S. HRG. 112–355

PROTECTING AMERICAN JOBS: STRENGTHENING TRADE ENFORCEMENT INCLUDING ANTI-DUMPING AND MARITIME LAWS

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

SPECIAL HEARING

MAY 25, 2011—WASHINGTON, DC

Printed for the use of the Committee on Appropriations

Available via the World Wide Web: http://www.gpo.gov/fdsys/browse/committee.action?chamber=senate&committee=appropriations

U.S. GOVERNMENT PRINTING OFFICE

66–755 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON APPROPRIATIONS

DANIEL K. INOUYE, Hawaii, *Chairman*

PATRICK J. LEAHY, Vermont
TOM HARKIN, Iowa
BARBARA A. MIKULSKI, Maryland
HERB KOHL, Wisconsin
PATTY MURRAY, Washington
DIANNE FEINSTEIN, California
RICHARD J. DURBIN, Illinois
TIM JOHNSON, South Dakota
MARY L. LANDRIEU, Louisiana
JACK REED, Rhode Island
FRANK R. LAUTENBERG, New Jersey
BEN NELSON, Nebraska
MARK PRYOR, Arkansas
JON TESTER, Montana
SHERROD BROWN, Ohio

THAD COCHRAN, Mississippi
MITCH MCCONNELL, Kentucky
RICHARD C. SHELBY, Alabama
KAY BAILEY HUTCHISON, Texas
LAMAR ALEXANDER, Tennessee
SUSAN COLLINS, Maine
LISA MURKOWSKI, Alaska
LINDSEY GRAHAM, South Carolina
MARK KIRK, Illinois
DANIEL COATS, Indiana
ROY BLUNT, Missouri
JERRY MORAN, Kansas
JOHN HOEVEN, North Dakota
RON JOHNSON, Wisconsin

CHARLES J. HOUY, *Staff Director*
BRUCE EVANS, *Minority Staff Director*

SUBCOMMITTEE ON THE DEPARTMENT OF HOMELAND SECURITY

MARY L. LANDRIEU, Louisiana, *Chairman*
FRANK R. LAUTENBERG, New Jersey, *Vice Chairman*

DANIEL K. INOUYE, Hawaii
PATRICK J. LEAHY, Vermont
PATTY MURRAY, Washington
JON TESTER, Montana

DANIEL COATS, Indiana
THAD COCHRAN, Mississippi
RICHARD C. SHELBY, Alabama
LISA MURKOWSKI, Alaska
JERRY MORAN, Kansas

Professional Staff
CHARLES KIEFFER
CHIP WALGREN
SCOTT NANCE
DRENAN E. DUDLEY
REBECCA DAVIES *(Minority)*
CAROL CRIBBS *(Minority)*

Administrative Support
NORA MARTIN
COURTNEY STEVENS *(Minority)*

CONTENTS

PROTECTING AMERICAN JOBS: STRENGTHENING TRADE ENFORCEMENT INCLUDING ANTI-DUMPING AND MARITIME LAWS

WEDNESDAY, MAY 25, 2011

U.S. SENATE,
SUBCOMMITTEE ON HOMELAND SECURITY,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:02 a.m., in room SD–124, Dirksen Senate Office Building, Hon. Mary L. Landrieu (chairman) presiding.

Present: Senators Landrieu and Coats.

OPENING STATEMENT OF SENATOR MARY L. LANDRIEU

Senator LANDRIEU. This meeting of the Homeland Security Subcommittee will come to order.

I appreciate the witnesses joining us this morning, and our ranking member, Senator Coats, and others will be joining us momentarily. Let me begin with a brief opening statement.

The Department of Homeland Security (DHS), as we all know, has many roles as it protects our country's security, including our economic security, which is sometimes in this Department overlooked. A critically underappreciated aspect of the Department's economic security role is enforcement of our Nation's trade laws.

After the Internal Revenue Service (IRS), DHS is responsible for the next-largest source of revenue collection. I think that might come as a surprise to many. In fiscal year 2009, U.S. companies imported more than $1.7 trillion in goods and deposited $22 billion in estimated duties into the U.S. Treasury.

When the American people and the Congress think of the jobs performed by Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), they think of men and women on our borders with scopes, potentially rifles, enforcing our immigration laws. But CBP and ICE are also responsible for enforcing our trade laws, including anti-dumping (AD) and maritime trade laws.

Together, with the Department of Commerce (DOC), these agencies assess duties on imported goods, collect those duties, and ensure that goods entering the Nation's stream of commerce are safe, traded fairly and competitively. Unfortunately, many U.S. businesses and their employees are harmed when other countries and companies unfairly and illegally dump their goods on the U.S. market. Those actions, frequently deliberate, undercut the cost of prod-

ucts made in this country, thereby increasing the cost of production, reducing profits, and causing the loss of American jobs.

I am concerned that CBP is simply not doing all they can to collect dumping duties that importers owe to the Federal Government. According to your own statistics, more than $1.5 billion, including $1.04 billion in duties related to AD that accumulated between 2001 and 2010, have yet to be collected. We want to examine why this morning.

Since 2005, for example, importers of shrimp from China have failed to pay more than $58 million in dumping duties, some of which is supposed to be redistributed to injured shrimpers, producers here in the United States, many of whom are in my State and in the region, of course, of the gulf coast.

Continued failure to collect these duties is fiscally irresponsible, and it further threatens the vulnerability of our gulf seafood industry that is struggling mightily to recover from the impacts of not only four major hurricanes in recent years, but also the devastating oil spill of just over a year ago.

The shrimp industry particularly has been a fundamental part of the Gulf of Mexico's culture for generations, particularly in south Louisiana. It is especially important to our State. In my State, we have at least 5,000 active shrimpers. Most of these are individuals, and it is more than just a job. It is an honored way of life, part of our culture.

Our shrimping business spans generations with entire families working together, trawling, processing, and distributing what is arguably the best-tasting shrimp—if I have to say so myself—in the world. So, for hundreds of years, these families have made their homes and towns and villages along our coast and bayous. If this system breaks down, if this system doesn't work, if we fail to collect the duties and distribute them appropriately, this industry and this way of life suffer.

Beyond its unique cultural significance, though, the Louisiana shrimp industry contributes more than $1 billion annually to our State's economy. But declining dock prices have been a trend for the past 2 decades, with prices falling precipitously since 1980.

In March 2008, the Government Accountability Office (GAO) reported that as of September 2007, CBP had been unable to collect more than $600 million owed in AD and countervailing duties (CVDs) imposed to remedy this unfair competition. These include duties imposed on products exported to the United States at unfairly low prices, and duties on products exported to the United States that were subsidized by foreign governments. In addition to the substantial amount of lost revenue, the uncollected duties cause concern that the U.S. Government has not fully remedied these unfair trade practices.

And I could go on and on about the shrimp industry, but it is not only the shrimp industry. Many, many industries are affected. Senator Coats's steel manufacturing industry is similarly affected, and we will be examining that in this hearing.

In a separate trade issue, the Jones Act is designed to strengthen the economic and military security of our Nation by ensuring the existence of a robust merchant marine fleet. CBP is charged with enforcing our Nation's cabotage laws, including the Jones Act,

which requires that any goods transported by water between two coast-wide points in the United States must be carried on ships that are built in America and crewed by Americans.

According to a study prepared by PricewaterhouseCoopers for the National Transportation Institute, Louisiana ranks No. 1 in the Nation for jobs, economic output, labor compensation, and value added related to the domestic maritime industry. This industry is responsible in my State alone for almost 62,000 jobs, with $3.4 billion a year in wages and an annual gross economic output of $14.25 billion.

I could go on and on. This Jones Act is not just important to Louisiana, but to many, many States, particularly coastal States. Working with DOC, CBP and ICE are charged with enforcing these trade laws. As we will hear today, there are too many examples of these agencies, in my view, not aggressively doing the job they are charged to do.

So I would like to examine if this is true, and if not, then what are the reasons that we are hearing so many of these complaints? And if it is, what can we do to potentially resource you better or streamline whatever regulations you are bumping into to get this job done?

That is the purpose of this hearing. Our duty is to ensure that your agencies, funded by this subcommittee, are provided the resources needed to do an excellent job in this field to enforce our existing trade laws. It is important for our businesses. We are trying to grow jobs in America, not lose them.

And we are trying to close a substantial budget gap. We don't want to leave $1 billion or $2 billion or $3 billion on the table when it can be collected and contribute to our effort and the great challenge that is before this Congress today.

So these are some of the facts that we hope to bring forward. We are trying to understand whether the failure to collect AD duties is a result of the authorization, weak authorization law, which potentially needs to be strengthened, or is it a lack of resources to enforce the law? Or is it just a failure of the agencies to communicate, a deliberate lack of aggressiveness, or some combination of the above?

We want to get to the bottom of this. I have had many, many, many complaints from my State from a broad variety, wide variety of industries.

So I thank you all for coming. I want this to be productive and constructive. We want to be helpful to you as these challenges, I am sure, are mounting.

So before we get to your opening remarks, I would like to turn to my ranking member, Senator Coats, for his opening statement. And thank you for joining me and for your interest in this subject, Senator.

STATEMENT OF SENATOR DAN COATS

Senator COATS. Madam Chair, thank you. And thank you for having this hearing today.

I think it is a good opportunity for me to make the acquaintance of individuals that I am happy to be working alongside of in the future. I am new to this Committee and new to the subcommittee,

but I am privileged to be able to serve as ranking member on this subcommittee, along with Senator Landrieu.

I want to assure you that those of us in Indiana don't have access to Indiana shrimp. So Louisiana is the highest priority in our shrimp orders. I am going to be asking from now on when I order shrimp at our restaurants whether it is Louisiana shrimp or not——

Senator LANDRIEU. Make sure it is gulf shrimp.

Senator Coats [continuing]. And make sure that it is.

I would like to just tag on a little bit to what the chairwoman has said here regarding collection of duties on importation of goods. I don't need to remind everybody we are at a time of fiscal constraint and looking for ways in which to continue to do our jobs effectively and efficiently with perhaps less resources.

And I have noticed how, and been personally engaged in helping support, additional revenues for our various police, sheriffs, and State trooper funds. I have noticed a very significant increase in the amount of cars pulled over to the side of the road, or tickets issued. They have met their fiscal challenge by making all of us safer drivers, including me.

So I think collection of duties is one way we can help offset some of the potential declining revenues or static revenues we are seeing. So I encourage you to continue to think along these terms.

My understanding is last fiscal year, 2010, CBP processed nearly $2 trillion in imports and collected more than $32 billion in duties, taxes, and fees. In addition to ensuring the free flow of goods and people across our borders, CBP, ICE, and DOC enforce laws that ensure fair trade and fair competition.

We do not want to encourage overly aggressive and unnecessary collection efforts, but by the same token, those that violate the laws need to be prosecuted. And collection of those fees is important. It sends a very important signal, I think, to those who are skirting the law that we are not going to tolerate that—that they do not have an easy path in terms of bringing their goods into this country illegally.

Trade enforcement, whether it is AD orders, intellectual property rights, or safety of commercial merchandise, is vitally important to this country. Trade laws are especially important to my State of Indiana, where we have a number of steel, pipe, furniture, and other companies that rely on AD/CVDs to protect against unfair imports.

I am proud that a leading representative of the steel industry, Keith Busse from Steel Dynamics, is here today to stress the importance of enforcing these trade laws. And we will hear from him in the second panel.

There are many of us who feel that each of your organizations should be doing more to enforce our trade laws. To give a sense of enforcement efforts in fiscal year 2010, CBP's Office of Laboratory and Scientific Services provided support in 977 shipments of products involved in AD cases and 484 cases involving intellectual property rights.

Since fiscal year 2006, ICE has initiated 391 cases based on allegations of fraud regarding AD orders. I hope that we will be able to discuss with all of our witnesses today how trade enforcement

can be improved and what level of resources we should put toward these efforts, and I look forward to our discussion.

Thank you, Madam Chair.

Senator LANDRIEU. Thank you, Senator. I really appreciate your focus and interest.

I would like to recognize our panel. In this order, ask them for their statements. Mr. Loren Yager from the Government Accountability Office; Mr. Allen Gina from Customs and Border Protection; Mr. Scott Ballman from Immigration and Customs Enforcement; and Mr. Ronald Lorentzen from the Department of Commerce.

So, Mr. Yager, if you will begin? And I think we have asked you for 3 to 5 minutes?

Thank you.

STATEMENT OF LOREN YAGER, DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. YAGER. Madam Chair Landrieu, Ranking Member Coats, thank you for the opportunity to appear before the subcommittee to present our findings on the enforcement of AD/CVDs.

Senator LANDRIEU. Could you pull the mike a little bit closer to you? It is a little difficult, but it moves. You can just—there you go.

Mr. YAGER. Okay. Madam Chair Landrieu, as you mentioned in your opening statement, the U.S. Government has not fully remedied the unfair trade practices for the U.S. industry and has also lost out on a substantial amount of duties that would have increased revenue to the U.S. Treasury.

As you know, DOC is responsible for calculating the appropriate AD/CVD rate. CBP is responsible for collecting any additional duties, called liquidating. And ICE provides the investigative support for these and other enforcement issues related to the U.S. border.

Madam Chair, my written statement summarizes the key efforts undertaken by CBP and DOC related to the issue of collection in recent years, efforts that have not solved the problem of significant lost revenues.

In the past month, there have been hearings and also public events focused on the design of the system and whether the United States should consider a change to the current system that we have called a retrospective system. I am happy to answer any questions related to the design of this system.

However, in my remarks today, let me focus on two aspects that are of more immediate relevance to this subcommittee, and these are related to getting the most effective use of the current resources—first, the need for better information and second, the need for better communication among the agencies to reduce the incidence of uncollected duties.

STATISTICS ON UNCOLLECTED DUTIES

First, let me talk about the importance of better information. As we demonstrated in our 2008 report, there are a few key statistics that are central to understanding the issue.

For example, GAO found in 2008 that uncollected duties were highly concentrated. Four products accounted for 84 percent of the uncollected duties. Importers purchasing from China accounted for

90 percent, and new shippers accounted for 40 percent of those uncollected duties.

Senator LANDRIEU. Could you state those again, please?

Mr. YAGER. Yes.

Senator LANDRIEU. Four industries accounted for 80 percent?

Mr. YAGER. For 84 percent. Importers purchasing from China accounted for 90 percent, and new shippers, which is a particular category of shippers, which can be explained also by DOC and CBP, accounted for 40 percent of the uncollected duties.

Senator LANDRIEU. Okay.

Mr. YAGER. This type of information helped the agencies, the Congress, and other stakeholders understand the nature of the problem and suggest ways to improve operations and to find solutions. However, from what we can gather, CBP and DOC have not updated most of these statistics since our 2008 report, and we believe they are missing an opportunity to utilize up-to-date information to identify the key risks and reduce uncollected duties.

OPPORTUNITIES TO IMPROVE COLLECTIONS OF ANTI-DUMPING AND COUNTERVAILING DUTIES

A second issue of particular interest to this panel is whether there are additional opportunities for the agencies represented here today to better communicate in ways that might make their individual efforts more effective. Let me give three examples.

The first is eliminating what is called "deemed liquidations". These represent a failure in the system as an entry is deemed liquidated if CBP does not issue the liquidation order within 6 months of DOC's notice in the Federal Register. This means that the Treasury forfeits all revenue that might have been collected as a result of a review.

Second is identifying the bad actors. We know from our 2008 report that only 20 firms represented 63 percent of all uncollected duties. This suggests that early warnings are needed to prevent bills of that magnitude, and it appears collectively that the agencies have much of the necessary information, either from themselves or from the private sector.

Whether this is ICE, who suspects that some firms may be owned by individuals who have avoided payment in the past; or it may be DOC, who might be aware that firms are importing large quantities on a minimal bond. And sharing that kind of information could prevent some of the largest bills from being created by firms who have no intention to pay.

And finally, improving workforce planning. In a presentation last week, CBP made the point that they don't know what is likely to happen even the next day in terms of the volume of liquidation instructions that come from DOC. It could be a slow day, or it could be a massive day for them in terms of trying to get those liquidation instructions out.

This has obvious implications for workforce planning and staffing and a major impact on the ability of the office to complete its work in an efficient manner. As a result, it is worth asking what kind of information DOC can legally provide to CBP in advance so that they can make appropriate decisions with regard to planning and

ensuring that their work environment moves smoothly through their responsibilities.

PREPARED STATEMENT

Madam Chair Landrieu, Ranking Member Coats, this concludes my statement. I would be happy to answer any questions that you have.

[The prepared statement follows:]

PREPARED STATEMENT OF YOREN LAGER

Chairman Landrieu, Ranking Member Coats, and members of the subcommittee: Thank you for the opportunity to appear before the subcommittee to present our findings on the enforcement of anti-dumping and countervailing duties (AD/CVDs). Since fiscal year 2001, the Federal Government has been unable to collect more than $1 billion in AD/CVDs imposed to remedy injurious, unfair foreign trade practices.[1] These include AD duties imposed on products exported to the United States at unfairly low prices (i.e., dumped) and CVDs on products exported to the United States that were subsidized by foreign governments. These uncollected duties show that the U.S. Government has not fully remedied the unfair trade practices for U.S. industry and has lost out on a substantial amount of duties that would have increased revenue to the U.S. Treasury.

In my statement today, I will summarize key findings from our prior reports on (1) past initiatives to improve AD/CVD collection and (2) additional options for improving AD/CVD collection. This statement is based on a body of work that we have conducted over the last several years for the Congress on issues related to the enforcement of U.S. trade laws, particularly a 2008 report on collection of AD/CVDs and a report, issued earlier this year, that included improved collection of AD/CVDs among opportunities for enhancing Government revenue.[2] Since our 2008 report was issued, we have followed up with the U.S. Government agencies involved in responding to our recommendations to improve AD/CVD collection. We conducted our work in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

BACKGROUND

The United States and many of its trading partners have established laws to remedy the unfair trade practices of other countries and foreign companies that cause injury to domestic industries. U.S. law authorizes the imposition of AD/CVDs to remedy these unfair trade practices, namely dumping (i.e., sales at less than normal value) and foreign government subsidies. The U.S. AD/CVD system is retrospective, in that importers pay estimated AD/CVDs at the time of importation, but the final amount of duties is not determined until later. By contrast, other major U.S. trading partners have AD/CVD systems that, although different from one another, are fundamentally prospective in that AD/CVDs assessed at the time a product enters the country are essentially treated as final.

Two key U.S. agencies are involved in assessing and collecting AD/CVDs owed. The Department of Commerce (DOC) is responsible for calculating the appropriate AD/CVD rate, which it issues in an AD/CVD order.[3] DOC typically determines two

[1] In this testimony we use the phrase "uncollected AD/CVDs" to mean the sum of all open, unpaid bills for AD/CVDs, which includes those currently under protest. We include the principal amount of the bill, but not any accrued interest. This amount does not include revenue that is written off or forgone when the U.S. Government is unable to issue duty bills within statutory deadlines.

[2] GAO, Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection, GAO–08–391 (Washington, DC: Mar. 26, 2008), and Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue, GAO–11–318SP (Washington, DC: Mar. 1, 2011). See also International Trade: Customs' Revised Bonding Policy Reduces Risk of Uncollected Duties, but Concerns about Uneven Implementation and Effects Remain, GAO–07–50 (Washington, DC: Oct. 18, 2006).

[3] Among other things, the order specifies the products for which importers must pay AD/CVDs.

types of AD/CVD rates in the course of an initial AD/CVD investigation on a product: a rate applicable to a product associated with several specific manufacturers and exporters, as well as an "all others" rate for all other manufacturers and exporters of the product who were not individually investigated. After the initial AD/CVD investigation, DOC can often conduct two subsequent types of review: administrative and new shipper.

Administrative Review

One year after the initial rate is established, DOC can also conduct a review to determine the actual, rather than estimated, level of dumping or subsidization. At the conclusion of the administrative review, the final duty rate, also known as the liquidation rate, is established for the product.

New Shipper Review

After an initial rate is established, a new shipper (i.e., a shipper who has not previously exported the product to the United States during the initial period of investigation and is not affiliated with any exporter who exported the subject merchandise) who is subject to the "all others" rate can request that DOC conduct a review to establish the shipper's own individual AD/CVD rate.

U.S. Customs and Border Protection (CBP), part of the Department of Homeland Security (DHS), is responsible for collecting the AD/CVDs. The initial AD/CVD order issued by DOC instructs CBP to collect cash deposits at the time of importation on the products subject to the order. Once DOC establishes a final duty rate, it communicates the rate to CBP through liquidation instructions, and CBP instructs staff at each port of entry to assess final duties on all relevant products (technically called liquidating).[4] This may result in providing importers—who are responsible for paying all duties, taxes, and fees on products brought into the United States—with a refund or sending an additional bill.

CBP is also responsible for setting the formula for establishing the bond amounts that importers must pay. To ensure payment of unforeseen obligations to the Government, all importers are required to post a security, usually a general obligation bond, when they import products into the United States.[5] This bond is an insurance policy protecting the U.S. Government against revenue loss if an importer defaults on its financial obligations. In general, the importer is required to obtain a bond equal to 10 percent of the amount the importer was assessed in duties, taxes, and fees over the preceding year (or $50,000, whichever is greater). In addition, importers purchasing from the new shipper can pay estimated AD/CVDs by providing a bond in lieu of paying cash to cover the duties—an option known as the new shipper bonding privilege.

We previously reported that more than $613 million in AD/CVDs from fiscal years 2001 through 2007 went uncollected, with the uncollected duties highly concentrated among a few industries, products, countries of origin, and importers.[6] Recent CBP data indicate that uncollected duties from fiscal year 2001 to 2010 have grown to more than $1 billion and are still highly concentrated. For example, according to CBP, five products from China account for 84 percent of uncollected duties.[7]

PAST INITIATIVES TO IMPROVE ANTI-DUMPING AND COUNTERVAILING DUTY COLLECTION HAVE MADE LITTLE PROGRESS

CBP, the Congress, and DOC have undertaken several initiatives to address the problem of uncollected AD/CVDs. However, these initiatives have not resolved the problems associated with collections.

CBP Temporarily Adjusted Standard Bond-Setting Formulas

In response to the problems of collecting AD/CVDs, in July 2004, CBP announced a revision to bonds covering certain imports subject to these duties, significantly increasing the value of bonds required of importers. CBP's goal was to increase protection for securing AD/CVD revenue for certain imports when the final amount of duties owed exceeds the amount paid at the time of importation, without imposing an "excessive burden" on importers. In February 2005, CBP applied this revision to imports of shrimp from six countries as a test case, which covered a potential increase in the final AD duty rate of up to 85 percent from the initial rate. However, shrimp

[4] 19 U.S.C. 1500. Legal authority over customs revenue functions is vested in the Secretary of the Treasury and, under Treasury Order 165, was delegated to the U.S. Customs Service. In March 2003, the U.S. Customs Service was transferred to DHS, and authority over customs revenue functions was delegated to DHS. 68 Fed. Reg. 10777–01 (Mar. 6, 2003).

[5] 19 CFR 142.4.

[6] GAO–08–391.

[7] The products are crawfish, fresh garlic, mushrooms, honey, and wooden bedroom furniture.

importers reported that the costs were substantial because they had to pay up front higher premiums and larger collateral requirements to obtain the bonds for the initial duties.[8] These increased up-front costs can deter malfeasance by illegitimate importers by increasing the cost of importing merchandise subject to AD/CVDs, but may also impose costs on legitimate importers that pose little risk of failing to pay retrospective AD/CVDs. The enhanced bonding requirement was subject to domestic and World Trade Organization (WTO) litigation, and CBP decided to terminate the requirement in April 2009.[9]

The Congress Temporarily Suspended New Shipper Bonding Privilege

The Congress partially addressed the risk that CBP would not be able to collect AD/CVDs from new shippers by suspending the new shipper bonding privilege from August 2006 to July 2009.[10] As a result, importers purchasing from new shippers were required to post a cash deposit for estimated AD/CVDs, like all other importers. This requirement eliminated the risk of uncollected AD/CVD revenues when the final duty amounts were assessed at the cash deposit rate or less because CBP did not have to issue a bill for the bonded amount.[11] Upon the July 2009 expiration of the requirement, the new shipper bonding privilege was reinstated. The Treasury stated in a 2008 report to the Congress that the added risk associated with the bond compared with the cash deposit is low.

Department of Commerce Continues Efforts To Improve Liquidation Instructions

DOC has taken steps to improve the transmission of liquidation instructions to CBP, which should improve CBP's ability to liquidate AD/CVDs in a timely manner. Once DOC determines the final AD/CVD, it publishes a notice in the Federal Register, and CBP has 6 months to complete the liquidation process.[12] If CBP fails to complete the liquidation process within 6 months, an entry is "deemed liquidated" at the rate asserted by the importer at the time of entry.[13] Once an entry has been deemed liquidated, CBP cannot attempt to collect any supplemental additional duties that might have been owed because of an increase in the AD/CVD rate from initial to final. DOC's liquidation instructions are necessary for CBP to assess and collect the appropriate amount of AD/CVDs in a timely manner. However, we reported in 2008 that there were frequent delays in DOC's transmission of liquidation instructions to CBP, and that about 80 percent of the time, DOC failed to send liquidation instructions within its self-imposed 15-day deadline. In addition, we found that DOC's liquidation instructions were sometimes unclear, thereby causing CBP to take extra time to obtain clarification. In December 2007, after we made DOC officials aware of the untimely liquidation instructions, DOC announced a plan for tracking timeliness, including a quarterly reporting requirement. In April 2011, DOC officials told us that DOC had deployed a system for tracking DOC's liquidation instructions. In addition, DOC and CBP established a mechanism for CBP port personnel to submit questions to DOC regarding liquidation issues.

---

[8] GAO–07–50 and GAO–08–391.

[9] In 2005, separate trade associations, whose membership includes some of the affected importers, filed two lawsuits against the United States challenging the bond policy. The Court of International Trade (CIT) dismissed one of the cases without a finding on the merits in 2008. *Seafood Exps. Ass'n of India* v. *United States*, case No. 05–00347, court order of Feb. 19, 2008 (docket entry No. 54). In August 2009, CIT issued a decision on the second case and ordered the enhanced bonding policy be set aside as arbitrary, capricious, and otherwise not in accordance with law. *National Fisheries Inst.* v. *United States*, 673 F. Supp. 2d 1270 (Ct. Int'l Trade 2009). CIT remanded the bond amount determinations and found that although CBP possessed the authority to require bonds that take into account anti-dumping duties, it arbitrarily and capriciously imposed the new bond formula solely on U.S. importers of subject shrimp. *Id.* In October 2010, CIT issued a final judgment sustaining CBP's recalculation of the bond amounts using the pre-2004 bonding formula. *National Fisheries Inst.* v. *United States*, No. 05–00683, 2010 WL 4121855 (Ct. Int'l Trade Oct. 21, 2010). In addition, WTO's Appellate Body ruled in July 2008 that CBP's enhanced bonding requirement was inconsistent with U.S. obligations under international agreements. United States—Measures Relating to Shrimp from Thailand and United States—Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, WT/DS343/AB/R and WT/DS345/AB/R.

[10] Pension Protection Act of 2006, Public Law No. 109–280, section 1632(a), 120 Stat. 780, 1165.

[11] This temporary requirement did not eliminate the risk of uncollected AD/CVDs in instances where the final duty rate amount exceeded the cash deposit amount.

[12] 19 U.S.C. 1504(d).

[13] The importer must use reasonable care in making entry and, when filing electronically, certify that the information is true and correct to the best of his knowledge. 19 U.S.C. 1484.

Agencies Believe Using International Agreements To Collect Duties Would Be Difficult and Ineffective

The House and Senate Appropriations Committees directed us to examine whether international agreements to which the United States is a party could be strengthened to improve the collection of AD/CVDs from importers with no attachable assets in the United States. We reported in 2008 that U.S. agency officials believed this would be both difficult and ineffective because of two key obstacles: Few countries are willing to enter into negotiations, and United States and foreign governments have a practice of not enforcing a revenue claim based upon the revenue laws of another country.[14] In addition, agency officials stated that strengthening international agreements would not substantially improve the collection of AD/CVDs, given the retrospective nature of the AD/CVD system and the high cost of litigation.

ADDITIONAL OPTIONS EXIST FOR IMPROVING COLLECTION OF ANTI-DUMPING AND COUNTERVAILING DUTIES

There are two key components of the U.S. AD/CVD system that have not been addressed but could improve the collection of AD/CVDs: the retrospective nature of the system and the new shipper review process. In addition, DOC and CBP are contemplating changes to the bonding process.

Retrospective Nature of United States System Could Be Revised

One key component of the U.S. AD/CVD system is its unique retrospective nature, which creates risks of uncollected duties both because of time lags and rate changes. As discussed earlier, importers pay the estimated amount of AD/CVDs when products enter the United States, but the final amount of duties owed is not determined until later. In 2008, we found that the average time elapsed between entry of goods and liquidation was more than 3 years. The long time lag between the initial entry of a product and the final assessment of duties heightens the risk that the Government will be unable to collect the full amount owed, as importers may disappear, cease business operations, or declare bankruptcy.

The final amount owed under the retrospective system of the United States can also be substantially more than the original estimate, putting revenue at risk. We reported that, while final AD duty rates are lower than or the same as the estimated duty rates the vast majority of the time, in some cases final duty rates are significantly higher. On the basis of our analysis of more than 6 years of CBP data covering more than 900,000 entries subject to AD duties, we found that duty rates went up 16 percent of the time, went down 24 percent of the time, and remained the same 60 percent of the time.[15] When duty rates increased, the median increase was less than 4 percentage points.[16] However, because of some large increases, the average rate increase was 62 percentage points, with some increases greater than 150 to 200 percentage points. The majority of uncollected duty bills more than $500,000 are attributed to rate increases greater than 150 percentage points.

In our 2008 report, we noted that the advantages and disadvantages of prospective and retrospective AD/CVD systems differ and depend on specific design features.

—In prospective AD/CVD systems, the amount of AD/CVDs paid by the importer at the time of importation is essentially treated as final.[17] This eliminates the risk of being unable to collect AD/CVDs and creates certainty for importers. In a retrospective AD/CVD system, however, the amount of AD/CVDs owed is not determined until well after the time of importation. This time lag can result in "bad actors", those importers who intentionally avoid paying required duties, not being identified until they have been importing for a long time. Only after its collections efforts are unsuccessful does the Government clearly know that duties owed by this importer are at serious risk for noncollection.

—Prospective AD/CVD systems create a smaller burden for customs officials because the full and final amount of AD/CVDs is assessed at the time of importation, whereas, according to CBP, the retrospective AD/CVD system of the United States places a unique and significant burden on CBP's resources.

---

[14] GAO, Agencies Believe Strengthening International Agreements To Improve Collection of Antidumping and Countervailing Duties Would Be Difficult and Ineffective, GAO–08–876R (Washington, DC: July 24, 2008).

[15] For information on how we calculated these duty rate changes, see GAO–08–391.

[16] A median increase of 4 percentage points means that half of the time the rate increased less than 4 percentage points.

[17] If and when the AD/CVD rate is changed under a prospective system, it is applied only to future imports and has no effect on the amount of duties owed for previous imports.

—Depending on the design of the prospective AD/CVD systems, the amount of duties assessed is based on dumping or subsidization that occurred in a previous period, and therefore may not equal the amount of actual dumping or subsidization, whereas under a retrospective AD/CVD system, the amount of duties assessed reflects the actual amount of dumping by the exporter for the period of review. However, in practice, a substantial amount of retrospective AD/CVD bills are not collected.

In response to a recommendation in our 2008 report, DOC reported to the Congress in 2010 on the advantages and disadvantages of retrospective and prospective systems.[18] While the DOC report cites a variety of strengths and weaknesses for both systems, it states that retroactive increases in AD/CVDs are particularly harmful for small businesses such as shrimp and seafood importers. Under a retrospective system, the DOC report notes, such small U.S. importers potentially face years of uncertainty over duty liability that can hinder their ability to make informed business decisions, plan investments, and create jobs.

New Shipper Review Process Could Be Enhanced

Another component of the AD/CVD collection system that has not been resolved is the new shipper review process. This process allows new manufacturers or exporters to petition for their own separate AD/CVD rate. However, U.S. law does not specify a minimum amount of exports or number of transactions that a company must make to be eligible for a new shipper review, and according to DOC officials, they do not have the legislative authority to create any such requirement. As a result, a shipper can be assigned an individual duty rate based on a minimal amount of exports—as little as one shipment, according to DOC—and can intentionally set a high price for this small amount of initial exports. This creates the possibility that companies may be able to get a low (or 0 percent) initial duty rate, which will subsequently rise when the exporter lowers its price. This creates additional risk by putting the Government in the position of having to collect additional duties in the future rather than at the time of importation. Importers that purchased goods from companies undergoing a new shipper review are responsible for approximately 40 percent of uncollected AD/CVDs.

The Department of Commerce and Customs and Border Protection Recently Proposed Additional Changes to the Bonding Process

DOC and CBP have proposed additional changes to the bonding process to try to reduce the risk of uncollected AD/CVDs. In April 2011, DOC proposed a rule that would eliminate the bond that all shippers post when entering products under an AD/CVD investigation and require a cash deposit instead.[19] A key reason for the change is that importers bear full responsibility for future duties, according to DOC. Separately, in May 2011, CBP's Commissioner of International Trade stated in a Senate hearing that CBP is developing internal guidance to require that importers at risk of evasion take out one-time bonds that cover at least the full value of the shipment (single-transaction bonds). Currently, shippers typically take out a "continuous bond" that covers all import transactions over the course of a year, and is calculated at 10 percent of the prior year's duties (or $50,000, whichever is greater). GAO has not reviewed these proposals or assessed their potential effect on the collection of additional AD/CVDs.

CONCLUDING OBSERVATIONS

The existence of a substantial amount of uncollected AD/CVDs undermines the effectiveness of the U.S. Government's efforts to remedy unfair foreign trade practices for U.S. industry. While the Congress and Federal agencies have taken actions to address the problem of uncollected duties, these initiatives have met with little success. Some additional options exist that the Congress could pursue to further protect Government revenue. In particular, the Congress could eliminate the retrospective component of the U.S. AD/CVD system and consider the variety of alternative prospective systems available. The Congress could also make adjustments to specific aspects of the U.S. AD/CVD system without altering its retrospective nature, such as by providing DOC the discretion to require companies applying for a new shipper review to have a minimum amount or value of imports before establishing an individual AD/CVD rate. However, any effort to improve the U.S. AD/CVD system

[18] DOC, International Trade Administration, Relative Advantages and Disadvantages of Retrospective and Prospective Antidumping and Countervailing Duty Collection Systems: A Report to Congress. (Washington, DC: November 2010).

[19] DOC regulations refer to this as a "provisional measure". 76 Fed. Reg. 23225 (April 26, 2011).

should consider the additional costs placed on legitimate importers while attempting to address the issue of illegitimate importers. We continue to respond to congressional interest in this issue, and have recently begun a review of the evasion of trade duty laws, in response to a request from the Subcommittee on International Trade, Customs, and Global Competitiveness, Senate Committee on Finance.

Chairman Landrieu, Ranking Member Coats, this completes my prepared statement. I would be happy to respond to any questions you or other members of the subcommittee may have at this time.

Senator LANDRIEU. Thank you very much.

We look forward to working closely with you, Mr. Yager.

Mr. Gina.

STATEMENT OF ALLEN GINA, ASSISTANT COMMISSIONER FOR INTERNATIONAL TRADE, CUSTOMS AND BORDER PROTECTION

Mr. GINA. Good morning.

Madam Chair Landrieu, Ranking Member Coats, and members of the subcommittee, it is an honor to appear before you today to discuss CBP's responsibility to detect and prevent the evasion of AD/CVDs.

Senator LANDRIEU. You have to pull your mike a little closer.

Mr. GINA. Absolutely.

Senator LANDRIEU. There you go.

Mr. GINA. Thank you.

My name is Al Gina, and I have been with CBP and its legacy agency, the U.S. Customs Service, for 29 years. While I am new to my role as assistant commissioner, Office of International Trade, I am committed to ensuring that the AD/CVD laws are enforced and that those who would try to evade those laws are identified and dealt with appropriately.

In today's oral testimony, I will be highlighting the principal points set out in my previously submitted written statement.

AD/CVD evasion is a significant challenge for the United States. And while we have had some successes, we realize that we must be more innovative and assertive to combat increasingly complex strategies used to evade AD/CVDs, which undermines the vitality of the U.S. industry and the integrity of our trade remedy laws.

First, I would like to outline the challenges we see with evasion and dumping collection. We see multiple techniques used to evade, often used together in complex schemes. We see illegal transshipments, undervaluation, failure to manifest, misclassification, and other techniques, such as employing shell companies or the use of foreign businesses outside the reach of CBP's authorities.

To address these threats, we use a layered approach by taking actions before and after goods enter the United States. Before goods arrive, CBP works with U.S. industry and foreign customs agencies to share information and assess risk of incoming shipments.

Based on information received and risk assessments, we may sample goods to determine country of origin at time of entry. After entry, we perform verifications in order to further assess risk and determine if additional corrective actions should be taken.

To track the valuable information that the private sector shares with us, we established CBP's e-Allegations online referral system in June 2008. We take each claim seriously, and we have researched 4,000 commercial allegations of which nearly 10 percent are AD/CVD-related.

CBP has also taken steps to specifically improve the collection of AD/CVDs on shrimp imports by requiring enhanced bonds. These efforts have been litigated in both the World Trade Organization (WTO), as well as the Court of International Trade. However, CBP continues to explore changes to enhance bonding requirements.

Additionally, CBP works with the private sector and ICE by initiating enforcement operations. In the last 2 years, 10 AD/CVD-focused operations have been conducted, resulting in successful cases on steel wire hangers, citric acid, mattress innerspring units, honey, furniture, tissue paper, lumber, catfish, and frozen shrimp.

Also in the last 5 years, CBP has conducted 215 CVD/AD-related audits and has recommended $42 million in recovery. However, CBP recognizes, as stated by Commissioner Bersin, that new methods of detection and deterrence are needed in this area of concern, and we look forward to continuing our work with DOC, ICE, GAO, industry, and this subcommittee to identify the most productive ways to deter dumping evasion and provide a level playing field.

Some approaches, if I might mention, under consideration include the greater use of single-transaction bonds for importers when we suspect a risk to revenue. We will pursue regulatory and statutory changes to address the risk of nonpayment or evasion posed by nonresident importers of record.

To trace the origin of goods imported using false documents, we need better information and verification of production capabilities in potential transshipment countries. Therefore, we are discussing how to secure new authority to conduct site visits in cooperation with host countries.

We are working with DOC on the exchanging of information that will help us verify the legitimacy of goods and to tighten the new shipper requirements, which we see as a potential risk. And we are in discussion with others to develop task forces that would concentrate resources on the most complex criminal cases, just as we have done with intellectual property rights.

PREPARED STATEMENT

Madam Chair Landrieu, members of the subcommittee, thank you again for the opportunity to testify today, and I look forward to working with you to address these issues. And I will be happy to answer your questions.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF ALLEN GINA

INTRODUCTION

Chairman Landrieu, Ranking Member Coats, and members of the subcommittee, it is an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) trade enforcement role, specifically in detecting and preventing the circumvention of anti-dumping and countervailing duties (AD/CVDs) on imported goods.

My name is Al Gina, the Assistant Commissioner for CBP's Office of International Trade. I have been with CBP and its legacy agency, the U.S. Customs Service, for 29 years. While I am new to my role as Assistant Commissioner, Office of International Trade, I am very committed to ensuring that the AD/CVD laws are vigorously enforced and that those who would try to evade those laws are identified and dealt with appropriately. Thank you for this opportunity to appear here today.

My testimony will highlight CBP's enforcement stance, provide examples of actions and initiatives performed in support of U.S. AD/CVD laws, and present some of the challenges we face while enforcing those important laws.

ANTI-DUMPING AND COUNTERVAILING DUTY EVASION

CBP and U.S. producers have a common interest in preventing the evasion of AD/CVDs, which undermines the vitality of U.S. industry and the integrity of our trade remedy laws. We take all indications or allegations of evasion very seriously, and in coordination with U.S. Immigration and Customs Enforcement (ICE), employ all available methods in accordance with the law to address these matters. Recent publicized arrests and convictions by ICE and the Department of Justice (DOJ), with significant CBP assistance, are evidence of this. However, the increasing complexity of the strategies employed by parties to evade AD/CVDs poses a significant challenge.

CBP has a statutory responsibility to collect all revenue due to the U.S. Government that arises from the importation of goods. In fiscal year 2010, CBP collected $310 million in AD/CVD deposits on $5.4 billion of goods subject to AD/CVD orders. CBP's main challenge in all areas of trade enforcement, including AD/CVD enforcement, is to identify the small minority of noncompliant shipments amid the universe of compliant shipments.

CBP's ability to fulfill its statutory responsibility to collect all revenue due to the U.S. Government that arises from the importation of goods has been affected by companies that willfully circumvent the provisions of the AD/CVD laws in order to avoid paying AD/CVDs. As evidenced by Senator Wyden's staff report on duty evasion, it is not difficult for an importer to find and collude with a producer to avoid paying dumping duties. Many of the parties identified in the Wyden report were able to hide their identity as part of the import transaction process.

Evasion takes several forms and often involves the collusion of several parties, including the manufacturer, shippers, and the importer. Several schemes may be employed at once, further complicating an already challenging task:

—Illegal transshipment involves the manipulation of documents and shipping logistics to disguise the true country of origin of a product. Transshipment is often built into production by design, with false markings and packaging devised to purposefully mimic legitimate production in other countries. Determining a product's country of origin through visual inspection or through verification of shipping documents can be very difficult, especially if cargo has been manipulated prior to import, completely masking the connection back to the true source country.

—Undervaluation involves the intentional falsification of documents and declarations to reduce the amount of AD/CVD a company must pay. Beyond the suspicion of undervaluation, it can be difficult to sufficiently prove that it is occurring, especially if there is collusion between the producer and importer to create false values.

—Failure to manifest (i.e., smuggling) is when a company does not declare goods on its entry documents in order to avoid paying AD/CVDs.

—Misclassification includes improperly declaring goods with the proper duty classification, or misdescribing the goods to avoid suspicion of dumping. This is easier to detect and address than other schemes, but is often used in combination with another scheme such as transshipment, so that it may still appear to fall outside the scope of an AD/CVD case.

—Other schemes that exist include taking advantage of loopholes related to administrative reviews, product engineering to fall outside the scope of a case, employing shell companies as a primary means of avoiding payment, or the use of foreign businesses outside the reach of CBP authorities.

Despite these challenges CBP, in partnership with ICE, has been increasingly successful in uncovering instances of illegal transshipment and penalizing those in the United States responsible for this fraud. Our recent enforcement activities include:

—Special operations attacking illegal transshipment of Chinese steel wire garment hangers through Vietnam, Korea, and Mexico, concluding with the assessment of $13.1 million in AD/CVDs and the arrests of two Mexican citizens.

—An ongoing CBP/ICE operation on illegal transshipment of Chinese citric acid resulting in the identification of $17 million in unpaid AD/CVDs. Additional revenue recoveries are expected as the operation continues.

—A joint CBP/ICE operation on uncovered mattress innerspring units from China that concluded with the assessment of $5.3 million in unpaid AD/CVDs.

—Using multiple investigative techniques including lab analysis, CBP and ICE detected that Chinese honey had been transshipped through Russia, India, Indonesia, Malaysia, Mongolia, the Philippines, South Korea, Taiwan, and Thailand. This operation has led so far to the indictment and arrest of multiple corporate officers.
—CBP recovered $2.5 million in unpaid AD duties through a company audit on imports of frozen warm water shrimp transshipped from China through Indonesia, where it was commingled with Indonesian shrimp.

A LAYERED APPROACH

CBP focuses its trade enforcement actions and resources around priority trade issues (PTI) that pose a significant risk to the U.S. economy, consumers, and stakeholders. In fiscal year 2003, AD/CVD enforcement was granted PTI status because of its importance to the U.S. economy.

CBP utilizes a layered approach to trade facilitation and enforcement, which employs numerous efforts in the pre-entry, entry, and post-release environments to prevent, address, and deter AD/CVD violations and promote compliance.

In the pre-entry environment, CBP works with U.S. industry and foreign customs agencies to share information prior to arrival, monitor the import process, verify compliance, and evaluate risk. At the border, CBP uses risk assessment to target and focus resources on high-risk security, admissibility, and health and safety issues for further review, while working to expedite compliant trade across the border. In a post-release setting, verifications and audits are performed to ensure the process functions properly and to refine risk assessments based on outcomes. Throughout this process, CBP personnel work with agents from ICE and staff from the Department of Commerce (DOC), the administering authority for AD/CVD determinations under U.S. law, on potential enforcement action. This comprehensive approach is a dynamic response to the nature of today's international trade environment.

We meet regularly with U.S. industry representatives to discuss AD/CVD circumvention schemes, and U.S. industry representatives share valuable private sector intelligence with us. In order to facilitate the process of providing us with this critical information, we created an online referral process called e-Allegations. Since e-Allegations' inception in June 2008, CBP has received more than 4,000 commercial allegations via www.cbp.gov. Nearly 10 percent of these allegations are AD/CVD-related. Every allegation submitted through e-Allegations is reviewed and researched to determine the validity of the trade law violation(s) being alleged. Some are reviewed and resolved internally within CBP, and some are referred to ICE for further investigation.

When CBP suspects that AD/CVD circumvention violates criminal laws, we work closely with ICE to pursue these violations. ICE has certain authorities and resources, such as its global network of attachés, that complement CBP's own civil authorities and limited international capabilities to address AD/CVD circumvention. Last year ICE, working with a foreign government, assisted in that government's seizure of multiple containers of Chinese honey that had been destined for the United States.

CBP carries out its AD/CVD enforcement by targeting AD/CVD circumvention at the national and port level. When targeting criteria alone cannot address all AD/CVD circumvention—it will not in many instances of transshipment—CBP will initiate an operation to coordinate actions across the country to determine if a violation is occurring and to determine its scope. In the last 2 years, 10 AD/CVD-focused national operations and several local operations have been completed. Additionally, in the last 5 years, CBP has conducted 215 AD/CVD-related audits and has recommended $42.2 million in recoveries to DOC.

NEW APPROACHES TO ANTI-DUMPING AND COUNTERVAILING DUTY ENFORCEMENT

CBP is constantly developing new approaches to AD/CVD enforcement to meet the challenges posed by complex AD/CVD circumvention schemes. CBP is working with U.S. industry, ICE, and our international partners to develop new sources of information to identify AD/CVD circumvention. CBP also takes a comprehensive and integrated view of security and trade enforcement, and is creatively using other civil authorities to stop AD/CVD circumvention. We are exploring many options that will give us additional information and new tools to protect U.S. revenue and identify those who would use our system for illicit gains.

As you know, under the current retrospective system, there can sometimes be substantial increases in AD/CVD rates several years after the initial finding by DOC. The bonding system is a key tool in our administration of the import process. We must pay particular attention to the risk of nonpayment or evasion posed by non-

resident importers of record. For example, we can use our existing regulations to levy single-transaction bonds against any importer when we suspect a risk to revenue and I have directed my staff to develop internal guidance to ensure that single-transaction bonds are required whenever we suspect that a risk of revenue loss exists.

CBP shares industry concerns about the importance of countering AD/CVD circumvention. We also understand that U.S. industry wants more transparency in CBP's AD/CVD circumvention efforts. We are examining ways to timely release information to the public about our enforcement activities. At the same time, there is necessarily information that we cannot make public when there is a criminal case under development. Such cases usually require time to develop as CBP, in cooperation with ICE, fully investigates and prosecutes the parties that are not properly paying their AD/CVDs. Such public prosecution sends a very strong message worldwide about the U.S. Government's AD/CVD enforcement efforts. All of this notwithstanding, we are taking all necessary steps to find ways that will allow us to release information to petitioners to make our process more transparent.

One of our biggest challenges, as I outlined earlier, is with transshipment where the normal documents available to us are not the complete set that would trace the goods back to the original country of origin. This was a problem we faced with textile transshipment and we found a good deal of success with textile production verification teams that, under the auspices of an agreement with the host country, would allow teams of CBP and ICE experts to determine the production capability of individual factories. CBP is looking at the possibility of conducting similar visits to ensure that goods are actually produced in the country claimed as the country of origin with our colleagues in the executive branch.

Some of the activities we are undertaking are:

—Working with DOJ to develop a task force to concentrate resources on the most complex cases just as we have with intellectual property rights;

—Working with DOC on release of information that will help us verify the legitimacy of goods suspected of transshipment and to tighten the "new shipper" requirements; and

—Clarifying the responsibility of customs brokers when executing powers of attorney, to verify the both the identities of their principals and their eligibility to be importers of record.

THE JONES ACT

CBP also enforces many navigation and shipping laws intended to protect the U.S. maritime industry. One of these laws is the "Jones Act", which provides in part that a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States, either directly or via a foreign port, unless the vessel is wholly owned by citizens of the United States and has been issued a certificate of documentation with a coastwise endorsement by the U.S. Coast Guard or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

Transportation in this context occurs when there is a lading of merchandise at one U.S. point and an unlading of the same merchandise at a different U.S. point. Penalties are assessed for violations of the Jones Act, typically in the amount of the value of the merchandise illegally transported.

CBP has a process whereby it issues rulings concerning the Jones Act and the other coastwise statutes. After issuance of its rulings, CBP publishes them in an electronic database where they can be reviewed by the public. CBP occasionally receives requests for waivers of the Jones Act, which are granted by the Secretary of Homeland Security if he/she determines that it is necessary in the interest of national defense and after consulting with the Maritime Administrator in the Department of Transportation, as to qualified U.S. vessel availability and receiving advice from the Departments of Defense and Energy about whether to grant the waiver. CBP Headquarters frequently interacts with and provides advice to its field offices concerning the enforcement of the Jones Act.

In addition to focusing on strong enforcement of the Jones Act, CBP also conducts significant outreach to industry in order to increase compliance prevent violations of the Jones Act.

CONCLUSION

Senator Landrieu, members of the subcommittee, thank you again for the opportunity to testify today, I will be happy to answer your questions.

Senator LANDRIEU. Thank you very much.

Mr. Ballman.

STATEMENT OF J. SCOTT BALLMAN, JR., DEPUTY ASSISTANT DIRECTOR, NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER, IMMIGRATION AND CUSTOMS ENFORCEMENT

Mr. BALLMAN. Thank you.

Madam Chair Landrieu, Ranking Member Coats, and distinguished members of the subcommittee, on behalf of Secretary Napolitano and Assistant Secretary Morton, it is my privilege to testify before you today to discuss the efforts of ICE Homeland Security Investigations (HSI) to combat illegal trade practices and investigate commercial fraud activities, including the evasion of AD/CVDs.

As members of this subcommittee know, globalization provides boundless opportunities for commerce. But with these opportunities comes new potential threats to national security. DHS is committed to ensuring the security of America's borders while fostering and facilitating the movement of legitimate trade that is critical to our economy.

ICE has a long history of engagement in commercial fraud enforcement, particularly AD/CVDs, dating back to our past as legacy U.S. Customs Service investigators. ICE works in close cooperation with relevant interagency partners, the private sector, and international counterparts to investigate a broad spectrum of crimes related to commercial fraud. ICE targets and investigates goods entering the United States illegally through our ports and seizes these goods for forfeiture.

ICE recognizes that we must partner with the private sector to obtain the necessary information to halt this illegal fraudulent trade practice. It is also essential that we continue to work with all relevant Federal agencies to confront this challenge. ICE has, therefore, built strong relationships with our interagency partners and international counterparts.

The ICE HSI commercial fraud priorities are, one, protect the health and safety of consumers, Government workers, and our warfighters from hazardous, tainted, substandard, and counterfeit imported products; two, protect U.S. businesses from unfair trade practices; and three, protect the revenue of the Federal Government.

Our AD/CVDs program is one way that ICE protects U.S. businesses. ICE is responsible for investigating importers who evade the payment of dumping duties on imported merchandise. AD cases are long-term transnational investigations that require significant coordination between domestic and international offices and with our foreign law enforcement counterparts.

When working dumping investigations, ICE agents work closely with CBP officers, import specialists, and regulatory auditors. Prior to opening a criminal case, ICE must verify the information related to dumping allegations made either by CBP or private industry. ICE agents research, identify, and obtain entry documents for all the alleged violator's importations to calculate a loss of revenue to the United States and to demonstrate that that loss of revenue exceeds prosecution thresholds set by the local United States attorney's office.

Even if the initial calculation exceeds the minimum prosecution threshold, it is important to note that preliminary dumping duty rates are only estimates. The final rate is set by DOC, and the final rate could be substantially lower than the initial estimate. For example, ICE had to close multiple Canadian softwood lumber investigations when the dumping duty rate was lowered to zero by DOC officials.

After demonstrating a loss of revenue that exceeds the threshold for prosecution, ICE will utilize mutual legal assistance treaties to obtain shipping records and other documents from foreign countries in order to prove that an individual or company evaded dumping duties through transshipment, undervaluation, overvaluation, or misdescription. This process normally involves coordination between several United States and foreign government agencies.

Since 2006, ICE has initiated 391 cases based on allegations of fraud relating to AD/CVD orders, which, to date, have resulted in 28 criminal arrests, 86 indictments, and 39 convictions.

Current dumping orders affect products that Americans use on a daily basis. Of these, ICE has investigated a wide range of commodities, including honey, saccharin, citric acid, lined paper products, pasta, polyurethane bags, shrimp, catfish, crawfish, garlic, mushrooms, steel, magnesium, pencils, wooden bedroom furniture, wire clothing hangers, ball bearings, and nails.

I would like to provide two examples of significant dumping investigations. In February 2008, ICE's special agent in charge (SAC) office in Chicago and the Food and Drug Administration (FDA) Office of Criminal Investigation began investigating Alfred L. Wolff, Inc., for the transshipment of Chinese honey to evade paying 221-percent AD duties.

YongXiang Yan, a Chinese manufacturer of honey and the president and chairman of the board of Changge City Jixiang Bee Product Company, Limited, supplied Alfred L. Wolff with Chinese honey that was transshipped through the Philippines before entering the United States. To date, this investigation has led to 14 indictments of 11 individuals and five companies and a forfeiture provision for approximately $78 million in evaded dumping duties, an additional $39.5 million in undervaluation.

In addition, five individuals have been arrested, two of whom have pled guilty and have been sentenced. Hung Ta Fan, the owner of four companies in the United States that were used to fraudulently import the honey from China, was sentenced to 30 months in prison and fined $5 million. And Yan was sentenced to 18 months and was fined $3 million.

In February 2007, ICE agents in Atlanta received an allegation from CBP import specialists that Goshen Trading was submitting fraudulent documents to CBP to evade the payment of AD duties on wooden bedroom furniture from China. The goods were allegedly being intentionally misclassified as "other" or "dining furniture" from China.

On April 10, 2007, ICE SAC Atlanta agents executed Federal search warrants at two Goshen business locations and at the residence of Goshen's owner, Seng Ng, which resulted in the seizure of 27 boxes of documents and eight computers. Subsequent analysis of the seized documents and computers identified evidence substan-

tiating that Goshen knowingly and willfully submitted fraudulent documents to CBP on at least 185 separate importations of Chinese wooden bedroom furniture.

On May 13, 2009, Ng pled guilty to 18 U.S.C. 542, entry of goods by means of false statements or invoices, and on July 27, 2009, Ng was sentenced to 14 months in prison and ordered to forfeit $5,993,433.70 to the United States in restitution.

It is important to note that ICE criminal investigations are the last line of defense against evasion of AD/CVDs. By the time ICE investigators have become involved in a particular case, the alleged violators have already committed customs fraud by evading or by attempting to evade dumping duties.

To act as a more efficient deterrent factor and protect U.S. business interests in global economy, the United States Government must increase its efforts to educate the public and foreign industry about the penalties and consequences for evading AD duties through our successful investigations and enforcement actions.

PREPARED STATEMENT

Thank you once again for the opportunity to appear before you today to discuss the important role ICE plays in combating illegal trade practices, commercial fraud activities, and enforcing AD/CVDs.

I would be pleased to answer any questions that you may have.

[The prepared statement follows:]

PREPARED STATEMENT OF J. SCOTT BALLMAN, JR.

INTRODUCTION

Chairman Landrieu, Ranking Member Coats, and distinguished members of the subcommittee: On behalf of Secretary Napolitano and Assistant Secretary Morton, it is my privilege to testify before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) to combat illegal trade practices and investigate commercial fraud activities, including the evasion of anti-dumping and countervailing duties (AD/CVDs). As members of this subcommittee know, globalization provides boundless opportunities for commerce, but with these opportunities comes new potential threats to national security. The Department of Homeland Security (DHS) is committed to ensuring the security of America's borders while fostering and facilitating the movement of legitimate trade that is critical to our economy.

ICE ENFORCEMENT EFFORTS

ICE has a long history of engagement in commercial fraud enforcement, particularly AD/CVD, dating back to our past as legacy U.S. Customs Service investigators. ICE works in close cooperation with relevant interagency partners, the private sector, and international counterparts to investigate a broad spectrum of crimes related to commercial fraud. ICE targets and investigates goods entering the United States illegally through our ports and seizes these goods for forfeiture. ICE recognizes that we must partner with the private sector to obtain the necessary information to halt this illegal fraudulent trade practice. It also is essential that we continue to work with all relevant Federal agencies to confront this challenge. ICE has, therefore, built strong relationships with our interagency partners and international counterparts.

ANTI-DUMPING AND COUNTERVAILING DUTIES PROGRAM

The ICE HSI Anti-Dumping and Countervailing Duties (AD/CVD) Program is one way that ICE protects U.S. businesses from fraudulent trade practices. AD/CVD orders are issued by the Department of Commerce (DOC) and collected and distributed by CBP. AD duties are assessed when importers sell merchandise at less than fair market value, which causes material injury to a domestic industry producing

a comparable product. The United States can also impose CVDs to offset foreign government subsidy payments on exports of foreign businesses. Duties are imposed to offset the dumping or subsidies provided by the foreign country in order to maintain the competitiveness of United States industry and to foster a level playing field for businesses.

ICE is responsible for investigating importers who evade the payment of AD/CVD on imported merchandise. AD/CVD cases are long-term, transnational investigations that require significant coordination between domestic and international offices and with our foreign law enforcement counterparts. When working AD/CVD investigations, ICE special agents also work closely with CBP officers, import specialists, and regulatory auditors.

Prior to opening a criminal case, ICE must verify the information related to dumping allegations made either by CBP or private industry. ICE agents research, identify and obtain entry documents for all of the alleged violator's importations to calculate a loss of revenue to the United States and to demonstrate that the loss of revenue exceeds the prosecution threshold set by the local United States Attorney's Office. Even if the initial calculation exceeds the minimum prosecution threshold, it is important to note that preliminary dumping duty rates are only estimates. The final rate is set by DOC, and the final rate can be substantially lower than the initial estimate. For example, ICE had to close multiple Canadian softwood lumber investigations when the dumping duty rate was lowered to zero by DOC officials.

After demonstrating a loss of revenue that exceeds the threshold for prosecution, ICE will utilize Mutual Legal Assistance Treaties (MLATs) to obtain shipping records and other documents from foreign countries in order to prove that an individual or company evaded dumping duties through transshipment, undervaluation or overvaluation, or misdescription. This process normally involves coordination between several United States and foreign government agencies.

ANTI-DUMPING AND COUNTERVAILING DUTY INVESTIGATIONS

Since 2006, ICE has initiated 391 cases based on allegations of fraud regarding AD/CVD orders, which to date have resulted in 28 criminal arrests, 86 indictments, and 39 convictions. Current AD/CVD orders affect products that Americans use on a daily basis. Of these, ICE has investigated a wide range of commodities including honey, saccharin, citric acid, lined paper products, pasta, polyethylene bags, shrimp, catfish, crayfish, garlic, steel, magnesium, pencils, wooden bedroom furniture, wire clothing hangers, ball bearings, and nails. I would now like to provide a few examples of significant AD/CVD investigations.

In April 2005, HSI special agent in charge (SAC) Buffalo personnel began investigating three individuals and two companies for importing disguised, mislabeled, and undervalued Chinese magnesium powder to circumvent a 305.56 percent AD duty. The magnesium powder was disguised by physically placing aluminum nuggets on top of the magnesium powder and claiming it was a blend of magnesium and aluminum powders. After arrival in the United States the aluminum nuggets were removed from the magnesium powder.

The three individuals and two businesses allegedly conspired to defraud the Department of Defense (DOD) by using this imported Chinese magnesium powder to manufacture countermeasure flares designed to draw heat seeking missiles away from fighter aircraft, in violation of the Buy America Contract, which requires that the magnesium must be a product of the United States.

DOD was sold 1.8 million fraudulent and untested countermeasure flares for approximately $42 million. The Chinese magnesium used in the manufacture of the countermeasure flares was substandard and DOD had to dispose of the flares. The company evaded approximately $10 million in AD duties.

In February 2007, ICE agents in Atlanta received an allegation from CBP Import Specialists that Goshen Trading (Goshen) was submitting fraudulent documents to CBP to evade the payment of AD duties on wooden bedroom furniture from China. The goods were allegedly being intentionally misclassified as "other" or "dining" furniture from China. On April 10, 2007, ICE SAC Atlanta agents executed Federal search warrants at two Goshen business locations and at the residence of Goshen's owner, Seng Ng, which resulted in the seizure of 27 boxes of documents and eight computers. Subsequent analysis of the seized documents and computers identified evidence substantiating that Goshen knowingly and willfully submitted fraudulent documents to CBP on at least 185 separate importations of Chinese wooden bedroom furniture. On May 13, 2009, Ng pled guilty to 18 U.S.C. 542, entry of goods by means of false statements or invoices. On July 27, 2009, Ng was sentenced to 14 months in prison, and ordered to forfeit $5,993,433.70 to the United States in restitution.

In February 2008, ICE's SAC office in Chicago and the Food and Drug Administration, Office of Criminal Investigation (OCI), began investigating Alfred L. Wolff, Inc., for the transshipment of Chinese honey to evade paying 221 percent AD duties. YongXiang Yan, a Chinese manufacturer of honey and the president and chairman of the board of Changge City Jixiang Bee Product Co. Ltd. (Jixiang), supplied Alfred L. Wolff, Inc., with Chinese honey that was transshipped through the Philippines before entering the United States. To date, this investigation has led to 14 indictments of 11 individuals and five companies, and a forfeiture provision for approximately $78 million in evaded dumping duties and an additional $39.5 million in undervaluation. In addition, five individuals have been arrested, two of whom have pled guilty and have been sentenced. Hung Ta Fan, the owner of four companies in the United States that were used to fraudulently import the honey from China, was sentenced to 30 months in prison and fined $5 million, and Yan was sentenced to 18 months and was fined $3 million.

ICE SAC San Diego investigated Arturo Huizar-Velazquez, a citizen of Mexico, for circumventing AD duties on Chinese-made metal hangers. The metal hangers were shipped from China through the Port of Long Beach California to Mexico, where they were relabeled as a product of Mexico and then imported in the United States. On March 9, 2010, a shipment of wire hangers from China, destined for Huizar-Velazquez in Mexico, was examined at the Port of Long Beach and marked with invisible ink. On March 17, 2010, this marked shipment was presented for export into Mexico at the Otay Mesa port of entry. On March 19, 2010, the marked shipment was re-presented for entry into the United States. On March 20, 2010, the shipment was examined, the invisible ink was observed and it was noted that the majority of the cartons were the same as those seen on March 9, 2010, in Long Beach. Additionally, all the cartons in the shipment were now stamped "Made in Mexico", which was not the case prior to being exported to Mexico. Huizar-Velazquez and his employee, Jesus De La Torre-Escobar, were arrested and charged in a 55-count indictment for entry of goods falsely classified, smuggling of goods, money laundering, and structuring of currency. The indictment included a forfeiture provision for $5 million. De La Torre-Escobar pled guilty to one count of conspiracy and Huizar-Velazquez pled guilty to conspiracy, entry of goods by false statements, false statements, wire fraud, and money laundering. De La Torre-Escobar was sentenced to 355 days in prison and required to pay $3.4 million in restitution. Huizar-Velazquez is scheduled to be sentenced on May 31, 2011.

It is important to note that ICE criminal investigations are the last line of defense against the evasion of AD/CVD. By the time ICE investigators are involved in a particular case, the alleged violators have already committed customs fraud by evading or by attempting to evade dumping duties. To further deter these activities and protect U.S. business interests in the global economy, the United States Government must also continue its efforts to educate the public and foreign industry about the penalties of our successful investigations and enforcement actions.

CONCLUSION

Thank you once again for the opportunity to appear before you today to discuss the important role that ICE plays in combating illegal trade practices and commercial fraud activities and enforcing AD/CVDs. I would be pleased to answer any questions that you may have at this time.

Senator LANDRIEU. Thank you very much.

Mr. Lorentzen.

STATEMENT OF RONALD LORENTZEN, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. LORENTZEN. Thank you, Madam Chair Landrieu and Ranking Member Coats for inviting me to appear before you today.

As the Deputy Assistant Secretary of Commerce for Import Administration, my charge is to enforce the AD/CVD laws in order to counter unfair trade practices that injure U.S. industries. And we do this in close and daily cooperation with our colleagues at DHS.

Under U.S. law, DOC conducts AD/CVD investigations and administrative reviews to determine whether imported merchandise is dumped or is subsidized by foreign governments. If our inves-

tigation finds that imports have been dumped or unfairly subsidized and if the International Trade Commission (ITC) finds that the domestic industry has been injured as a result, we issue an AD or CVD order.

When that happens, we instruct CBP to require importers to pay cash deposits whenever they import merchandise subject to that order. Thereafter, on an annual basis and upon request by an interested party, we will review the entries made in the prior year to determine the actual level of duties owed.

Section 781 of the Tariff Act of 1930 empowers my agency to identify and counteract circumvention of AD/CVD orders. Under these provisions, DOC may conduct circumvention inquiries when it is alleged that minor alterations have been made to subject merchandise in order to evade AD or CVD orders, or merchandise subject to an order is completed or assembled in the United States or other foreign countries from parts and components imported from the country subject to the order.

DOC can also find under these statutory provisions that later developed merchandise may be included within the scope of an existing order.

If it is determined that an order is being circumvented, DOC may, after consulting the ITC, direct CBP to suspend liquidation of the entries and require a cash deposit of estimated duties on all unliquidated merchandise determined to be circumventing the order. We are currently investigating seven allegations of circumvention involving imports of various steel, textile, industrial, chemical, and paper products.

Beyond our own authority to address circumvention, we work daily with CBP, ICE, and the Department of Justice (DOJ) to assist them in enforcing the customs laws and ensuring our border measures are effective. In 2006, we established a Customs Liaison Unit under the direction of our Deputy Assistant Secretary for AD/CVD Operations to work with CBP and ICE on fraud and evasion matters related to AD/CVD measures. This staff meets regularly with their CBP and ICE colleagues to share information and coordinate responses to fraud and evasion threats.

In February of last year, the AD/CVD portion of CBP's new commercial trade tracking system, the Automated Commercial Environment (ACE) went live for entries of merchandise subject to AD/CVD orders. This new system allows us to maintain more efficient communication with CBP and the proper application of AD/CVDs.

For example, ACE now allows us to apply duties on a per-unit basis, in addition to the typical ad valorem rates. This helps us to counter situations where companies understate the value of their imported merchandise, and we have opted to apply per-unit rates in several dumping cases, including crawfish, honey, activated carbon, and garlic from China, as well as fish fillets from Vietnam.

In the course of our work, our staff may come across information indicating the possible evasion of AD/CVDs, and we have also encountered in our work, situations in which foreign manufacturers have presented us with false documents. To deal with this, we have issued an interim final rule to amend our regulation governing the certification of factual information submitted to us in AD/CVD pro-

ceedings, and are currently awaiting comments from interested parties so that we may issue the final rule.

The amendments strengthen current requirements by mandating that the party submitting information identify specifically the documents, time period, party, and date to which the certification applies. These changes will better ensure that parties and their counsel can be held legally responsible for the authenticity of specific documents given to us and are aware of the consequences of certifying false documents.

When DOC uncovers information that indicates possible evasion of the AD/CVD laws, we have the statutory authority to provide that information to our colleagues at DHS, and we do so. Once a fraud or evasion investigation involving an AD/CVD case is initiated by ICE, we are often asked by CBP or ICE agents or the U.S. attorney conducting the investigation to provide assistance.

Cooperation among our agencies has resulted in indictments, convictions, and prison sentences for evaders of AD/CVD orders, and my written testimony provides examples of the fruits of that labor. My agency is committed to strict enforcement of the unfair trade laws and will continue to work actively with our partner agencies to minimize evasion of them.

PREPARED STATEMENT

Thank you for providing me the opportunity to speak to you today, and I am happy to take your questions.

[The prepared statement follows:]

PREPARED STATEMENT OF RONALD LORENTZEN

Thank you Chairman Landrieu and Ranking Member Coats for inviting me to appear before you today to discuss the issue of the evasion of anti-dumping duty and countervailing duty (AD/CVD) orders and the efforts of the Department of Commerce (DOC) to enforce the trade remedy laws.

As the Deputy Assistant Secretary for Import Administration (IA) at DOC, my primary responsibility is to administer the AD/CVD laws, which are designed to counter unfair trade practices that injure U.S. industries in our domestic market.

As part of the Trade Agreements Act of 1979, the Congress transferred from the Department of the Treasury to DOC the responsibility for administering the AD/CVD laws. And then, in the late 1980s, the Congress gave DOC additional authority, under section 781 of the Tariff Act of 1930, to deal with the potential circumvention of AD/CVD orders. Moreover, as a matter of daily business, we cooperate with U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) in a variety of ways to try to counter and thwart various duty evasions schemes.

DOC conducts AD/CVD investigations and administrative reviews to determine whether imported merchandise is dumped (that is, sold in the United States at less than fair, or normal, value) or subsidized by foreign governments. If our investigation finds that imports have been dumped or unfairly subsidized, and if the International Trade Commission (ITC) finds that a domestic industry has been injured as a result of the unfairly traded imports, we issue an AD duty or CVD order. When that happens, we instruct CBP to require importers to pay cash deposits whenever they import merchandise subject to that order. Thereafter, on an annual basis, we will conduct an administrative review of the entries from the past year to determine the actual level of dumping or subsidization during the prior 1-year period.

DOC's role in detecting and deterring the circumvention of AD/CVDs is addressed in section 781 of the act. Pursuant to those provisions, DOC may conduct circumvention inquiries when:

—It is alleged that minor alterations have been made to subject merchandise in order to evade AD/CVD orders; or

—It is alleged that merchandise subject to an order is completed or assembled in the United States or other foreign countries from parts and components imported from the country subject to the order.

DOC can also find under these provisions that later-developed merchandise may be included within the scope of an existing order.

If it is determined that an order is being circumvented, DOC may, after taking into account any advice provided by the ITC, direct CBP to suspend liquidation of the entries and require a cash deposit of estimated duties on all unliquidated merchandise determined to be circumventing the order. For example, in October 2006, DOC published the final affirmative determination of circumvention of the AD order on petroleum wax candles from China. DOC determined that candles composed of petroleum and more than 50 percent or more palm and/or other vegetable oil-based waxes ("mixed-wax candles") were later-developed merchandise and, thus, were circumventing the AD order. In addition, we determined that mixed-wax candles containing any amount of petroleum are covered by the scope of the order.

DOC is currently investigating seven allegations of circumvention, including steel wire garment hangers from China, laminated woven sacks from China, small diameter graphite electrodes from China, glycine from China, tissue paper from China, cut-to-length carbon steel plate from China, and ferrovanadium from Russia.

In the tissue paper inquiry, DOC recently made a preliminarily determination that certain tissue paper processed and exported to the United States by a Vietnamese company was circumventing the AD order on tissue paper from China. Based on this determination, DOC directed CBP to suspend liquidation and collect cash deposits at a rate of 112.64 percent for all exports from the Vietnamese company retroactive to the date we initiated the circumvention inquiry. We will be taking comments from interested parties prior to making a final determination in this case in August.

Similarly, in a case involving cut-to-length carbon steel plate (steel plate) from China, it was determined that a Chinese producer was adding boron to the steel plate in an attempt to circumvent the order and avoid paying AD duties by making the boron-infused steel plate an out-of-scope product. In August 2009, DOC determined that imports of steel plate produced by the specific Chinese exporter involved in this scheme should be covered by the steel plate order and directed CBP to suspend liquidation of entries of the merchandise. We are now conducting another inquiry to determine if a similar ruling should apply to all imports of the same merchandise from China.

In addition to the authority specifically prescribed to DOC by the statute, we work in close cooperation with CBP, ICE, and the Department of Justice (DOJ) to assist them in enforcing the customs laws and ensuring our border measures are effective.

In 2006, IA formally established a Customs Unit, which falls under the direction of our Deputy Assistant Secretary for AD/CVD Operations. The Customs Unit serves as our primary staff-level liaison with CBP and ICE on many of the fraud/evasion matters related to our AD/CVD measures. The members of this staff meet regularly with personnel from CBP and ICE to discuss enforcement issues, share information and coordinate our interaction to address potential fraud and evasion of AD/CVDs in a timely manner.

In February of last year, the AD/CVD portion of CBP's new commercial trade tracking system—the automated commercial environment (ACE) went "live" for entries of merchandise subject to AD/CVD orders. ACE allows DOC to maintain much more efficient communication with CBP in the implementation and application of the AD/CVD rates.

For example, ACE enables the application of AD/CVD rates on a per-unit basis, as opposed to the typical ad valorem rates. The application of a per-unit amount is important to counter situations where companies regularly understate the value of their imported merchandise. Cash deposit rates are typically calculated as a percentage of the entered value of the imported merchandise. By undervaluing the merchandise, importers avoid paying the full duties owed. To forestall such activity, we have resorted to the use of per-unit rates in several AD cases including crawfish, honey, activated carbon, and garlic from China, as well as fish fillets from Vietnam. As an illustration, DOC has imposed a cash deposit rate of $5.23 per/kilogram for an exporter's entries of crawfish from China. Thus, even if the value of the merchandise is undervalued upon entry, the full amount of the duties owed is being applied.

In the course of our proceedings, particularly our annual administrative reviews, our staff occasionally comes across information indicating the possible evasion of AD/CVDs, and DOC has also encountered situations in which foreign manufacturers have presented false documents during the course of an AD/CVD proceeding. In response to such behavior, we recently amended our regulation governing the certifi-

cation of factual information submitted to DOC by a person or his or her representative during AD/CVD proceedings. The amendments aim to strengthen the current certification requirements by mandating that the party submitting the documents:

—identify to which document the certification applies;

—to which segment of an AD/CVD proceeding the certification applies;

—who is making the certification; and

—the date on which the certification was made.

These new requirements will better ensure that parties and their counsel can be held legally responsible for the authenticity of specific documents and are aware of the consequences of certifying false documents.

When DOC uncovers information that indicates possible evasion of the AD/CVD laws, we have the statutory authority to provide that information to DHS. Upon examination of the information provided, authorities at DHS may initiate an investigation which may result in the imposition of civil or criminal penalties and fines on parties involved in the evasion scheme. Once a fraud/evasion investigation involving an AD/CVD case is initiated by ICE, DOC is frequently asked by CBP/ICE agents or the Assistant U.S. Attorney prosecuting the investigation to provide assistance.

Cooperation among DOC, CBP, ICE, and DOJ has resulted in indictments, convictions, and prison sentences for evaders of AD/CVD orders. Such cooperation led to the indictment of Alfred L. Wolff Gmbh, a German food conglomerate, and 10 executives. Federal prosecutors alleged that the conglomerate and 10 of its executives conspired to illegally import more than $40 million of honey from China between 2002 and 2009, and concealed its country of origin in order to avoid paying nearly $80 million in AD duties. Also indicted was Gong Jie Chen, a Chinese national who was the sales manager for a company called QHD Sanhai Honey Co., Ltd., located in Hebei Province, China. He allegedly set up this company as a front to conceal the Chinese origin of the honey being shipped to the United States and to avoid paying AD duties.

The defendants were charged with conspiracy and smuggling, falsifying documents submitted to CBP and DOC, and violating food and drug safety laws. The defendants allegedly destroyed records and other evidence of fraud, including internal emails and documents that were allegedly used to falsify the origin of the honey and to avoid paying the AD duties. If convicted, some of the defendants could face more than 20 years in prison.

During a fraud investigation of steel wire garment hangers from China, DOC assisted the Assistant U.S. Attorney prosecuting the investigation by providing background and guidance regarding the AD process. After completion of the fraud investigation, a U.S. importer was arrested and charged with fraud, smuggling, and money laundering in connection with bringing Chinese-made hangers into the United States via a third country and falsely claiming a country of origin other than China. Conviction on these felonies carries a maximum prison term of between 5 and 20 years per count, plus substantial monetary fines and the payment of applicable dumping duties.

Further, during verification of the respondent, Cantho Agricultural and Animal Products Im-Ex Company (CATACO), in the first administrative review of frozen fish fillets from Vietnam, DOC officials found evidence of mislabeling and duty reimbursements. This information was conveyed to ICE, providing critical information for their criminal case against one of CATACO's importers. As a result, in 2007, the U.S. District Court in Panama City, Florida, sentenced Danny Nguyen to Federal prison, and issued criminal fines to Panhandle Seafood, Inc., and Panhandle Trading, Inc. for a multi-year scheme that involved smuggling and distributing mislabeled frozen fish fillets into the United States and Canada from Vietnam. The 42-count criminal indictment charged that from 2002 to 2005, Mr. Nguyen and his two companies conspired with Vietnamese fish exporters to intentionally mislabel hundreds of thousands of pounds of Vietnamese frozen fish fillets. Nguyen was charged with importing fish into the United States that was incorrectly labeled as grouper and other fish types in order to avoid U.S. AD duties.

After pleading guilty, Mr. Nguyen received a sentence of 51 months imprisonment and 3 years supervised release. Panhandle Seafood Inc. received 5 years probation and forfeited the real property of the business. Panhandle Trading Inc. was also ordered to pay restitution of $1.3 million and received 5 years probation.

In another evasion scheme involving frozen fish fillets from Vietnam, DOC found that some Vietnamese exporters and U.S. importers were mislabeling the subject merchandise as other types of fish that were not subject to AD duties in order to avoid those duties. Investigation and cooperation among several Federal agencies have resulted in several convictions, indictments, and prison sentences. For example, in October 2008, 12 individuals and companies were convicted of criminal of-

fenses related to a scheme to avoid paying duties by falsely labeling fish for import and then selling it in the United States at below market price. Two Virginia-based companies, Virginia Star Seafood Corporation and International Sea Products Corporation, illegally imported more than 10 million pounds of frozen fish fillets from companies in Vietnam, valued at $15.5 million.

In the 2005–2006 AD review of freshwater crawfish from China, DOC obtained evidence showing that imports claimed by the respondent to be whole crawfish (non-subject merchandise) were in fact imports of crawfish tail meat (subject merchandise). DOC worked with CBP and the Food and Drug Administration (FDA) to obtain evidence that DOC ultimately used in its determination to base the respondent's dumping margin on adverse facts available, resulting in a relatively high-dumping margin. Some of the evidence obtained by DOC included entry, sales, and shipping documents, FDA photographs of the imported product in question showing that the bags contained crawfish tail meat, not whole crawfish, warehouse records, FDA surveillance reports, and information regarding CBP's reclassification of merchandise from "certain disputed entries" to "entries of subject merchandise".

The examples I have just provided illustrate the close and expanding relationship between DOC, DOJ, ICE, and CBP with regard to stopping duty evasion. DOC is committed to strict enforcement of the unfair trade laws and will continue to work intensively and actively with our sister agencies to minimize evasion of AD/CVDs.

Thank you for providing me the opportunity to testify. I am happy to take your questions.

Senator LANDRIEU. Thank you very much.

Mr. Yager, let me begin with you. If you could help us understand a little more clearly the size of this problem? How many AD/CVD cases are received annually in your review? Is that volume going up significantly or down? Could you comment?

Mr. YAGER. Yes, Madam Chair Landrieu. When we did our report in 2008, there were slightly more than 240 open AD orders. I believe as of March of this year, there are more than 300. But I think that is only one way to measure the scale of the problem.

One of the other ways is to think about the workload impact that it has, for example, at DOC and CBP. Particularly at CBP, each one of those orders that is received and is open could cover one country, but multiple different tariff specific products, as well as many firms.

In addition, because of the fact that we have the system that provides updates and a retrospective system, it also requires a great deal of work for each one of those open orders.

Senator LANDRIEU. Right. I wanted to understand, and I am glad you pointed that out, an order is not just one importer or one company trying to circumvent the rule on one line of product. An order could be multiple——

Mr. YAGER. An order tends to be for one country.

Senator LANDRIEU. Okay.

Mr. YAGER. But it could cover, for example, 6, 8, 12 specific tariff schedule items, which are highly specific. So, within the steel area, for example, it could contain a number of different steel products within that broad order. And each one of those orders would typically have specific rates for certain companies, and then it would have an all-country rate for those that do not have that specific information.

So there is a great deal of difference between one order and the next. Some could be relatively narrow and specific with a few companies and not a great volume of imports, and others could be substantial.

But I think one other thing to point out is that the impact also differs greatly and the importance of this differs greatly. As you

mentioned in your opening statement, there are certain industries, particularly aquaculture and agriculture, where the impact of this noncollection is particularly important for a variety of reasons, some of which have to do with the nature of the industry.

As you mentioned, the seafood industry tends to be small operators. There is a great deal of entry and exit in that industry. And many of the nonpayment issues are highly concentrated in the industry of seafood, whether it is crawfish, shrimp, or some others. And so, the impact is highly concentrated, particularly on certain types of aquaculture and agriculture industries.

Senator LANDRIEU. And let me ask you for your comments about this liquidation issue. I am a little unclear about the testimony that we are receiving about it. Is our liquidation process working or not working?

Mr. YAGER. Okay. There are a couple of different aspects of the liquidation process, which I think are worth talking about at this hearing. One that I brought up specifically in my oral statement was something called deemed liquidation, and that is the requirement that the United States has that CBP needs to provide those instructions to the ports and publish that information within 6 months of receiving the information from DOC.

And if they do not get it out within the 6 months, then the United States does not have the right to collect any additional duties that may be owed. So that is one particular aspect.

Senator LANDRIEU. So the bottom line is if we don't act, tons and tons and millions and billions of dollars could flow into this country illegally if they just get through the 6-month review period, and then we basically can't touch them?

Mr. YAGER. I believe that we wouldn't call it illegally because that would be the responsibility of the United States to ensure that that liquidation is performed within 6 months. So we would forfeit the ability to collect any additional funds that might be due on those imports.

Senator LANDRIEU. Do you have an estimate of, in your view, having done this review, of what our gap is? In other words, are we collecting 20, 30 percent of what you think is owed? Is there any way to judge how far off our collections are?

Mr. YAGER. Madam Chair Landrieu, that is an excellent question. I think maybe we can also ask CBP for that. But I think one of the things that is really quite important and makes it very difficult to do work in this area is that once the goods have entered the United States, Customs, as they mentioned in their opening statement, collects that initial deposit as well as a bond.

But until the final determination is made by DOC, which could be anywhere from 1 year to numerous years later, it really is not clear what their final duty will be, and no one can estimate what that will be because it depends upon the investigations that are then put in place by DOC. So it is an excellent question. And because of the complexity of the system that we have, it is really quite difficult to answer that.

Of course, the point you made in the opening statement is that on a cumulative basis, there have been more than $1 billion in collections that we have not been able to get for the U.S. Government

over approximately a 10-year period. I think that is the best measure of the uncollected duties, at least that we could find.

Senator LANDRIEU. All right. I have other questions, but let me turn to my ranking member.

Senator COATS. Thank you.

Just answered one of my questions. You mentioned four industries constitute 84 percent of uncollected duties. Would you name those four industries?

Mr. YAGER. The information that we have, Senator Coats, is from 2008, and I can tell you what those industries were. They were honey, crawfish, fresh garlic, and mushrooms. And I believe there are some other products that are also in that list, but those are the top four as of 2008.

I believe those are the ones that we mentioned. And I don't know whether there is a change. I think there are some additions to that. But those were the four most important industries in 2008.

RESOURCES NEEDS

Senator COATS. Knowing that, how do you allocate your resources and personnel? And the larger question is, do you have the resources that you think you need or the personnel you need to not only address the major four, but also not overlook those that fall below the top four, but are still critical in terms of our dealing with protections for U.S. industry?

Mr. YAGER. Ranking Member Coats, when we did the work for the Congress in 2008, we did ask questions about whether the human capital was sufficient at the agencies, such as DOC and CBP. At that time, we had found that, at least in DOC, they were working with significantly less than their full-time equivalents (FTEs) in order to process these orders.

And I think that would be, obviously, a good question for DOC to answer at this point as to whether they have the people necessary to perform these functions?

Senator LANDRIEU. Mr. Lorentzen.

Senator COATS. Would you like to follow up on that?

Mr. LORENTZEN. I think in the current environment, all agencies are struggling to be as economic as they can be with the resources that they have. But we do feel that we have adequate resources, as set forth in the President's current year budget.

Thank you.

Senator COATS. You are one of the few who has come before us on any appropriations matter that says we have adequate resources. Congratulations.

Particularly at a time of fiscal constraint, it is important to hear that. But it is also important for us to know that in the area of enforcement and collection that sometimes we may be shortchanging ourselves. Maybe a few more resources, if necessary, would more than pay for itself.

I am not asking you to change your testimony here, but you should feel free to let us know if there are ways that we can either help you in terms of allocating resources in certain areas that would result in better benefits for us—not just from the collection standpoint, but also from the protection standpoint for our industries.

You also mentioned that China accounted for 90 percent of uncollected duties. I assume then that we could draw the conclusion that that is where you are focusing at least 90 percent of your efforts. And I am wondering are there things that we can do or provide, or that you need in order to better focus that concentration on a country that is clearly the most egregious offender of all of these protections?

Senator LANDRIEU. Mr. Gina——

Senator COATS. I say it to the panel, and I think whoever is most directly associated with that question should address it.

Mr. GINA. Just for clarification in conjunction to what Mr. Yager had stated, the most current update on the five items that posed the greatest challenge for us are, as indicated: crawfish, fresh garlic, honey, mushrooms, and wooden bedroom furniture. All, as you stated, Senator, originating from China. It comprises approximately 84 percent, or $878 million of the approximate $1 billion that has yet to be collected over the past 10 years.

I think an interesting statistic is that, as you stated, Senator Landrieu, even though there is *X* number of orders, there was approximately 160,000 entries that were closed out in fiscal year 2010 relative to AD/CVD. Of that, 60 percent of the time, the duty that was initially assessed stayed the same. Twenty-four percent of the time, the duty that was assessed actually was lowered, and the Government issued a rebate.

It is that last 16 percent of the time, or approximately 25,600 entries, where the duty was increased. And in reading the GAO report prior, I think this study showed, of that 16 percent, about one-half the time the increase is somewhat within the 4-percent range. But it is that other one-half of that 16 percent where the increase is significantly increased. And therefore, the challenges that presents relative to the collection are the fact that sometimes actual legitimate importers can't afford to pay.

Surety companies that have written the bonds for these importers, two of them are in receivership because, I guess, they just never counted on that much additional money being owed. The collection efforts that we then have taken is, first, our Office of Administration will issue bills. If payments are not made, those cases are referred to our Office of Chief Counsel. They take the appropriate measures to try to collect.

If they don't have success, they are referred to DOJ for possible additional action and/or bringing individuals into court. We will go back at times and even ask our colleagues at ICE, who is CBP's investigative arm, if there is additional information in trying to collect it.

So it is that small percentage of individuals which are imposing the greatest consequence relative to these collections of duties.

Senator LANDRIEU. Can I follow up on that for just a minute?

Senator COATS. Sure. Yes.

Senator LANDRIEU. Let us follow that line for just a minute. Because if the 16 percent that you have identified after you review owe substantially more money than initially completed or assessed, and you said that sometimes the surety bonds backing up that group are not substantial enough to provide that revenue, of that 16 percent, is it the same sort of bad actors? Is it the crawfish in

that 16 percent, the shrimp, the mushrooms, the honey, and the bedroom furniture? Or is it other things within that 16 percent?

So it is sort of a pattern that can be identified is what you are saying?

Mr. GINA. Right. And I think what we had attempted to do, and we are continuing to evaluate how to be more effective. As I stated in my oral statement, we attempted to modify our bonding and the issuance of much greater enhanced single-transaction bonds.

The normal bonding requirement or rule of thumb is that you go to an importer's past 12 months history, and it is 10 percent of the duties, revenues, or taxes that are submitted to the Government. What we attempted to do was, in order to secure a greater surety of payment, issue bonds relative to the actual value of the imports, plus the duty. That, of course, was challenged, and we are trying to come up with different measures that would be accepted.

Senator LANDRIEU. But, Mr. Gina, and one thing, Senator, I want to just bring to our attention. I mean, one of the things that concerns me is that CBP has 58,700 employees, 20,000 patrol agents, 22,000 are the officers, cargo and passenger, air, land, and sea ports of entry. And only 13 of these employees are fully dedicated to AD/CVDs.

Is that your understanding? And I also understand there are more than 1,200 import specialists, Revenue Division personnel lawyers, but only 13 people dedicated to AD/CVDs out of an agency of 58,000. Is that correct?

Mr. GINA. I think it is misleading, Senator.

Senator LANDRIEU. Okay.

Mr. GINA. If I might, CBP has approximately, out of the 58,000, 9,600-plus employees involved in commercial trade. Of that, 1,000-plus are solely dedicated to the Office of International Trade. Of that number, approximately 2,500 positions are what we refer to as nonuniformed positions.

So if I may list, just as an example of some of those nonuniformed positions that would get possibly involved in the course of their day-to-day activity as part of their collateral duties are chemists, customs attorneys, auditors, drawback specialists, entry specialists, financial system specialists, fines, penalties, and forfeiture specialists. There are approximately 900 import specialists, national account managers, and seized property specialists.

Of those individuals, that is also augmented by the 5,000 CBPO uniform and 2,000-plus agricultural inspectors. The numbers that you stated, those individuals we believe are augmented by individuals who primarily focus, are the subject matter experts is the eight staff in the Office of International Trade dedicated to AD/CVD.

We also have a national targeting analysis group in south Florida that is 1 of 5, which focuses solely on AD/CVD. And it is those individuals who are doing the risk analysis, which is then directing those thousands of individuals in the field.

Senator LANDRIEU. I think that is one of the things that Senator Coats and I really want to get to the bottom of in this hearing, and I know our time is limited. But what are your resources? How are they being applied?

And if they could be applied in a better fashion, how much additional revenue we could generate not just for the Federal Treasury, but potentially a stream of that revenue could come back to your individual agencies to step up your efforts. I mean, this is really a very tragic situation as it relates to crawfish and shrimp, I can tell you.

I mean, it is putting huge pressure on an industry that could—it is small businesses in our State that have very sort of low-entry level. You need a boat. You need the ability to work hard and long hours, gasoline in the boat, and some skill to shrimp. But otherwise, it is a fairly low barrier of entry. People can make a lot of money in good times shrimping.

But with this situation, no one in my State can make any money because they are just absolutely overwhelmed with the dumping activities, and that is just seafood. And that is just crawfish and shrimp. I don't know about honey and garlic, and I am very curious as to why we don't import bedroom furniture, but it seems like we can import dining room furniture. Did you hear that?

But I will come back to that in a minute. Maybe I missed something.

But one more thing, Mr. Ballman, could you comment on your positions? We understand there are only 39 full-time positions out of a corps of 9,390 with ICE?

Mr. BALLMAN. Certainly, Madam Chair.

It is also a little misleading here. The 39 is FTEs. We have 26 SAC offices, each of which has a commercial fraud investigative group. Then we have all the sub offices that are under those who have agents that aren't specialized, but they do carry commercial fraud cases, including AD cases as well.

So what the FTE amounts to is we have taken all the hours that were applied to AD investigations and came up with that figure. That doesn't mean we only have 39 people working the cases, and we are only working 39 cases. That just means that the accumulations of hours would mean 39 man-years went into those investigations in 1 year.

INTERNATIONAL TRADE ADMINISTRATION STAFFING

Senator LANDRIEU. Okay. And Mr. Lorentzen, if you could comment? There are 1,500 positions in International Trade, 300 individuals dedicated to AD compliance. Is that your understanding?

Mr. LORENTZEN. Yes, Madam Chair. That is approximately correct.

The International Trade Administration has four business units. The unit that I am responsible for, Import Administration, has its core mission of enforcing the law, as I indicated. And right now, we have an operational staff of about 294 financial analysts, accountants, and investigators, and a legal staff of a little more than 30 lawyers that assist us in that work.

Senator LANDRIEU. And Mr. Yager, let me, just as my last question before turning it back over to Senator Coats, we are going to submit a lot of questions for the record because we want to get to our second panel. What is your general view, having investigated or reviewed their operations, in terms of the resources that are being applied to collecting—identifying the fines, collecting them,

having the inspectors to go after the bad actors, and focusing, as Senator Coats said, on the obvious either bad actors or areas or countries or products?

Mr. YAGER. That is one of the two things that we mentioned or that I mentioned in the oral statement, and that is they do have the personnel in order to process these types of orders. And I think one of the things that did alarm us, though, is the fact that CBP has a significant challenge in trying to plan the workload that they need to get through because some of these orders, as I mentioned, are quite complicated. And they don't know from one day to the next just how many orders they are going to need to have to process.

And because they have that 6-month deadline and because of the complexity, there have been times when we have had that situation of deemed liquidation, which, again, is our forfeiture of the right to collect those——

Senator LANDRIEU. Because they don't have an ability to surge their personnel or et cetera?

Mr. YAGER. Certainly if we were managing that office, we would do everything we can to understand what our workload is going to be for the next week, month, 6 months, and 1 year. And I think in this environment, it seems quite difficult for them to be able to do that.

If I could just respond, too, also to a couple of points that were made earlier by Mr. Gina, we do think that considering a single-transaction bond is one way to try to target your efforts. Because I think what we found when we did the work earlier on shrimp and others is that some of the measures that they put in place had a lot of what you would call "collateral damage".

It imposed costs on many importers who fully intended to pay their bills. But as you noted, you have many small firms in these different industries, and when you impose costs on the full range of importers when your focus is really on a few bad actors, then that is not a very efficient system.

To the extent that they can focus and target their enforcement efforts and get additional monies from those firms who have no intention to pay, that would be a much more effective system, and I think that is one possibility. Using that single-transaction bond might offer you that kind of an option.

And one other comment that you made is finding that balance between security and the commercial side is something that CBP and all of DHS has struggled with since the creation. But we do recognize that with the current commissioner, there is much more emphasis on revenue.

In the past, we had to ask why the inspector general of DHS had not done a single financial audit since the creation of the Department. We think now that the attention to that commercial side is growing again will give these offices the opportunity to perform their missions.

Senator LANDRIEU. Thank you.

Senator COATS. I want to make a point and then also ask a question. The point is it is clear one of the nations that we have a very significant relationship with, particularly in terms of trade, is China. Yet we are hearing and reaffirming what all of us know—

it is not been a responsible trading partner. Whether it is China's inability to let its currency float against the dollar in the way that everyone has had to do—virtually everyone else—or whether it is in this area of trade violations that we have been discussing today clearly is something that needs to be run up the flagpole.

When the Secretary of Commerce interacts with his equivalent in China, when the President or Vice President interacts with their equivalents in China, trade enforcement needs to be a continued top priority. We appreciate the job that you are doing, but some of this effort, particularly when we target it the way we can, needs to be accompanied with support for you from the highest possible levels and from demands from us at the highest possible levels.

This is something that has been going on for a long time, and it is egregiously hurting American industry and American jobs. And I know that we are, unfortunately, indebted to the Chinese to a larger extent in terms of financing our debt than any nation should be. And that is a separate issue in and of itself.

Nevertheless, there ought to be some rules that the world community of trade engages in, and clearly, this is something that has to be addressed at a higher governmental level.

On the way in this morning, I was listening to sports radio, and they were talking about the fact that the NFL, which conducts annual meetings with the new drafted rookies for the purpose of informing them and acquainting them with what the responsibilities are, the legalities, the ethics, and everything else, as someone moving into the NFL, on a new team. Kids coming out of college, and so forth and so on.

And that annual NFL meeting had to be suspended or terminated because of the walkout and so forth. But the discussion was how important it is at the beginning of the process to know what the rules, regulations, ethics requirements, and personal performance requirements in terms of how you interact as someone that is a part of the organization.

And so, when you were talking about when the statistic came up about 40 percent of the uncollected revenues come from new shippers, I am just wondering what kind of process do those new shippers have to go through before they have the right permits and licenses and so forth to do business with us. I am wondering if this is not a way to put the fear of enforcement penalty, including criminal violation, in front of those people before they are granted the right to ship into the United States.

I am just wondering if we can't better put, as I said, a little bit of fear and particularly information in their hands so that they know they have to go through a pretty rigorous process before they are allowed to even get engaged. And if they violate those rules, there are going to be very severe penalties.

Mr. YAGER. Yes, Ranking Member Coats. The new shipper designation does create specific risks for the United States, particularly in the collection of AD duties. And new shipper is a category of firm that has not imported or not shipped goods to the United States under a particular order, and they apply to DOC to begin making those shipments, and they are given an initial rate.

And oftentimes, that rate could be made on the basis of one or two or just a small number of shipments. At some later point, they

might step up the value of shipments, the value of shipments and the volume. And then some years later, after a DOC review, it could turn out that that rate that they had initially been paying is nowhere near sufficient to cover the level of dumping that was actually occurring.

So that new shipper problem is certainly one that we identified that does create specific risks for collection. And while many of the new shippers fully intend to pay their bills, it does appear that some firms use that as an opportunity to get a low rate, ship a great deal of product into the United States, and then walk when the bill becomes due.

Senator COATS. It is clear then that we can do some things at the beginning to, hopefully, alleviate that issue.

Anybody else want to comment on that? Then I am finished with my questions.

NEW SHIPPERS

Senator LANDRIEU. Yes, and I just want to ask—that is a good question. I want to follow up. How long can you be a new shipper? For 1 year, 2 years, 3 years, 6 months? What is the new shipper designation? Go ahead.

Mr. LORENTZEN. As Mr. Yager explained, under the AD law, the law permits a new shipper to come to DOC and ask for its own rate. Because when——

Senator LANDRIEU. But how long does that rate last?

Mr. LORENTZEN. So that rate would be established for them at the end of that review, assuming we first confirm that they are, indeed, a new shipper. We devote a lot of resources to confirming that they are not an affiliated party that is trying to sneak around the rate that they already have.

So we look at whether the transaction is in commercial quantities and whether they are a bona fide shipper.

Senator LANDRIEU. And how long does it last?

Mr. LORENTZEN. The rate resulting from a new shipper review can last for up to a year.

Senator LANDRIEU. Okay. But nobody can be a new shipper for like 5 years?

Mr. LORENTZEN. No.

Senator LANDRIEU. You can only be a new shipper for 6 months, a year, and then you are an old shipper?

Mr. LORENTZEN. Once you have established they are a new shipper, you are given your specific rate. And then either the domestic industry or that shipper can ask that their rate be updated or reviewed in the following year.

Senator LANDRIEU. Okay. Let me ask, because we have got to move to the second panel, but I do need to ask because each one of you have indicated that you do have sufficient resources to do the job we are asking you to do. If that is the case, now we are leaving $1 billion-plus on the table. So I don't know whether we don't have the people or we are not coordinating, but there is $1 billion-plus on the table that we are not collecting.

So there is something that is not working as well as it could, and we need to try to figure that out. If it is not additional personnel or additional resources, what do each of you—and I am going to

ask each of you to do two things quickly. What do you believe are required to pick up this $1 billion that the American taxpayers are owed and our businesses deserve in terms of fair playing field for trade on these industries that have been identified this morning, starting with you, Mr. Gina?

And then I will end with you, Mr. Yager.

Mr. GINA. Very quickly, I think two items that may contribute to a significant change is the better utilization of single-transaction bonds, as alluded to, and also a further review of the new shipper program and trying to ensure that is not used as a loophole also in the circumvention of duties.

Senator LANDRIEU. Mr. Ballman.

Mr. BALLMAN. I think there are two areas from an investigative point of view that need to be addressed, the retrospective versus the prospective. So that if there is any way that—DOC is very good at setting the rates, but they do change.

From an investigative standpoint, I need to be able to investigate one rate and know that I am not wasting my resources if that rate is lowered. And the other thing is the new shipper rule. In both cases that I mentioned in my oral statement, the honey, the people involved in that were trying to set up as a new shipper.

They were actually under consideration by DOC when we found in our search warrant that everything they had provided to them was false. That added another 20-year count to the indictment, which was very nice for that.

And then for the wooden bedroom furniture, we have seen that there are now trading companies that are getting a lower rate as a new shipper. So it doesn't surprise me at all that most of the imports are now coming from trading companies rather than the manufacturers.

Senator LANDRIEU. Mr. Lorentzen.

Mr. LORENTZEN. To name just a couple of things, I would say, first of all, it has been stressed that we need to have more and more effective communication, which I think all of us are attempting to do, and we need to develop that further. I think the new automated system I referred to in my testimony helps us to achieve that. It allows direct contact between people in the ports and staff in my office to get real-time information.

The other thing I would say on new shippers is the Congress at one point several years ago had suspended the bonding rule and required that cash deposits be posted by new shippers. That was for only a 3-year period of time, and it expired. And I think that would be a very practical and direct impact change that could address this problem.

Senator LANDRIEU. And Mr. Yager.

Mr. YAGER. Yes. I believe there are three things that the Congress could be involved in that could help to address this problem.

First is to look at the current structure of the new shipper arrangements because we do believe that creates a vulnerability. Second, I believe that the Congress should also require continued reporting on the amount of uncollected duties.

Right now, CBP is required to report on uncollected duties under the Continuing Dumping Subsidy Offset Act, the Byrd amendment. But it does not report on all the uncollected duties. We think that

that would be very helpful for the Congress and other stakeholders to get that kind of information in order to be able to monitor the status of the collections.

And finally, I think there is a bigger discussion about whether the current system, the retrospective system that we have, can be effectively used in order to provide remedy to the U.S. firms, as well as provide the revenue to the U.S. Treasury.

So those are the three things for the Congress. And of course, in my statement, I talked about better data analysis and better communication among the agencies as also being important.

Senator LANDRIEU. Thank you. Your testimony has been excellent this morning.

I do have a question, but I will ask for a response in writing, about the Jones Act, if DHS can enforce the Jones Act effectively without assigning priority to the mission and dedicating resources to accomplish it. Secretary Napolitano, before our Homeland Security subcommittee, said she had the resources necessary. But I am going to ask you all to clarify her comments in writing. Does DHS have a dedicated enforcement regime to investigate Jones Act violations, and if not, what would you need to establish one that can be effective? How would it engage with the Coast Guard and other agencies? How many people and what level of resources are dedicated to Jones Act enforcement? How many Jones Act cases does CBP review annually?

[The information follows:]

JONES ACT ENFORCEMENT

CBP receives information regarding alleged coastwise violations from a variety of sources and coordinates the review of allegations with ICE. While the offshore facilities are located outside the limits of the CBP ports of entry, this does not preclude the initiation of an appropriate action for violations.

CBP enforcement of the Jones Act is a coordinated effort by CBP local ports of entry, CBP field offices and CBP headquarters (HQ) offices and personnel working with other U.S. Government agencies i.e., U.S. Coast Guard (USCG) and U.S. Immigration and Customs Enforcement (ICE) and industry. CBP field personnel work in conjunction with ICE Investigations and the USCG to address alleged coastwise violations. Guidance is provided in such cases by the CBP Penalties Branch of Regulations & Rulings (RR), Office of International Trade (OT).

Cooperation with the USCG and ICE is essential to successfully investigate potential Jones Act violations. CBP is engaged with its partners in coordinated efforts to investigate allegations of coastwise movements in violation of U.S. laws. An example of this cooperation is the CBP port of entry (POE), Morgan City, Louisiana.

The CBP Morgan City POE is responsible for providing coverage for a large portion of the Louisiana coastal area as well as monitoring the movement of foreign vessels operating at offshore facilities. Staffing levels and operational requirements require the port to demonstrate a great deal of flexibility in addressing allegations of Jones Act violations.

To prepare all parties engaged in investigating potential Jones Act violations within the area of responsibility, the CBP Morgan City POE conducts "Jones Act" awareness training with USCG and ICE. When a Jones Act issue is brought to the attention of CBP Morgan City and it appears to be valid, CBP personnel will conduct a boarding in conjunction with the local USCG station and ICE. In many cases the USCG will ferry CBP personnel from Morgan City to the vessel operating at offshore facilities. The interagency team will collect evidence from the official vessel logs, and any cargo manifest and/or invoices from the vessel and interview crew to determine if a violation occurred. The local CBP Morgan City POE leverages existing Federal assets at other components and relies on a team approach to successfully address Jones Act violations.

JONES ACT RESOURCES

At the CBP HQ level, various offices are involved in reviewing, investigating and providing guidance and oversight on Jones Act issues to the field offices. They are comprised of the Office of Field Operations (OFO) Cargo & Conveyance Security (CCS); OFO Agriculture Programs and Trade Liaison (APTL); OFO Fines, Penalties and Forfeiture (FP&F); and the Cargo Security, Carriers, and Immigration Branch (CCIB) of Regulations & Rulings (RR), Office of International Trade (OT).

OFO/CCS and OFO/APTL/FP&F each assign two program managers with the responsibility of managing and resolving coastwise issues.

The CCIB is staffed with a branch chief, five attorney-advisors and an administrative assistant. Attorney-Advisors in the penalties branch of RR/OT also work on Jones Act matters. The CCIB falls under the jurisdiction of the Director, Border Security and Trade Compliance (RR/OT), who is integral to Jones Act enforcement.

CBP field offices at the port of entry level are staffed with vessel entrance and clearance specialists (VECS) and CBP officers assigned to identify and initiate potential Jones Act violations. These CBP front-line personnel are provided a number of in-house resources (e.g., training, directives, memorandums, handbooks, rulings, information notices, etc.) to assist in enforcing Jones Act statutes, regulations, and policy.

Local CBP port directors assign and distribute resources at a level commensurate with the number of Jones Act violation allegations. For smaller CBP ports of entry, with high volumes of vessel entrances and clearances and wide-ranging port boundaries, this task has proven challenging, particularly in the Outer Continental Shelf (OCS) region.

In fiscal years 2009–2011, all CBP ports of entry issued 57 Jones Act-specific penalties. In each of these incidents, a case was opened after a thorough investigation was completed by CBP and its Government partners and sufficient evidence was found to commence formal penalty proceedings.

Senator LANDRIEU. But you all have been terrific. I want to excuse this first panel and then call up our second panel.

Thank you very much.

And if any of you all can stay around to hear the testimony of the second panel, that would be very helpful.

Thank you.

All right. To save time, let me introduce the second panel—Mr. Kristen M. Baumer of Paul Piazza & Son, Inc., of New Orleans; Eddy Hayes, partner of Leake & Andersson, professor of law at Tulane University; Keith Busse, chairman and CEO of Steel Dynamics—and I am going to have the ranking member introduce him more fully in a minute—and Jim Adams, Offshore Marine Service Association.

All of you represent significant industries with significant experience in this area. We are particularly happy to have Tulane University present.

And Senator, would you like to introduce your witness?

Senator COATS. I would. I would like to welcome Keith Busse, chairman and chief executive officer of Steel Dynamics.

Steel Dynamics is a company that Keith founded in 1993. It was an entrepreneurial venture. Under his leadership, it has grown to become the Nation's largest mini mill steel and metals recycling company. It employs about 7,000 people and has annual production exceeding 7 million tons.

So it not only is a producer of needed material for our industries, but it is also a responsible citizen in terms of recycling used materials into forming this product.

Prior to starting Steel Dynamics, he was associated with Nucor Corporation, which also is located primarily in Indiana, and successfully developed one of the largest flat-rolled steel production facilities in the United States.

He has received numerous awards, and I am glad that he could be here to testify for us today about some of the trials and travails of being in an industry when you are competing against someone that is breaking the law and using unfair practices. So welcome to him and the rest of the panelists.

Thank you very much.

Senator LANDRIEU. Thank you.

And let me just say for the Baumer family, I really appreciate your being here, and your family came from Sicily 135 years ago. And your family has settled along the banks of the Mississippi River in New Orleans. We are so grateful for the work and the enterprise that you and your family have contributed all those years, and we are thrilled to have you this morning.

So, Mr. Baumer, why don't we go ahead and start with you?

STATEMENT OF KRISTEN M. BAUMER, PRESIDENT, PAUL PIAZZA & SON, INC., NEW ORLEANS, LOUISIANA

Mr. BAUMER. Thank you, Madam Chair.

Madam Chair and Ranking Member Coats, thank you for the opportunity again to testify before you today.

My name is Kristen M. Baumer, as you said, and I am the president of Paul Piazza & Son, which is a fourth-generation, family-owned Louisiana shrimp processing and wholesale distribution company, which was established in 1892.

About 135 years ago, Paul Piazza left his home in Sicily when he was 15 years old with dreams of a better life for himself and his family. He supported himself by walking the streets of New Orleans, selling shrimp from a basket on his back.

Later, that basket became a horse-drawn wagon. Shortly thereafter, he established Paul Piazza & Son in the French Market with his son, my grandfather, Vincent Rene Piazza. Through honesty, integrity, dedication, and hard work, combined with consistent quality domestic shrimp products from our gulf fishermen, my great-grandfather, my grandfather, as well as my father and uncle, transformed Paul Piazza & Son into one of the largest domestic shrimp processors and distributors in the gulf today.

Currently, we are processing, inventorying, and supplying many food service companies and retail grocery store chains throughout the United States, as well as our Nation's military, with approximately 20 million pounds of domestic shrimp each year.

As you know, the shrimp industry contributes about $1 billion annually to Louisiana's economy. The industry is responsible for employing thousands of hard-working Louisiana citizens in shrimp harvesting and related production and distribution activity.

The gulf shrimp industry has survived hurricanes and the gulf oil spill. But perhaps the most dire and sustained threat we have ever faced has been unfair competition from imported shrimp. Nearly 90 percent of the shrimp consumed in this country is imported, which makes our industry particularly vulnerable if that imported shrimp is not traded fairly.

In 2003, our industry was in crisis. A massive wave of foreign shrimp was being dumped into our market at less than fair value, driving down prices, eating into our market share, and forcing our shrimp boats to tie up at the docks.

The industry took action. We invested an enormous amount of time, effort, and resources to obtain AD orders on shrimp from six countries. Duties redistributed to the affected domestic industry under CDSOA have allowed many of us to regroup and rebuild after being hammered by dumped imports, successive hurricanes, and the gulf oil spill.

These duties have also allowed processors like Paul Piazza & Son to pass on dockside prices that allow our fishermen to keep trawling the waters they have fished for generations, despite rising fuel prices.

Unfortunately, much more needs to be done to ensure these orders are actually restoring conditions of fair trade to our market. Foreign producers and importers have gone to extraordinary lengths to evade the duties they owe, greatly undermining the effectiveness of the orders we fought so hard to obtain.

Their actions fall into three categories—one, the nonpayment of duties; two, transshipment of shrimp through countries not covered by the orders; and three, misclassification of covered shrimp as product not covered by the orders.

The nonpayment of duties is the most well-documented of the three. Since the orders were imposed in 2005, shrimp importers have failed to pay more than $75 million in duties they owe to the U.S. Government. This is a massive problem that is not limited to shrimp alone.

Another iconic Louisiana industry, crawfish, has also suffered with more than $560 million in AD duties that remain unpaid. In all, Customs has been unable to collect more than $1.5 billion in AD/CVDs since 2001. It means that $1 out of every $3 of unfair trade duties due to our Government are simply not being paid.

Our trade remedy laws provide for our industry first and often the only line of defense for American companies, farmers, fishermen, and workers when they are forced to compete with dumped and subsidized imports. We are very grateful to Senator Landrieu for her championship on this important issue, and we look forward to working with the subcommittee to finally fix this hole in our trade remedy system.

PREPARED STATEMENT

I look forward to any questions that you may have after everyone speaks.

[The prepared statement follows:]

PREPARED STATEMENT OF KRISTEN M. BAUMER

Madam Chairman, Ranking Member Coats, members of the subcommittee, thank you for the opportunity to testify before you today. My name is Kristen M. Baumer, and I am the president of Paul Piazza & Son, Inc., a fourth-generation, family-owned Louisiana shrimp processing and wholesale distribution company which was established in 1892.

There is a lady who stands tall in New York harbor with a message which says, "Give me your tired, Your poor, Your huddled masses yearning to breathe free . . . I lift my lamp beside the golden door." Many of our ancestors heeded the call of the Lady of Liberty, and found their destiny on the golden shores of America. My great grandfather, Paul Piazza, was no exception.

Approximately 135 years ago, Paul Piazza left his home town in Sicily when he was 15 years old with dreams of a better life for himself and his family, and landed near the banks of the Mississippi River, in New Orleans, Louisiana. He supported himself by walking the streets of New Orleans selling shrimp from a basket on his

back. Later, that basket became a horse-drawn wagon selling seafood. Shortly thereafter, he established Paul Piazza & Son, as an open marketplace in the French Market with his son, my grandfather, Vincent "Rene" Piazza. They would buy seafood from local fishermen to distribute to local restaurants and markets. Through honesty, integrity, dedication, and hard work, combined with consistent quality domestic shrimp products, my great grandfather, my grandfather, as well as my father and uncle, transformed Paul Piazza & Son, Inc. into one of the largest domestic shrimp processors and distributors in the gulf south.

Today we process, inventory, and supply many foodservice companies and retail grocery stores throughout the United States, as well our Nation's military, with approximately 20 million pounds of domestic shrimp each year. Yet, we very much remain a family business headquartered in New Orleans, Louisiana. I run the business along with my brother Shep and brother-in-law, Kory, and the many valued employees of our company, many of whom have been with our company since I was a small child.

Personally, I worked in the business during my high school and college years. After law school and 10 years in the legal profession, I returned to our family's business to help rebuild our company after Hurricane Katrina destroyed millions of dollars in inventory and nearly collapsed our business. Through the hard work of our extended family, the hard work and sweat of our gulf fishermen, and the protection and financial support we have received from the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), Paul Piazza & Son, Inc. has continued to process and sell domestic shrimp to the citizens of our country. We have also taken a leadership role in protecting and preserving our domestic shrimp industry despite the many challenges posed by imported seafood. I have been an active board member with the Louisiana Seafood Marketing and Promotion Board and Louisiana Shrimp task force, as well as an active member of the American Shrimp Processors Association.

The shrimp industry contributes about $1 billion annually to Louisiana's economy. The industry is also responsible for employing thousands of hard-working Louisiana citizens in shrimp harvesting and related production and distribution activity. Shrimping is a way of life for many of Louisiana's citizens. In most cases, shrimping operations are small, family-run businesses, and many fishermen's families have been trawling the same waters for generations.

The gulf shrimp industry has survived Hurricanes Katrina, Rita, and Ike, and the gulf oil spill, but perhaps the most dire threat we have ever faced has been unfair competition from imported shrimp. Nearly 90 percent of the shrimp consumed in this country is imported, which makes our industry particularly vulnerable if that imported shrimp is not traded fairly. In 2003, our industry was in crisis. A massive wave of foreign shrimp was being dumped in our market at less than fair value, driving down prices for the rest of us and eating into our market share. As a result, many of our shrimp boats were forced to simply tie up at the docks because they could not afford to go out and harvest.

The industry took action. We invested a huge amount of time, effort, and resources to obtain anti-dumping (AD) orders on shrimp from six countries:

—Brazil;
—China;
—Ecuador;
—India;
—Thailand; and
—Vietnam.

These are some of the most economically important orders to be imposed in recent years—in 2005, when the orders were imposed, shrimp imports from these six countries totaled $1.7 billion.

Without these orders, I doubt our industry would have survived the past 6 years. They stopped the downward spiral in prices and stabilized the market. While dumping has continued, duties collected under the orders have imposed needed price discipline on importers. In addition, duties redistributed to the affected domestic industry under the CDSOA have allowed many of us to regroup and rebuild after being hammered first by dumped imports, then by successive hurricanes, and last year, by the gulf oil spill.

Unfortunately, much more needs to be done to ensure these orders are actually restoring conditions of fair trade to our market. Foreign producers and importers have gone to extraordinary lengths to evade the AD duties they owe, greatly undermining the effectiveness of the orders we fought so hard to obtain. Their actions fall into three general categories:

—the nonpayment of duties;
—transshipment of shrimp through countries not covered by the orders; and
—misclassification of covered shrimp as product not covered by the orders.

The nonpayment of duties is the most well-documented of the three enforcement problems. Since the orders were imposed in 2005, shrimp importers have failed to pay more than $75 million in duties they owe to the U.S. Government. China is by far the biggest source of the problem, accounting for 78 percent of the unpaid duties on shrimp, and 93 percent of the unpaid duties on seafood imports overall. When these duties go uncollected, it means that unfairly dumped shrimp is being allowed to enter our market with no price discipline. It also deprives the U.S. Government of revenue it is owed. In addition, to the extent the duties were owed on imports covered by CDSOA, it has robbed our own industry of part of the compensation it was owed under the law.

This is a massive problem that is not limited to shrimp alone. Another iconic Louisiana industry, crawfish, has also suffered—crawfish importers have failed to pay more than $560 million in AD duties they owe. In all, Customs has been unable to collect more than $1.5 billion in AD and countervailing duties (CVDs) since 2001. This is a staggering amount. It means that $1 out of every $3 of unfair trade duties due to our Government are simply not being paid at all.

We are very grateful to Senator Landrieu for her championship on this important issue, which is of great concern not only to the shrimp and seafood industries but to the many domestic producers across our country who have been irreparably harmed by nonpayment of duties. We look forward to working with the subcommittee to finally fix this gaping hole in our trade remedy system.

Foreign producers and importers further undermine our trade relief through transshipment and misclassification. We applaud Customs for the work they have done to uncover and prosecute these fraudulent schemes, but they need more tools and more resources to prevent these schemes from weakening our trade laws.

In 2005, for example, Customs discovered that more than $6 million in shrimp from China had been illegally transshipped through Indonesia to avoid AD duties, and Customs recovered more than $2 million in duties owed on this shrimp. Unfortunately, those duties were not collected until late 2007, after the shrimp had already entered the market at dumped prices and the harm had been done. In 2007, Customs also found Chinese shrimp being transshipped through Malaysia to avoid an FDA import alert regarding the presence of unapproved drugs in seafood from China. Such evasion is particularly troubling given that, according to a Government Accountability Office report released last month, only a mere 0.1 percent of all seafood imports from countries not under an import alert are tested by the FDA for banned drug residues.

Another example concerns so-called "dusted" shrimp, shrimp that is coated with flour but not fully breaded. In 2007, Customs sampled shrimp being entered as "dusted" product from China, which at that time was not subject to the AD order, and found that a full 64 percent of the sampled shipments did not in fact qualify as dusted shrimp and should have been entered under the order. While Customs estimated that the duties potentially due on the sampled shipments were about $5 million, the total loss in AD duties, assuming a similar rate of fraud going back to the issuance of the orders, was estimated at more than $130 million.

While these enforcement actions by Customs have sent a needed signal to importers that they will be held accountable for such fraudulent schemes, we need more tools and resources that allow Customs to collect duties more quickly, anticipate risks proactively, share information more openly, and keep such fraudulent imports out of our market in the first place. Otherwise, the relief is often too little, too late for the domestic industry.

Our trade remedy laws provide the first, and often the only, line of defense for American companies, farmers, fishermen, and workers when they are forced to compete with dumped and subsidized imports. The Congress created these laws to ensure that opening the doors of foreign commerce does not unfairly distort the playing field for U.S. industries here at home. A healthy trade remedy regime is key to continued domestic support for our engagement in the global economy. But these laws mean little if they are not vigorously enforced. I hope this hearing will be a first step towards strengthening that enforcement and fulfilling the promise of our trade remedy laws.

I thank the subcommittee for the opportunity to testify today and for your interest in this important issue. I look forward to any questions you may have.

Senator LANDRIEU. Thank you, Mr. Baumer. I appreciate it.

Mr. Hayes.

STATEMENT OF EDDY HAYES, PARTNER, LEAKE & ANDERSSON, AND PROFESSOR, TRADE POLICY, TULANE LAW SCHOOL, NEW ORLEANS, LOUISIANA

Mr. HAYES. Thank you, Madam Chair, Ranking Member Coats.

My name is Eddy Hayes, and I am a partner at the law firm of Leake & Andersson in New Orleans. I lead the firm's international trade and business practice, and I also am proud to serve as an adjunct professor at Tulane Law School and at Loyola Law School, where I teach a seminar on international trade. I am also very proud to be counsel to the American Shrimp Processors Association.

On a personal note, Senator Landrieu, I wanted to say thank you for everything that you have done not just for this industry, but for our citizens and our State. We have had a wild ride since 2005, and I can tell you, we all feel better that you are up here being our champion.

So thank you, Senator Landrieu.

As Mr. Baumer just testified, the shrimp industry has seen the damaging effects of duty evasion, transshipment, and circumvention firsthand. Duty nonpayment in the shrimp industry alone has deprived the U.S. Government of more than $75 million in tariff revenue and more than $1.5 billion in tariff revenue overall since 2001.

These problems have seriously compromised the integrity of the trade relief that this industry fought so hard to obtain. If the IRS had only collected $2 out of every $3 it was owed, it would be on the front page of every newspaper, and rightly so. And we believe this issue demands the same measure of attention.

We are deeply appreciative of all the support the industry has received from this subcommittee, including the powerful testimony that both Madam Chair Landrieu and Senator Cochran provided to ITC in its recent sunset review of the AD orders on shrimp.

Now that the commission has voted to keep these orders in place, it is the perfect opportunity to ensure that the full measure of AD orders are realized and that the relief intended under the law is provided to the members of the shrimp industry.

Madam Chair Landrieu, as the commission voted to maintain these orders, you rightly noted that the next step was to ensure that all the duties owed under the orders were, in fact, being paid. And we could not agree more that that is the next logical step.

Importers of goods under an AD or CVD order generally have to post cash deposits equal to the estimated dumping or subsidy margin for those goods. Because the final duty liability may be higher than this cash deposit amount, importers are also required to post a bond in addition to their cash deposits.

New exporters are allowed to post bonds instead of cash deposits while they seek reviews to establish their own dumping margins. Unfortunately, the bonds that are currently required in these situations are simply not sufficient to allow Customs to collect the full amount of duties owed. In some cases, the importer is nothing more than a P.O. box, and there is no way to collect against the importer at all.

Customs is then forced to try and collect against the entity, most oftentimes a surety that provided the bond. But when the import-

ers are only required to obtain a continuous entry bond, rather than the more robust single entry bond, then the bond is often inadequate to capture the full amount of dumping and the revenue that is due to the United States.

This problem is particularly acute for agriculture and aquaculture products, where fragmentation in the foreign industries allows players to appear and disappear at whim and often without a trace. Seafood alone accounts for 43 percent of the duties that have not been collected since 2001, and most of that amount is due to duties that have not been paid by importers of crawfish and shrimp.

Now, to its credit, Customs has tried to address the problem in these industries with enhanced bonding requirements. Though those particular requirements have been struck down, we believe it is possible to reintroduce those requirements in a consistent manner with our obligations both domestically and internationally.

For example, whenever the amount of uncollected duties exceeds a certain monetary threshold, for example, $1 million, then Customs could require that the importers post a more robust single entry bond. Furthermore, we should not allow an importer to continue posting the same security after DOC has preliminarily found that a higher margin is likely to apply or while a final DOC determination is under appeal. Instead, importers should have to start posting a sufficiently high bond to meet those increased margins shortly after those determinations.

And finally, the Congress should eliminate the privilege that new shippers have to post bonds rather than cash deposits as they await the results of their new shipper reviews. I believe these three changes would go a very long way to plugging the holes through which far too many importers escape their duty liability. These changes will ensure this inexcusable behavior is not allowed to continue.

PREPARED STATEMENT

We also support the proposals put forth by your colleague Senator Wyden and others to give Customs the tools it needs to more effectively address these issues of transshipment, misclassification, circumvention, and duty evasion. And I am happy to answer any questions that the Madam Chair and the ranking member have.

[The prepared statement follows:]

PREPARED STATEMENT OF EDDY HAYES

Madam Chairman, Ranking Member Coats, members of the subcommittee, good morning. My name is Eddy Hayes, and I am a partner at the law firm of Leake & Andersson LLP in New Orleans, Louisiana. I lead the firm's international trade practice, and I am an adjunct professor of law at Tulane University Law School and Loyola University Law School, where I teach a seminar on international trade law and practice. I also represent the city of New Orleans on the U.S. Trade Representative's Intergovernmental Policy Advisory Committee, and I serve on the roster of panelists eligible to adjudicate trade disputes under chapter 19 of the North American Free Trade Agreement.

I am also counsel to the American Shrimp Processors Association, the largest national organization of shrimp processors. As Mr. Baumer just testified, this industry has seen the damaging effects of duty evasion, transshipment, and circumvention first-hand. Duty nonpayment in the shrimp industry alone has deprived the U.S. Government of more than $75 million in tariff revenue—and more than $1.5 billion in tariff revenue overall—since 2001. These problems have seriously compromised

the integrity of the trade relief the industry has fought to obtain and maintain over the years.

We are deeply appreciative of all of the support the industry has received from this subcommittee, including the powerful testimony that both Chairman Landrieu and Senator Cochran provided to the U.S. International Trade Commission in its recent sunset review of the anti-dumping (AD) orders on shrimp. The Commission rightly decided that revocation of the orders would likely lead to a continuation or recurrence of material injury to the domestic shrimp industry, and voted to keep these orders in place. Now is the perfect opportunity to ensure that these orders are in fact providing the full measure of relief intended under the law.

Chairman Landrieu, as the Commission voted to maintain these orders, you rightly noted that the next step was to ensure that all duties owed under the orders were in fact being paid. We could not agree more. As Mr. Baumer testified, importers have failed to pay more than $75 million in AD duties owed. As I noted, across all orders, such nonpayment has deprived the U.S. Government of more than $1.5 billion in revenue. If the Internal Revenue Service only collected $2 out every $3 tax owed, it would be on the front page of every newspaper, and rightly so. This duty collection problem deserves a similar level of urgent attention.

Importers of goods under an AD or countervailing duty (CVD) order generally must post cash deposits equal to the estimated dumping or subsidy margin for those goods. The actual margin of dumping or subsidization for the merchandise will often not be finalized until an administrative review is conducted by DOC, and sometimes, until judicial review of DOC's determination is complete. Because the final duty liability may be higher than the estimated margin covered by cash deposits, importers are also required to post a bond in addition to their cash deposits. In addition, a new exporter or producer may post a bond instead of cash deposits while it seeks a determination of its correct margin in a new shipper review.

Unfortunately, the bonds that are currently required in these situations are simply not sufficient to allow Customs to collect the full amount of duties it is owed. In too many cases when the ultimate duty liability increases over the preliminary estimate, or when a new shipper fails to achieve a lower rate in its requested review, the importer of record is unable or unwilling to meet its duty obligation. In some cases, the "importer" is little more than a U.S. post office box address for the foreign producer or exporter, and there is no way to collect at all. Customs is then forced to try to collect against the surety that provided the bond. But if importers are only required to obtain a continuous entry bond, which is capped at 10 percent of the duties owed in the previous year, what Customs is able to collect from a surety may be far less than the full amount actually owed.

The problem is particularly acute for agriculture and aquaculture products, where fragmentation in the foreign industries allows players to appear and disappear without a trace. Indeed, seafood alone accounts for a full 43 percent of the duties that have not been collected since 2001, and most of that amount is due to duties that have not been paid by importers of crawfish and shrimp.

To its credit, Customs has tried to address the problem in these industries with enhanced bonding requirements. Unfortunately, those requirements were struck down because they singled out agriculture and aquaculture. But there is a way to make such requirements fully consistent with both U.S. law and our World Trade Organization obligations by ensuring they are based on an objective risk assessment rather than industry categories. For example, whenever the amount of uncollected duties under an order exceeds a certain fixed amount, say $1 million, Customs could require that importers post a more robust single entry bond, rather than the insufficient continuous entry bond, for imports under that order. Such a requirement would be industry- and country-neutral, easy to administer, and highly effective.

Furthermore, we should not allow an importer to continue posting the same security after the Department of Commerce (DOC) has preliminarily found that a higher margin is likely to apply or while a final DOC determination that such a higher margin will apply is under appeal. Instead, importers should have to start posting a sufficiently high security to meet increased margins shortly after any preliminary DOC determination that the duty liability is likely to be higher than the cash deposit rates. The same obligation should apply if any final determination by DOC that finds a margin that is higher than the cash deposit rates is subsequently appealed. To facilitate this, DOC should be required to publish the amount by which the margins that apply to exporters in a preliminary or final determination exceed each exporter's cash deposit rates for the period reviewed.

Finally, the Congress could change the law to eliminate the privilege new shippers currently enjoy to post bonds rather than cash deposits as they await the results of new shipper reviews. Importers of merchandise from new shippers should

face the same cash deposit requirements as importers from other companies that have not received individual rates.

These three changes would go a very long way towards plugging the holes through which far too many importers currently escape their duty liability. While they can't make our industries whole for the harm they have already suffered, these changes will ensure this inexcusable behavior is not allowed to continue. In addition, we believe it is entirely appropriate for these changes to originate from this subcommittee because they go directly to Customs' revenue-raising authority.

As to the problems of transshipment, misclassification, circumvention, and other schemes, we believe it is time to supplement Customs' toolkit so it can act with the speed, flexibility, and transparency that modern commerce demands. As Mr. Baumer testified, too often enforcement efforts such as civil fraud cases, penalty collections, and criminal prosecutions take far too long to have a meaningful impact on the market. In addition, the legal threshold for initiating such investigations is a high one, and such cases are resource-intensive.

While these enforcement actions play an important role, more is needed. Numerous helpful proposals have been put forward that would give Customs needed new enforcement tools, including by Senator Wyden and some of his colleagues. We are supportive of Senator Wyden's proposals and believe them consistent with the ideas proposed below.

First, Customs should suspend liquidation of entries as soon as there is a reasonable indication that goods which may be subject to an order are not being properly entered under that order. The burden should be on the importer, not on Customs, to substantiate claims regarding the origin, physical properties, and value of the merchandise. While these claims are being verified, entries would be held in suspension. If an importer cannot substantiate its claims, Customs should be able to apply an adverse inference that the goods are in fact subject to the order, and assess duty liability accordingly. Similar procedures at DOC create a strong incentive for foreign producers to cooperate and provide requested information, and the same would hopefully be true at Customs. These actions would be separate from, and in addition to, any civil or criminal proceedings against the importer.

Second, the ability of Customs to share useful information with those who have the most vested interest in enforcing our trade laws—the domestic industry—is currently hampered by legal restrictions such as the Trade Secrets Act. At DOC, the ability of domestic parties to access foreign producers' confidential business information under administrative protective orders has proven invaluable; it permits the domestic industry to provide targeted, specific information to DOC, eases the Department's own investigative burden, and helps to keep respondents honest, all while protecting confidential information. Similar procedures should be available at Customs. In addition, Customs should be able to update the domestic industry on the status of investigative matters without violating its confidentiality obligations. This would keep the domestic industry involved and invested and permit Customs to share its successes.

Third, there should be more robust information sharing between Customs and DOC. When Customs conducts the type of verification outlined above, it should forward the resulting information to DOC so it can be part of its own record, and so that parties to the DOC proceeding can access that information under protective order. Similarly, parties should be allowed to share confidential information learned in a DOC proceeding with Customs. If, for example, Customs suddenly sees a large increase in imports claiming to originate from a foreign producer that recently received a relatively low margin, information learned in the DOC proceeding may demonstrate that the foreign producer has nowhere near the capacity to produce such a high volume of imports, and that they are in fact being fraudulently shipped from foreign producers subject to much higher margins. Interested parties should be able to alert Customs to such information without violating their confidentiality obligations.

Fourth, Customs must be allowed to use the full range of information it currently collects from importers for trade enforcement purposes. In 2009, Customs began requiring importers to submit additional information regarding cargo shipments on their way to our ports, the so-called "10 + 2" requirements. The information is collected for smuggling and security purposes, and it includes the identity of the seller, the buyer, the manufacturer, the party being shipped to, the country of origin, the applicable tariff line, where the container was loaded, and the identity of the consolidator. This information is already being collected on all cargo shipments to the United States, yet Customs is prohibited from using this information for trade enforcement purposes. By eliminating this needless wall between security and trade enforcement, we could give Customs access to a huge amount of extremely useful

information at no extra cost to the taxpayer and with no additional burden on importers.

Finally, in this time of acute fiscal pressures, we understand that any request for increased funding is a hard sell. But at Customs, the funds invested bring a concrete revenue return back to the Government, and they are thus money well spent. At a minimum, we should ensure that Customs is not being deprived of the appropriations it needs to protect the tariff revenue and to ensure the integrity of our trade remedy laws. The losses due to unpaid duties alone exceed $1.5 billion over the past 10 years; it is impossible to quantify the additional amounts lost to transshipment, circumvention, misclassification, and other schemes.

I thank the subcommittee for the opportunity to testify today, and I look forward to working with you on these important issues. I would be happy to take any questions you may have.

Senator LANDRIEU. Thank you.

Mr. Busse.

STATEMENT OF KEITH BUSSE, CHAIRMAN AND CEO, STEEL DYNAMICS, INC., FORT WAYNE, INDIANA

Mr. BUSSE. Good morning, Madam Chair Landrieu, Senator Coats, and members of the subcommittee.

I am Keith Busse, co-founder, chairman, and CEO of Steel Dynamics, Inc. (SDI). We began operations in Butler, Indiana, with one greenfield mini mill in the year 1996. We now have five mills in three States with more than 6,000 employees dedicated to steel making and recycling.

We produce flat-rolled steel, special bar quality steels, rebar rail structurals, and we gather, process, and distribute scrap. We recently began producing pig iron from iron ore oxide at our Mesabi Nugget plant in Hoyt Lakes, Minnesota, and will soon begin a joint venture with a Spanish entity to produce copper rod.

Thank you for inviting me to discuss a paramount issue for U.S. manufacturers, specifically our trade laws and the proper enforcement of existing dumping orders. Testimony this morning from CBP, ICE, DOC, and GAO showed that much work remains to ensure that custom fraud ends.

Our expansion and continued investment in new technologies, products, and employment in the United States faces one major headwind, China. The Chinese Government has subsidized a steel industry with 800 million tons of capacity and only 675 million tons of domestic demand. The 125 million tons of excess capacity is pouring onto world markets, as China is the world's largest steel exporter.

This exists because the Chinese Government manipulates the value of its currency to provide export subsidies. The United States should address this issue immediately because it is costing us millions of jobs. However, I know that this is not the subject of today's hearing.

In 2000, SDI and others obtained AD duties on imports of hot-rolled steel from China. In the past few years, many of our most important customer groups, including the pipe and tube industry, wire products producers, and steel wheel producers, have won AD/CVD orders against China or are now seeking them.

But a new industry has sprung up in China to evade duties by creating false country of origin documents and transshipping those Chinese products through third countries. Customs' present inability to stop this massive invasion is harming us and the American worker.

I would like to offer three recommendations to you. First, the Congress has to ensure that DHS is accountable for investigating and determining whether AD/CVDs are being evaded. Both DOC and ITC have statutory timelines in place that require them to publish results. I understand that no similar rules apply to Customs investigations of allegations of duty evasion.

Therefore, I would urge you to support the bipartisan efforts of Senators Wyden and Snowe and their colleagues to establish a new statutory system to initiate, investigate, and reach conclusions about duty evasion within a defined timeframe.

Second, and this is where this subcommittee has a direct impact, clearly, DHS will need separate funding through a fresh appropriations for establishing an office to process administrative protective orders and additional personnel to investigate duty evasion and collect AV and CVDs. These expenditures will pay for themselves, as millions of dollars of duties are recouped through collections by CBP.

If these duties are collected, then U.S. producers will finally receive the relief intended from the imposition of duties under U.S. law. This will improve conditions for manufacturers, who will reenlist workers and contribute to our economic recovery in communities throughout the country.

Third, I understand that when textile quotas were put in effect, Customs had production verification teams that would go to foreign countries to investigate whether clothing was made in the factories they were alleged to be made in or they were, in fact, Chinese. The same thing should now be done with AD/CVD orders since importers claim the imports are from Malaysia, Vietnam, Taiwan, Hong Kong, Turkey, you name it, even though these products are made in China.

Evidently, the State Department would have to work out memorandums of understanding with countries to allow these production verification teams to do their work. But I would emphasize that this would be an important step in intervention.

PREPARED STATEMENT

Let me conclude by telling you that our board is considering an investment of $1.5 billion in a new greenfield mini mill to make flat-rolled steel primarily for tube and line pipe, mainly used to drill and transport oil and gas from new shale drilling sites around the country. This could create thousands of new jobs, but we need your help to stop the Chinese invasion of AD/CVD orders on these products. America must be prepared to secure the integrity of our ports.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF KEITH BUSSE

Good Morning Chairman Landrieu, Senator Coats, and members of the subcommittee. I am Keith Busse, co-founder, chairman, and CEO of Steel Dynamics. We began operations in Butler, Indiana with one greenfield mini mill in 1996. We now have five mills in three States with more than 6,000 employees in steel and recycling. We produce flat-rolled steel, SBQ bars, rebar, rail, structurals, and we gather, process, and distribute scrap. We recently began producing pig iron from

iron ore at our Mesabi Nugget plant in Hoyt Lakes, Minnesota and we will soon begin a joint venture with a Spanish entity to produce copper rod.

Thank you for inviting me to discuss a paramount issue for U.S. manufacturers—our trade laws and the proper enforcement of existing dumping orders. Testimony this morning from Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Department of Commerce (DOC), and the General Accountability Office (GAO) showed that much work remains to ensure that customs fraud ends.

Our expansion and continued investment in new technologies, products, and employment in the United States faces one major headwind: China. The Chinese Government has subsidized a steel industry with 800 million tons of capacity and only 675 million tons of domestic demand. That 125 million tons of excess capacity is pouring on to world markets and China is the world's largest steel exporter. This exists because the Chinese Government manipulates the value of its currency to provide export subsidies. The United States should address this issue immediately because it is stealing millions of jobs from us. However, I know that is not the subject of today's hearing.

In 2000, SDI and others obtained anti-dumping (AD) duties on imports of hot-rolled sheet from China. In the past few years, many of our most important customer groups including the pipe and tube industry, wire products producers, and steel wheels producers have won AD and countervailing duty (CVD) orders against China, or are now seeking them. But, a new industry has sprung up in China to evade trade relief by creating false country of origin documents and the transshipping of Chinese products through third countries. Customs' present inability to stop this massive evasion is harming us and our workers.

I would like to offer three recommendations to you. First, the Congress has to ensure that the Department of Homeland Security is accountable for investigating and determining whether AD/CVDs are being evaded. Both DOC and the U.S. International Trade Commission have statutory timelines in place that require them to publish results. I understand that no similar rules apply to Customs investigations of allegations of duty evasion. Therefore, I urge you to support the bipartisan efforts of Senators Wyden and Snowe and their colleagues to establish a new statutory system to initiate, investigate, and reach conclusions about duty evasion within a defined timeframe.

Second, and this is where this subcommittee has a direct impact. Clearly, Homeland Security will need separate funding through appropriations for establishing an office to process administrative protective orders, and additional personnel to investigate duty evasion and collect AD/CVDs. These expenditures will pay for themselves as millions in dollars of duties are recouped through collections by CBP. If these duties are collected, then U.S. producers will finally receive the relief intended from the imposition of duties under U.S. law. This will improve conditions for manufacturers who will re-enlist workers and contribute to economic recovery in communities throughout the country. Third, I understand that when textile quotas were put into effect, Customs had production verification teams that would go to foreign countries to investigate whether clothing was made in the factories that they were alleged to be made in, or they were in fact Chinese. The same thing should now be done with AD/CVD orders since importers claim the imports are from Malaysia, Vietnam, Taiwan, Hong Kong, Turkey—you name it—even though these products are made in China. Evidently, the State Department would have to work out memorandums of understanding with countries to allow these production verification teams to do their work, but I would emphasize that this would be an important step in intervention.

Let me conclude by telling you that our board has preliminarily allotted $1.5 billion for a new greenfield mini mill to make flat-rolled steel primarily for tube and line pipe mainly used to drill and transport oil and gas from new shale drilling sites around the country. This could create thousands of new U.S. jobs, but we need your help to stop Chinese evasion of AD/CVD orders on these products. America must be prepared to secure the integrity of our ports. Thank you.

Senator LANDRIEU. Thank you.

And thank you for raising the issue of production inspection teams. We are going to focus on that, and I will have a few questions to you all and also the previous panel.

Mr. Adams.

STATEMENT OF JIM ADAMS, PRESIDENT AND CEO, OFFSHORE MARINE SERVICE ASSOCIATION, NEW ORLEANS, LOUISIANA

Mr. ADAMS. Good morning. Madam Chair, Ranking Member Coats, thank you so much for this opportunity.

As president of the Offshore Marine Service Association (OMSA), I am pleased to testify on the need for disciplined, consistent, transparent enforcement of the Jones Act. OMSA represents more than 250 companies, and you know most of them and know our board members.

Our members need consistent Jones Act enforcement. But they are also a resource. You know them well, and they can be the eyes and ears on the gulf for both CBP and the Coast Guard, and I would like to talk about how we can get more out of that partnership.

The Jones Act is very broad, and it is very clear. It requires that to transport goods domestically, that that move needs to be made on a U.S.-built boat owned by Americans and crewed with American crew members. Foreign vessels are prohibited from engaging in coast-wide trade.

Ensuring foreign vessels stay in their nontransportation lane is the responsibility of CBP and the Coast Guard. The need for clear, consistent, vigorous enforcement is essential to our members. It is really what the basis of the capital formation and the jobs that go along with that capital formation are built upon.

But it is not an easy job. In contrast to a typical container ship move, a conventional move, in the Outer Continental Shelf (OCS), things are very complex. The OCS is a vast subsea network of wells and pipelines and equipment, and it is very foreign-looking to the average American. In this environment, it really takes a seasoned eye to differentiate between what is transportation service and what might be an installation or construction service.

In the past 30 years, the complexity of the OCS has driven CBP down a very difficult and piecemeal path of letter rulings that have fostered uncertainty in our market, and you can be sure that foreign vessel operators have done their best to exploit the ambiguity that remains in the rules.

In 2009, CBP courageously attempted to make broad policy improvements. But under intense political pressure to protect the status quo, CBP had to withdraw its rulemaking. I would like to thank CBP for that effort, and I remain confident that their acknowledgment that broad policy change was warranted, that acknowledgment will affect future letter rulings, as well as the enforcement posture of the agency.

Again, enforcing the Jones Act on the OCS is a difficult job. Violations occur far offshore and at private docks. In 2008—you know our members, they are self-starters—they created the Jones Act Compliance Program. Under this program, we have been assisting CBP and the Coast Guard with enforcement of all of our domestic transportation laws.

We work closely with the CBP port directors to provide them with training, to give them the latest understanding of where technology is going, what they might expect to see occurring at various docks, and to understand what operations are going on. Using the Automatic Identification System, OMSA continually monitors the

location and movements of every foreign vessel operating in the gulf.

This surveillance, coupled with an aggressive intelligence program, allows OMSA to identify suspicious behavior. Then we take that intelligence and documented vessel movement data, and we provide it to CBP and help them build a case. This is an excellent example of what maritime domain awareness really is, and we would love to share this information with the Coast Guard so that we can not only do this for economic interest reasons, but also for Homeland Security.

OMSA has assisted CBP in eight enforcement cases. Six of those are going to the fine assessment phase. Two of them were immediately rectified with compliance. As soon as we get compliance, a particular job will go to a U.S. flag boat and that work will go to U.S. crewmen.

When a violation occurs, the penalty is the value of the cargo moved. In the six pending cases, the value of the cargos moved is between $2.5 million and $10 million. We strongly encourage CBP to take immediate action and assess a penalty. We understand they are very close on a couple of these cases.

We think, with a strong penalty, that will provide the market clarity necessary for companies to understand what is at risk when they make a move of convenience possibly.

Senator LANDRIEU. Okay. Try to wrap up, if you can?

Mr. ADAMS. Yes, I will.

PREPARED STATEMENT

Just before closing, thank you so much for your leadership in trying to get permits awarded in the gulf. We are at a critical stage. Our industry is being decapitalized, and our world-class workforce is being displaced.

But thanks to your leadership, we may see improvement in the near future. I certainly hope so.

[The prepared statement follows:]

PREPARED STATEMENT OF JIM ADAMS

Madam Chairman and members of the subcommittee: As the president and chief executive officer of the Offshore Marine Service Association (OMSA), I am pleased to have the opportunity to describe the challenges facing our industry and the Department of Homeland Security (DHS) through its agency, U.S. Customs and Border Protection (CBP), in enforcing the Jones Act in the Gulf of Mexico. The Jones Act is very broad and very clear in its mandate—no merchandise or passengers shall be transported by water between points in the United States in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States.

OMSA represents more than 250 companies that own and operate vessels, perform towing activities and provide services in support of the production, exploration and development of offshore natural resources. These companies employ more than 12,000 mariners operating approximately 1,200 vessels in the Gulf of Mexico. Madam Chairman, in your visits to Port Fourchon and other port and offshore facilities in southeast Louisiana, you have observed firsthand the OMSA member vessels and personnel that support vital offshore oil and gas exploration and development operations. While our association represents the world's largest offshore vessel companies, most OMSA members are to this day family owned and operated businesses. Our members not only perform a valuable economic function for the oil and gas industry, but we also have an important homeland security role to play. Because we regularly operate within and beyond the maritime borders of the United States,

OMSA members serve as "an early-warning system" for threats against the strategic assets in the Gulf of Mexico and our homeland.

Madam Chairman, at the outset, I would like to provide the subcommittee with some important background on the Jones Act, a critically important law that is vital to the American maritime industry and our operations in the Gulf of Mexico. When the Jones Act was enacted by the Congress in 1920, its preamble provided that:

"It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this act, the [United States] shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained."

While the Jones Act dates from 1920, cabotage laws from which it came were enacted by the first United States Congress in 1789. Through the Jones Act and its predecessor statutes, the Congress intended to ensure that the United States has available vessels to meet sealift needs, trained and experienced seafarers to operate U.S. Government ships in times of national emergency, and a modern shipyard industrial base that is critical to the Nation's military and economic security. In so doing, the Congress required that vessels operating in the domestic commerce of the United States must be owned by U.S. citizens, built in U.S. shipyards, crewed by U.S. citizens, and documented under the laws of the United States as U.S. flag vessels. CBP is vested with the authority to interpret and enforce these Jones Act requirements. Indeed, as the Preamble included by the Congress at the time of the passage of the Jones Act makes clear, it is the duty of CBP to "keep always" the stated purpose of the statute as the "primary end" to be attained. This means, and the Congress made clear, that when creating rules and regulations and when administering all shipping laws, of which the Jones Act is one, CBP must "do whatever necessary to develop and encourage the maintenance of such a merchant marine".

Without a doubt, U.S. businesses have done their part in ensuring that our Nation has a vibrant merchant marine. The investment by American businesses, and members of OMSA, based on the Jones Act is substantial. According to America's Maritime Partnership, the entire Jones Act fleet is comprised of more than 40,000 vessels and represents an investment of nearly $30 billion. Jones Act vessels annually move more than 100 million passengers and 1 billion tons of cargo with a market value of $400 billion. There are 74,000 jobs that are directly related to Jones Act maritime activity, and total employment related to domestic waterborne commerce is 500,000. The annual economic impact of the industry is $100 billion, with $29 billion in annual wages paid and $11 billion in taxes generated. In addition to support for domestic offshore oil and gas activities on the Outer Continental Shelf of the United States (OCS), Jones Act vessels carry grain, coal and other dry-bulk cargoes, crude, and petroleum products on the inland river system; domestic crude oil from Alaska to west coast refineries; iron ore, limestone and coal throughout the Great Lakes; refined petroleum products along the east and gulf coasts; and merchandise and construction materials to and from Alaska, Hawaii, Puerto Rico, and Guam.

The segment of the industry that serves the Nation's oil and gas exploration and development on the OCS is a vital and indispensable part of the Nation's Jones Act fleet and its ability to competitively explore and produce domestic sources of oil and gas. Prior to the moratorium imposed by the administration on OCS drilling activities, the United States obtained almost a one-third of its oil and more than a quarter of its gas from offshore drilling and production.

In addition to the importance of the oil and gas sector, the OCS may also be a significant future source of wind-generated electricity. Our members' vessels serve exploration, development, and production rigs and facilities and support offshore and subsea construction, installation, maintenance, repair and decommissioning activities. In addition to transporting deck cargo, such as pipe or drummed material and equipment, our vessels also transport liquid mud, potable and drilling water, diesel fuel, dry bulk cement, and personnel between shore bases and offshore rigs and production facilities.

The need for clarity, consistent with legislative intent, and vigorous enforcement of the Jones Act by CBP is extremely important in the context of offshore oil and gas activities on the OCS. This issue is of even greater importance in the Gulf of Mexico where day-to-day operations have been significantly curtailed by the Administration's continuing de facto moratorium on offshore oil and gas drilling activities. In contrast to the relative simplicity of the transportation of merchandise from one place to another in other segments of the Jones Act trade, oil and gas exploration and development activities on the OCS are very complex. On the OCS, rapidly developing technology supports the installation of subsea wells and the myriad types of connecting pipes and other equipment necessary for the production of oil and gas. In the deepwater oil and gas fields, a new generation of special purpose and multipurpose vessels and equipment has been developed to facilitate operations. Subsea systems in deepwater often employ multiple wells connected to each other and production facilities with a wide variety of devices and patterns with such colorful names as "daisy chain tiebacks", "cluster well manifolds", and "multi-well templates" that can be miles long. Production facilities, fixed or floating, are connected to seabed systems by devices such as "flexible compliant risers", "steel catenary risers", "tower risers", and "top tension risers". Production structures vary depending on the depth of the water, and may run the gamut from platforms fixed to the seabed to moored floating production, storage and offloading vessels. There are at least four marine pipeline installation methods, including towing, S-lay, J-lay, and reel lay.

This complexity in oil and gas activities on the OCS has taken CBP down a path of rulings based on specific and very complex fact patterns and situations that have unfortunately resulted in a lack of clarity and a misapplication of the law. Foreign vessel owners have exploited this ambiguity—and even promoted it—in order to create a market on the U.S. OCS for their vessels that should be reserved to Jones Act qualified vessels. Because of the complex, dynamic and rapidly changing environment on the OCS, the lack of clarity or failure to apply the Jones Act as intended by the Congress has created uncertainty, undermined enforcement, and opened the door to foreign carriers to inappropriately engage in the coastwise trade of the United States. In fact, this lack of clarity in the past in CBP rulings has allowed numerous foreign-flag vessels with foreign crews to carry on activities and transport cargo in the Gulf of Mexico, thereby costing OMSA members both jobs and revenue.

In 2009, and with the full support of OMSA and its membership, CBP courageously initiated action to restore proper clarity to and enforcement of the Jones Act. Specifically, in its July 2009 proposed modification and revocation of certain previous Jones Act ruling letters, CBP sought to restore the definition of what constitutes vessel "equipment" as it relates to the transportation of merchandise under the Jones Act. CBP had revoked an earlier ruling that allowed a foreign-flag vessel to transport and install a wellhead assembly (commonly known as a "Christmas tree") from a U.S. port to the OCS, and the agency sought to impose clear and proper guidance to the trade community for compliance and to ensure that the legislative intent of the Congress is followed in the application of the Jones Act. However, to the great disappointment of OMSA and others in the Jones Act community, CBP, at the direction of the Department of Homeland Security, soon withdrew the modification and revocation proposal, and subsequent rulemaking proceedings in this matter have been abandoned for now.

OMSA fully understands the difficulty of enforcing the Jones Act on the OCS, particularly given the size of the Gulf of Mexico and the complexity of OCS operations. Jones Act violations are often occurring far offshore or at remote private facilities. With this in mind, OMSA has taken steps to create a working partnership with CBP to assist in its enforcement of the Jones Act. And, I am pleased to report that our partnership is delivering positive results. I want to thank CBP for its commitment to this initiative and encourage CBP to continue its efforts to pursue swift enforcement when violations occur.

In 2008, OMSA took the initiative to create a Jones Act compliance program with the express purpose of assisting CBP and the U.S. Coast Guard in enforcement of the Jones Act and other key maritime laws of the United States. Our members are operating throughout the Gulf of Mexico on a daily basis and are often able to see first-hand violations of the Jones Act by foreign flag vessels. In essence, the U.S.-flagged Jones Act fleet, in its role as an essential partner with DHS in the maritime homeland security mission, serves as the Nation's "eyes and ears" in the strategically vital OCS region.

Under our Jones Act compliance program, OMSA works closely with CBP Port Directors and provides them with information and assistance to ensure a common understanding of the offshore industry's equipment, technology, operations, and terminology. Next, we actively monitor the location and movement of every foreign vessel

in the Gulf of Mexico through the use of automated identification system technology. By continually documenting the location and activities of foreign vessels working in the Gulf of Mexico, OMSA is able to recognize vessel movements that warrant further scrutiny. We also have developed the capability to generate credible information about possible violations of the Jones Act from our experienced personnel working offshore. OMSA's Jones Act Compliance Manager regularly provides detailed enforcement reports to CBP that enable the Federal Government to pursue those companies and individuals that are actively violating the Jones Act.

As a result of this program and the information that OMSA has provided to CBP, there have been numerous enforcement actions successfully initiated. In fact, there have been eight enforcement cases in the past few years that are progressing towards a fine or have been otherwise resolved by CBP with full compliance by the foreign shipowner. In order for its enforcement efforts to be credible and deter future violations by foreign flag shipowners, we encourage CBP to act quickly and decisively to impose fines and other sanctions when a violation is found, and to widely publish such enforcement actions. We are confident that with the assessment of a few significant penalties, there will be a marked change in the inappropriate activities of certain foreign flag vessels in the Gulf of Mexico. As a result, more opportunities for U.S. flag vessels and American crews will be created.

Madam Chairman, the members of OMSA are proud to support the efforts to develop the oil and gas resources of this Nation. We have made a substantial investment in this enterprise and are prepared to increase that investment. Our investments in the past have been predicated on the continuing viability of the Jones Act and the expectation that the Federal Government will aggressively enforce that law. Our investments in the future, investments that would continue to generate thousands of American jobs, also directly depend on the efforts of CBP to ensure that foreign vessels with foreign crews are prohibited from routinely violating the Jones Act in the Gulf of Mexico. We are pleased that CBP has worked with us in a constructive fashion to improve compliance with the Jones Act, and we look forward to even more vigorous enforcement in the years to come.

Madam Chairman, thank you for inviting me to appear before the subcommittee today. I will be pleased to answer any questions that you or any members of the subcommittee may have.

Senator LANDRIEU. Thank you. Thank you, Mr. Adams.

Our whole delegation is working on it with the other gulf coast Senators. We will continue to push it. It is extremely important.

But between the pressures on our seafood industry not just from natural disasters, but from the failure to be able to enforce and collect in this area, and with the permatorium that we say is still in effect in the gulf, it is a very tough time for many industries. And indirectly, of course, you have got the hospitality industry, which is affected by these base industries that are not able to perform at their highest levels.

Let me ask quickly just a couple of things. All of you—Mr. Baumer, Mr. Hayes, and Mr. Busse—have you all ever used the e-Allegations process? They have created an online referral process for AD, or any of your members or associates? Have you all used that process? Are you familiar with it? It is called e-Allegations. I think it is an online way for people to enter complaints or et cetera.

Mr. Hayes, are you familiar with it?

Mr. HAYES. Madam Chair, I am familiar with it. Not intimately, but I can tell you that in our industry, there have been complaints that have been made that were industry-driven because of our knowledge of what is going on. I don't know that they were made through the e-filing system. But there have been complaints registered with respect to transshipment, misclassification, and other issues.

But I am not so sure that any of it has been directed directly to undercollection and noncollection issues. But certainly, we will take

a look at the e-filing system and familiarize ourselves with it to see if it is efficient and if it works.

Senator LANDRIEU. Anybody else want to comment on that? If not, don't feel compelled. Mr. Busse.

Mr. BUSSE. Madam Chair, our steel producers, I am not sure if other steel producers have used the system. We have not, but our clients have. The pipe and tube making community uses that system today.

Senator LANDRIEU. Okay. Mr. Baumer, help me understand, when the old Byrd rule was in effect that has been ruled not up to standard with the World Trade Organization (WTO) guidelines, but there was money collected under that rule. How did you all, some of the processors use some of that funding? How did you use it to sort of reinvest and/or recapitalize, and do you have any suggestions about how we could move forward and either reshape or redesign that process?

It seems only fair to me that some of the penalties, the injured parties themselves should receive some benefit from the violations that occur. But do you want to comment on any of that and clarify some of it?

Mr. BAUMER. Yes. I guess on how the Byrd money that was distributed to the industry was used would depend on the individual circumstances. For us as a company, and a lot of our other processors and fishermen, we used it in multiple ways.

The first way is we upgraded our plants, put new machinery in, new floors, new buildings, new refrigeration. A second way that we did it was we paid more at the dockside for shrimp that we would otherwise pay while we are competing with imports. So we used that as our profit margin, so to speak, to pay higher prices than we can actually sell the shrimp for on the open market.

And three, what it allowed us to do, it gave us more capital to inventory product year-round. In our industry, capitalization is very important because, as a domestic industry, we only fish for certain months out of the year. But to compete with imports, we can't write long-term contracts because we are not sure what is coming out of the water.

So, to the best of our ability, we buy product, inventory millions throughout the months that we are not fishing to keep our customers year-round. So inventory, upgrades on plants, and higher dock prices I would say, give or take, are the three areas that were most beneficial.

On the future, to address the question on the future, I personally, and a lot of people in our industry would love to see some of the monies that are collected be put back into our industry. It was WTO-inconsistent, but I would like to see a very easy way, I think, to do it would be to get that money back into our fishermen's hands, maybe through fuel subsidies.

So we could buy shrimp at potentially a lower price or a fair price, but it would eliminate some of their risk when they are fishing. Still cover their expenses. And we would potentially be able to get shrimp at a lower cost to compete with imports that are continuing to come in cheaper and cheaper at times.

So fuel subsidies would be a great way, as well as upgrades on rigs to put newer fishing methods, more sustainable fishing. A lot

of the retailers in this country, as you know, are moving to the Marine Stewardship Council or to other sustainability measures. And the more our fishermen have money to invest in their fleets to upgrade to produce more sustainable, so to speak, a more sustainable catch, would also be an upgrade.

Senator LANDRIEU. Thank you.

My final question, and I will turn it over to Senator Coats. Mr. Hayes, you have worked with this industry, particularly aquaculture, shrimp, and crawfish. But as a professor, you are familiar. What would be the two or three things that you would like to suggest to our subcommittee that we can do, either through the appropriations process or focused on either resources or directing resources or enforcing what the laws allow us to do today?

Mr. HAYES. Thank you, Madam Chair.

My suggestion would be, No. 1, focus on the bonding issue. That is a very easy fix, and it is something that can be done, arguably, by CBP on its own, with some direction from this subcommittee and from the Congress.

The enhanced bonding issue, if it is applied on a neutral basis, based upon an objective risk assessment, then I believe it would be WTO-consistent and also in compliance with our domestic laws. That is a very easy thing that we can do to capture those duties that are being uncollected.

Also the new shipper issue, having them post cash deposits rather than the bond is an easy fix that I think the Congress would have to create. But that is also something that could be done.

And then, also the notion of some type of separate remedy in these types of situations that, in addition to the civil and the criminal fraud actions where they have very high thresholds to prosecute these cases, if we have sort of a revenue remedy where there is adverse inferences against the foreign importers who are trying to game the system, then if there is this revenue remedy available and the industry is engaged, then it is a very pragmatic way to address the issue.

So I think the bonding issues are very important, and they are very obtainable. And they are quite easy to address. And then also this notion of a separate type of remedy that would allow individuals or groups to bring complaints to the appropriate administrating authority to investigate these issues and have information freely shared between Customs and DOC under an administrative protective order, which has been very successful in the AD environment.

So those are two things, Madam Chair, that I would suggest. And just real briefly, if I could? Mr. Yager, this morning, was discussing the retrospective system that we have. I just wanted to point out that that system is not only the most fair and transparent system in the world. It allows you to collect more revenue because we determine what the actual dumping rate is.

There is a preliminary rate. And then after the review, that rate is often much higher. So the retrospective system allows you to collect more revenue, assuming that Customs and DOC are doing their job appropriately.

So I just wanted to mention that we are strong supporters of the retrospective system that we have, as long as Customs and DOC have the tools necessary to collect the duties.

Senator LANDRIEU. Mr. Baumer. And then I will turn to the Senator.

Mr. BAUMER. I would like to add one more thing that I was thinking about that I wanted to mention to you. I mentioned fuel subsidies on some of that money. Another avenue that would be excellent for the industry is to fund, at least early on until they become self-sustainable, a marketing program similar to Wild American Shrimp.

I know the American Shrimp Processors Association has numerous processors that process and distribute most of the shrimp in the United States, and we are working together now to create a united marketing program because 90 percent of the people that eat shrimp in this country, when they are eating them, think they are eating domestic. And if those people were aware of what they were eating, 90 percent of them, because of the flavor profile, as you mentioned earlier, would choose to eat domestic shrimp.

But with such a small niche industry, 5, 10 percent at times, it is going to take a pretty cohesive marketing and broad marketing program to inform people of what they are eating to help out our industry and get it out of that commodity market.

Senator LANDRIEU. Thank you very much.

Senator Coats.

Senator COATS. Thank you, Madam Chair.

Thanks, all four of you, for your testimony here this morning.

And Madam Chair, thank you for holding the hearing. It has been informative, and we talked just a couple of whispers here in between in terms of some action that we think we can take regarding some of the trade agreements that are coming before the Senate this year. So this has been very, very helpful.

Mr. Busse, thank you also for your testimony and for being here. You made three recommendations for us. And the first was a statutory timeline issue, which we will take a look at. The second was the resources and personnel necessary to have the various departments become the most efficient and effective that they can be. And the third was the production verification.

I think those are all legitimate recommendations. I know that the chairman and I will be discussing how we look at that and how we potentially can address those three issues.

I just have one question for you, Keith, relative to the resources and personnel question. As you heard, I asked that question to the first panel, and the answer was essentially we pretty much have what we need.

Now, as I said, that is welcome news to us that are in a position where people are going to be asked to do more with less. And we don't have the funds available out there to do many add-ons, if any. But I would be interested in your response to them when they said, "We have got what we need. Maybe there is a few more efficient ways of doing our work, but we have the resources, and we have the personnel."

But that is really contrary to what you are saying, at least I think what you are saying. Do you want to comment on that?

Mr. BUSSE. I think it has been clearly established there is cheating and fraud going on, and I think it really is low-hanging fruit. I think the return on investment is monumental there.

It is appropriate, I think, that we are sitting here in the Dirksen building. I think it was Senator Everett M. Dirksen that said, "A million here and a million there, and pretty soon, we are talking about real money."

I guess in today's environment, where we have enormous debt and we have revenue streams that don't match that debt, running enormous deficits, I would say this is one of the easier areas to pick up a billion or two. Because I think the phrase today would be, "A billion here and a billion there, and pretty soon, we are talking about real money."

So it is tough enough to bring a dumping case. A lot of work goes into that, and they are hard to win. But when you win them, I think enforcement is paramount. And it is obvious we are not getting the job done.

We can say we have adequate resources, but there is still cheating going on out there and evasion of a duty exists today. So I would say my challenge to them would be why aren't we getting the job done if you have the adequate resources?

Senator COATS. Madam Chair, thank you.

Senator LANDRIEU. Yes.

Senator COATS. That is all the questions that I have. Again, thanks to the panel for your contributions here, and we look forward to continuing to work with you and administration officials to, as you say, go after that low-hanging fruit and have a better system that not only brings in more revenue, but also protects U.S. industries and U.S. jobs.

Senator LANDRIEU. Thank you.

I just have three brief questions. And while Senator Coats is here, just bear with me for a minute.

It is very hard, I think, sometimes for the people in our country to understand just the visual difference between the west coast, the east coast, and the gulf coast. Just very briefly, the gulf coast—because we do oil and gas drilling—we literally have cities operating offshore. There are no cities operating off the shores of California or New Jersey. We literally have cities, what I would describe as skyscrapers that are taller than the skyscrapers in any of our cities out in the gulf.

So we have an inhabited gulf. It is like living on the water. Not just boats coming back and forth, but people inhabiting platforms, which is why I think, Mr. Adams, you got to your program of these offshore private companies helping the Coast Guard helping Customs. Customs doesn't have a fleet of boats.

The Coast Guard is very overworked and stretched right now. So one of my questions is when you all started with OMSA support, this effort OMSA, you created the Jones Act Compliance Program to be the eyes and the ears in the gulf. So you can identify foreign vessels that are unidentified. Your crew members would be out there seeing them.

It is an excellent example of public-private partnerships, which the two of us are very supportive of, trying to limit the cost to the Government by leveraging the private assets. But you said there

were six or you said in your testimony there were six documented violations OMSA members, OMSA members reported, but there have been no follow-up.

Do you know why these particular violations that you have reported had not been followed up? I am very curious as to why they haven't.

Mr. ADAMS. I think there has been work conducted on the cases. They just haven't been—and should be. I am sorry. The cases are pending the issuance of a penalty.

Senator LANDRIEU. But no fines have been assessed. So you all reported them. You did what you were supposed to do. There are investigations underway on those six ships that seem to be out of compliance, but no fines have been assessed, to your knowledge?

Mr. ADAMS. That is correct. And I can't explain why. I would just encourage the assessment of a fine. It would provide the market clarity we need.

Senator LANDRIEU. Okay. And finally, Mr. Baumer, we didn't talk at all, and I want to get this into the record, about the health risk of some of the seafood that is coming in from potentially China, other parts, Asia, et cetera. Are you hearing complaints or have any evidence to suggest or testimony to give about the health and safety risk associated with some of these products coming in that are part of the illegal dumping that is going on?

Mr. BAUMER. Most of the testimony that I would provide would be in the GAO report that, in fact, I just reviewed this on the plane over here. You constantly hear in our industry about drug residues and so forth. And to me, it is surprising to me to think that we allow right now importers to put drugs or antibiotics into seafood that are not approved by the FDA.

Almost to the point where it is almost an equal protection violation under our Constitution that to think if you have aquaculture in this country, you cannot use an antibiotic that can be used in another country to keep the bacteria off of the shrimp.

And to the extent that and those antibiotics cause long-term effects, maybe the science isn't quite there yet. But it is certainly an issue that I think needs to be explored and informed to the public more than it is currently being done.

Senator LANDRIEU. Okay. Thank you all very much.

It has been a wonderful hearing. I see a young gentleman behind you. Is that part of the seventh generation?

Mr. BAUMER. This is the fifth generation.

Senator LANDRIEU. Fifth generation.

Mr. BAUMER. Fifth generation. This is my son, Vincent.

Senator LANDRIEU. Vincent, welcome to our hearing today. We thank you for being here.

Mr. BAUMER. Thank you.

ADDITIONAL COMMITTEE QUESTIONS

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED TO LOREN YAGER

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

UNDER-COLLECTION OF TARIFF REVENUE

Question. Based on information contained in the annual anti-dumping and countervailing duty (AD/CVD) enforcement report required by the Homeland Security appropriations law, a total of more than $1.5 billion in duties have not been collected between 2001 and 2010. Of this amount, more than $1 billion are uncollected AD/CVDs—of which more than $660 million consists of duties owed on seafood—and 94 percent of the under-collected seafood duties are from China. We are facing huge budget deficits in this country. For that reason alone, we should be more aggressive in collecting duties we are rightly owed. Why are we not doing more to collect all duties?

Answer. We have undertaken a number of efforts over the years to help the Congress better understand issues related to uncollected AD/CVDs, and our work has identified a number of opportunities for improving duty collection. For example, our written testimony statement [1] noted that duty collection could be improved by revising the retrospective nature of the U.S. system and by requiring companies applying for new shipper status to have a minimum amount or value of imports before receiving an individual AD/CVD rate. Similarly, our March 2008 [2] report on uncollected AD/CVDs included several recommendations to help ensure the full collection of AD/CVDs. Specifically, we recommended that:

—the Department of Homeland Security (DHS) determine whether bonding requirements can be adjusted to further protect revenue;
—the Department of Commerce (DOC) work with DHS to identify opportunities to improve the clarity of liquidation instructions; and
—DOC develop a strategic human capital plan to ensure that it has sufficient human capital to issue timely and clear liquidation instructions.

With regard to the first of the recommendations above, U.S. Customs and Border Protection (CBP) has stated that it remains committed to utilizing its bonding authority to address revenue risk. However, the World Trade Organization's (WTO) Appellate Body ruled in July 2008 that CBP's enhanced bonding requirement, which was applied to the AD orders on shrimp as a test case, was inconsistent with U.S. obligations under international agreements. CBP subsequently decided to terminate the enhanced bonding requirement. Detailed information on actions the agencies have taken in response to the second recommendation is provided in our response to the question on "Effective Communications", and we continue to track the agencies' progress in responding to the third recommendation. In addition, given congressional concerns that evasion of AD/CVDs results in lost revenues and weakens protections for U.S. industry and workers, we are currently conducting a review of U.S. efforts to detect and deter evasion of AD/CVDs at the request of Senators Ron Wyden and Olympia Snowe.

REASONS IN DEFENSE OF A RETROSPECTIVE TRADE SYSTEM

Question. Both the Government Accountability Office (GAO) and DOC state that the retrospective trade law—which is current U.S. trade law—is "particularly harmful for small businesses such as shrimp and seafood importers".

What are the reasons given in defense of this trade system that apparently deliberately harms a segment of U.S. employers?

Answer. We reported in March 2008 [3] that one relative advantage of a retrospective AD/CVD system is the accuracy of the amount of AD/CVDs assessed. However, we also noted that, in practice, a substantial amount of retrospective AD/CVD bills are not collected. This suggests that assessing a more accurate duty rate does not necessarily result in receiving more accurate duty amounts from importers. Moreover, the long lag time involved in assessing a final, more accurate duty rate—3.3 years, on average, as of our March 2008 [4] report—creates uncertainty over duty liability that can hinder the ability of small U.S. importers to make informed business decisions, plan investments, and create jobs.

---

[1] GAO, Antidumping and Countervailing Duties: Options for Improving Collection, GAO–11–693T (Washington, DC: May 25, 2011).

[2] GAO, Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps To Reduce Substantial Shortfalls in Duty Collection, GAO–08–391 (Washington, DC: Mar. 26, 2008).

[3] GAO–08–391.

[4] GAO–08–391.

Is it possible to modify U.S. trade laws so that small businesses like these are not harmed while maintaining the system which appears to benefit other industries?

Answer. Our written testimony statement [5] emphasizes that any effort to improve the U.S. AD/CVD system should consider the additional costs placed on legitimate importers—including legitimate small businesses—while attempting to address the issue of illegitimate importers. We believe that one way to pursue the goal of minimizing the additional costs on legitimate importers is to include this goal as an explicit criterion for consideration in any evaluation of changes to the current retrospective AD/CVD system or in the design of a prospective system.

SHRIMP TEST CASE

Question. Your testimony discusses the 2005 decision by CBP to test shrimp imports from six countries. This requirement was terminated in 2009. What were the lessons learned by this test case? What were the benefits—and also the costs—of this requirement on companies?

Answer. We reported in October 2006 [6] on the effects of CBP's revised bonding policy and its application to the "test case" of shrimp imports. While we noted that the effects of the revised policy could not be readily isolated from the effects of other changes occurring during the same time period, we were able to identify the following lessons learned:

—CBP estimates indicated that more revenue was protected as a result of the new bond policy. Based on the value of actual bonds obtained after implementation of the revised policy, CBP reported in December 2005 that the revised bond policy would ensure collection of revenue up to an increase of 85 percent in final AD duty rates, versus the traditional bond formula, which would only cover a 28-percent increase.

—In addition to the AD duties imposed, the costs associated with higher bond amounts were substantial, according to shrimp importers. Under the revised bonding policy, importers paid higher premiums and typically also had to post the 100 percent collateral required by surety providers before the sureties would write the larger bonds. Importers with whom we spoke reported a range of effects arising from these higher costs on import flows, their sourcing patterns, and their business practices. Many importers emphasized that the collateral requirement was particularly onerous because it restricted the funds available to operate the business, and that this constraint resulted in lost or forgone business opportunities. In particular, importers reported that the higher bonds and collateral requirements were negatively affecting many smaller shrimp importing businesses, causing them to stop importing or to exit the industry.

Moreover, given the WTO's July 2008 ruling that CBP's revised bonding policy was inconsistent with U.S. obligations under international agreements, we believe an additional lesson learned is that consideration of any modification to the U.S. AD/CVD system should include analysis of whether the change would be consistent with international trade agreements, including WTO rules.

Question. DOC allows domestic parties to access confidential information learned in your proceedings under a protective order. Do you feel these protective orders function well? What if these parties could also use that information with CBP, and access CBP information to use with DOC? Would this be helpful?

Answer. We have not conducted work on this issue and are not in a position to answer this question.

Question. I understand that DOC is proposing to require cash deposits, instead of just bonds, between preliminary and final determinations in original investigations. This appears to be a positive decision. Do you see any reason we shouldn't make a similar change by eliminating the bonding privilege for new shipper reviews? What else can you do administratively to minimize abuse of the new shipper review process?

Answer. According to the Department of the Treasury (Treasury), the new shipper bonding privilege poses a minimal risk to collection of AD/CVDs. Specifically, Treasury reported to the Congress in December 2008 that the added risk associated with a bond, as compared to a cash deposit, is equal to the probability of failing to collect on an obligation secured by a bond, which is low. Consequently, Treasury stated that it did not believe suspension of the new shipper bonding privilege would have any significant impact on the collection of AD/CVDs. Treasury added that the sig-

[5] GAO–11–693T.

[6] GAO, International Trade: Customs' Revised Bonding Policy Reduces Risk of Uncollected Duties, but Concerns about Uneven Implementation and Effects Remain, GAO–07–50 (Washington, DC: Oct. 18, 2006).

nificant risk associated with new shippers comes from the retrospective component of the U.S. AD/CVD system, without which there would be minimal risk of uncollected AD/CVDs.

As noted in our written testimony statement,[7] one way to improve collection of AD/CVDs would be to eliminate the retrospective component of the U.S. AD/CVD system and consider the variety of alternative prospective systems available. We also noted that the new shipper review process could be enhanced without altering the retrospective nature of the U.S. AD/CVD system, such as by requiring companies that are applying for a new shipper review to have a minimum amount or value of imports before establishing an individual AD/CVD rate. At present, a shipper can be assigned an individual duty rate based on as little as one shipment, intentionally set at a high price, resulting in a low or 0-percent duty rate. This creates additional risk by putting the Government in the position of having to collect additional duties in the future rather than at the time of importation.

CHARACTERISTICS OF A GOOD ANTI-DUMPING SYSTEM

Question. GAO reported in 2008 on the U.S. AD system and recommended that DOC create a study on the possible advantages and disadvantages of alternative systems.

What are some criteria the Congress should keep in mind as it considers ways to improve collection of AD duties?

Answer. Our March 2008[8] report identified several criteria for DOC, DHS, and Treasury to address in their analysis and reporting on the relative advantages and disadvantages of prospective and retrospective AD/CVD systems. Specifically, we stated that the three agencies should address the extent to which each type of AD/CVD system would likely achieve the following goals:

—remedy injurious dumping or subsidized exports;

—minimize uncollected duties;

—reduce incentives and opportunities for importers to evade AD/CVDs;

—effectively target high-risk importers; and

—create a minimal administrative burden.

In addition, we believe that minimizing the additional costs on legitimate importers should be another explicit criterion for consideration in any evaluation of changes to the current retrospective AD/CVD system or in the design of a prospective system. While this list is not intended to be exhaustive, we believe that these are important criteria for the Congress to keep in mind as it considers ways to improve collection of AD/CVDs.

What progress has DOC made on such a study?

Answer. DOC, with input from DHS and Treasury, completed a report in November 2010 that addressed the criteria we identified in March 2008[9] and listed a variety of advantages and disadvantages of both prospective and retrospective AD/CVD systems.

EFFECTIVE COMMUNICATIONS

Question. In 2008, GAO reported that there were frequent delays in DOC's transmission of liquidation instructions to CBP and that about 80 percent of the time, DOC failed to send liquidation instructions within its self-imposed 15-day deadline.

How have the agencies improved communication since 2008?

Answer. In our March 2008[10] report on uncollected AD/CVDs, we identified untimely and unclear liquidation instructions from DOC as an impediment to CBP's ability to liquidate entries subject to AD/CVDs. For example, we found that, over the 4-month period we reviewed, DOC did not send liquidation instructions to CBP headquarters within its self-imposed deadline of 15 days approximately 80 percent of the time.[11] After we made DOC officials aware of the untimely liquidation instructions, DOC officials announced a plan to track the timeliness of liquidation instructions. Further, as noted earlier, we recommended that DOC work with DHS to identify opportunities to improve the clarity of liquidation instructions. In February 2010, DOC and CBP deployed a new component specific to AD/CVD issues as part of CBP's cargo management system (the Automated Commercial Environment (ACE)), to increase the efficiency of communication between the two agencies. CBP personnel at the port can now utilize the system to submit inquiries and seek

[7] GAO–11–693 T.
[8] GAO–08–391.
[9] GAO–08–391.
[10] GAO–08–391.
[11] We have not updated these statistics since 2008.

clarification of DOC's liquidation instructions. In addition, a messaging system was built into ACE, enabling CBP to track the sending and posting of DOC's liquidation instructions. ACE was also modified to build in a new case reference file that includes information such as Harmonized Tariff Schedule numbers, scope of information, start and stop suspension dates, and cash/bond data. This case reference file allows for the automatic application of cash deposit and liquidation instructions, and according to DOC, streamlines the communication process between both agencies.

BONDING REQUIREMENTS

Question. Right now, even if DOC has preliminarily determined that the final dumping rate is likely to be higher than the cash deposit rate, we don't immediately change the bonding requirements to reflect that. Even where DOC has reached a final determination of increased liability, we still don't update our bonding requirements if that determination is appealed to the courts.

Can the bonding requirements for an individual company be updated in a more timely fashion? Given that it often takes an importer years to be held accountable for their violations, do you think that the outcome of an investigation still makes an impact on the market? What could be done to expedite these types of investigations?

Would you support a change that requires bonding requirements to be enhanced after a DOC determination that the margins are likely to exceed cash deposits, even if the determination is only preliminary or being appealed? Isn't it better to err on the side of protecting the revenue once we have an indication from DOC that cash deposits may not cover an importer's ultimate liability?

Answer. We have not conducted work on these issues. However, in our written testimony statement,[12] we noted that while the increased up-front costs for higher bonds can deter malfeasance by illegitimate importers, the higher costs may also affect legitimate importers who pose little risk of failing to pay retrospective AD/CVDs.

Question. In CBP's statement, it discusses how easy it is for an importer to find and collude with a producer to avoid paying dumping duties. It lists some of these schemes including illegal transshipment, undervaluation, failure to manifest, and misclassification. If a company—or a country—deliberately sets out to engage in these kinds of trade fraud, how can the U.S. Government appropriately tackle this issue?

Answer. As noted earlier, we are currently conducting a review of the issue of evasion of AD/CVDs at the request of Senators Ron Wyden and Olympia Snowe. We would welcome the opportunity to brief the subcommittee on the results of this review once completed.

PRODUCT CONCENTRATION

Question. CBP reported that uncollected AD duties are highly concentrated among a few products (crawfish, fresh garlic, mushrooms, honey, and wooden bedroom furniture). These five products represent more than 80 percent of the uncollected duties.

Why are uncollected AD duties concentrated among these products? Why don't you focus your limited resources on these products and create task forces as was done for textiles?

Answer. Four of these products are agriculture/aquaculture products. In 2006,[13] we reported that CBP had identified agriculture/aquaculture importers as sharing certain characteristics that made them a high risk for being unable to pay the full amount of AD/CVDs owed, namely:

—low capitalization and many small firms;
—a high degree of leveraging and dependence on borrowing;
—a fluid market with many entrants and exits; and
—most importers had 5 years or less in the industry.

However, DHS noted in its comments to our 2008[14] report that countries, industries, products and importers that currently pose a revenue risk may not be the same ones that will pose a revenue risk in the future. For this reason, we believe it is important to identify the underlying reasons for noncollection.

[12] GAO–11–693T.
[13] GAO–07–50.
[14] GAO–08–391.

WILLFUL CIRCUMVENTION

Question. As noted in the background section, companies willfully circumvent the provisions of the AD/CVD laws by illegally transshipping goods through an intermediate destination to mask the true country of origin; undervaluing goods to reduce the amount of AD/CVD owed; misclassifying or misdescribing merchandise outside the scope of the order and, therefore, not subject to AD/CVD; and failing to manifest (smuggling) goods. What remedies are there to pursue those who willfully circumvent the laws?

Can the U.S. Government issue—in essence—a "stop importing" order against the company or the individual? Recognizing it is difficult to collect revenues and conduct inspections overseas, what can we do to the U.S.-based representatives of these illegal importers?

Answer. Regarding remedies to pursue those who willfully circumvent the laws, we are currently conducting a review of the issue of evasion of AD/CVDs at the request of Senators Ron Wyden and Olympia Snowe. As mentioned earlier, we would welcome the opportunity to brief the subcommittee on the results of this review once completed.

In May 2011, the Assistant Commissioner of CBP's Office of International Trade stated in a Senate hearing that CBP is developing internal guidance to require that importers at risk of evasion take out one-time bonds that cover at least the full value of the shipment (single-transaction bonds). Currently, shippers typically take out a "continuous bond" that covers all import transactions over the course of a year and is calculated at 10 percent of the prior year's duties (or $50,000, whichever is greater). We have not reviewed CBP's guidance or assessed its potential effect on the collection of additional AD/CVDs. However, any effort to improve the U.S. AD/CVD system should consider the additional costs placed on legitimate importers while attempting to address the issue of illegitimate importers.

QUESTIONS SUBMITTED TO ALLEN GINA

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

COLLECTING DUTIES ON SHRIMP

Question. Customs and Border Protection (CBP) claims it has taken steps to specifically improve the collection of anti-dumping (AD) duties on shrimp imports and that it continues to explore statutory and nonstatutory changes to enhance bonding requirements.

Please list the specific steps you are taking and when did you start taking these steps as they related to shrimp imports?

Answer. In 2004, CBP applied to anti-dumping/countervailing duty (AD/CVD) shrimp imports a revised bond policy which increased the bond requirements commensurate to the risk of such imports. However, the enhanced bond policy was challenged at the U.S. Court of International Trade (CIT) and at the World Trade Organization (WTO). In April 2009, following the adoption of the WTO Appellate Body's report finding that the enhanced bonding requirement was WTO-inconsistent, CBP ended this program. CIT also recently struck down this policy as well. CBP is currently developing internal guidance to ensure that single-transaction bonds (STBs) are required whenever we suspect that a risk of revenue loss exists due to evasion for shrimp and other AD/CVD imports.

USE OF FINES COLLECTED FOR INVESTIGATIONS

Question. What legal impediments prevent CBP from being able to use a portion of the fines it collects to cover the costs of increased investigations?

Answer. CBP does not have specific statutory authority to supplement its appropriations, as with certain user fees, and CBP cannot use fines or duties that it collects to cover program costs. By law, CBP deposits them directly into the U.S. Treasury.

TRANSPARENCY

Question. We frequently hear from U.S. industry that many of the AD charges it brings to CBP seem to enter a "black hole"—never to be responded to by CBP. But in your testimony you claim that you "meet regularly with U.S. industry representatives to discuss AD/CVD circumvention schemes". Why does industry have this impression? How can CBP fix the information sharing and transparency process?

Some U.S. companies have charged that CBP claims it cannot share information because of Trade Secrets Act restrictions. Is this true? Why? What are the legal—as opposed to internal policy or practice guidance—prohibiting CBP from keeping an importer regularly updated on status of the charges?

CBP has created an online complaint process called e-Allegations. How many individual complaints have been received on it and how many has CBP acted on? What information on the investigation of these allegations is transmitted to industry?

You have stated that you are reviewing the trade secrets statute and regulations to find ways to allow CBP to release information to petitioners to make the investigations process more transparent. Please give me a date when that review will be completed and a date when the results of it will be implemented.

Does CBP need a trade enforcement ombudsman to act as an interlocutor with industry?

Answer. As noted, CBP meets regularly with U.S. industry representatives to discuss AD/CVD circumvention schemes. We also understand that U.S. industry wants more transparency in CBP's AD/CVD circumvention enforcement efforts, especially in response to specific allegations of AD/CVD circumvention. In certain circumstances, e.g., when developing a criminal investigation or evaluating the sufficiency of alleged circumvention activities, CBP is limited in what information CBP can make public. As discussed more fully below, CBP is evaluating opportunities to share greater information with our trade partners.

We are examining ways to timely release information to the public about our enforcement activities while providing safeguards to legitimate trading community against frivolous claims. We are currently looking at steps to find ways that will allow us to release information to petitioners to make our process more transparent. These include earlier publication of enforcement actions. We have also asked the AD/CVD working group of CBP's private sector Commercial Operations Advisory Committee work group to provide feedback on greater information sharing with the trade community on AD/CVD enforcement.

Yes, much of the information relating to AD enforcement is business confidential information and the Trade Secrets Act imposes criminal liability upon Federal employees who disclose confidential commercial information unless there is a statute or regulation authorizing such disclosure.

CBP is prohibited by the Trade Secrets Act from providing business confidential information obtained from one party to another party who is not part of the import transaction.

Since e-Allegations' inception in June 2008, CBP has received more than 4,000 commercial allegations via www.cbp.gov—370 of these allegations are AD/CVD-related, and regardless of the subject, CBP reviews and makes an initial assignment of each allegation within 2 to 3 days of receipt. Each allegation is closed out, but how it is closed and how long it takes will vary depending on the specifics of the allegation, CBP authorities, the need for U.S. Immigration and Customs Enforcement (ICE) investigative capabilities, and the ability of CBP to take action if a violation is confirmed. Most allegations are closed within 6 months, but others will take longer if they are especially complex or involve overseas parties. An allegation can conclude with enforcement action, or the allegation is disproved, or others where the allegation appears credible, but CBP is unable to prove the violation to the standards required by our authorities. In the latter case, the allegation may be closed from an analytical perspective, but operational monitoring and follow-up action may continue.

CBP is prohibited by the Trade Secrets Act to release confidential commercial information contrary to the commercial provisions of that act. There is also information that we cannot make public when there is a criminal case related to an allegation under development. Such cases usually require time to develop as CBP, in cooperation with ICE, fully investigates and prosecutes the parties that are not properly paying their AD/CVDs. All of this notwithstanding, we are taking all necessary steps to find ways that will allow us to release information to petitioners to make our process more transparent.

CBP has been looking at ways that we are able to share information on trade enforcement. Recently we provided internal guidance to our ports of entry to publish enforcement results earlier. This new policy has been successful in CBP being able to publicize its role in the conviction of smugglers of wire hangers that were subject to AD/CVD. We have started a review of the process under which we keep information protected from inappropriate release. We will continue to look for ways that we can be more responsive to the public and to share with them as much as possible while ensuring the confidentiality of business-sensitive materials or information that could be used to build a criminal case. We anticipate that this review will be done by the end of the fiscal year.

CBP has established the Office of Trade Relations (OTR) to act as the senior advisor to the Commissioner on issues related to private sector industry and trade. OTR is responsible for and has a process established to ensure that challenges and concerns raised by trade stakeholders is addressed in an efficient and timely manner and that particular problems or concerns have the visibility of the Commissioner. CBP is committed to ensuring that this office and its role have the capacity to carry out this important responsibility.

LOUISIANA SHRIMP INDUSTRY

Question. The Louisiana shrimp industry contributes about $1 billion annually to the State economy. Thousands of our citizens are employed in this industry that is both culturally and economically important to our State and the entire gulf region. This industry fought to win AD orders on shrimp from six countries, and yet importers have failed to pay more than $75 million in AD duties they owe to the U.S. Government under these orders. Importers of crawfish have gotten away with not paying another $560 million in duties they owe. In fact, seafood alone accounts for a full 43 percent of the more than $1.5 billion in duties we have not been able to collect since 2001. The system is broken and it needs to be fixed.

There are several factors at work. First, imports from China seem to be driving the problem—China alone accounts for more than 90 percent of the uncollected duties on seafood, for example. We also have a lot of fly-by-night operators who disappear once duties become due. This is especially true in fragmented industries like agriculture and aquaculture. We can't change the fact that more and more of our imports are from China and that some players in fragmented industries try to avoid their duty obligations. While it is beyond this subcommittee's jurisdiction, perhaps what we should do is update our system so it adapts to these market realities.

I know CBP is aware of the problem, particularly in the seafood industry, and that you tried to address it without success.

Has CBP considered imposing enhanced bonding across the board? Alternatively, couldn't you require enhanced bonding whenever there a risk of underpayment arises based on some neutral criteria, such as history of under collection under a particular order? Can you do this under your existing statutory authority, or would you need help from the Congress to do this?

Answer. CBP has considered all options available for enhanced bonding that would be consistent with the WTO Appellate Body's finding that an enhanced bonding requirement was WTO-inconsistent, and CIT's ruling that an enhanced bonding policy covering certain importations of shrimp was arbitrary, capricious, and otherwise not in accordance with law. It has been determined that enhanced bonding cannot be imposed across the board, so CBP will focus on using STBs where there is a reasonable belief that a particular shipment poses a risk to the revenue.

So long as the United States employs a retrospective AD/CVD scheme, CBP continues to consider whether it is possible to require enhanced bonding in light of the recent decision of the WTO Appellate Body, and CIT's decision in *National Fisheries Institute (NFI)* v. *United States*. In NFI, CIT ordered an enhanced bonding policy covering certain importations of shrimp subject to AD duty orders to be set aside as arbitrary, capricious, and otherwise not in accordance with law. 637 F. Supp. 2d 1270 (Ct. Int'l Trade 2009). Setting aside concerns about CBP's legal authority to require enhanced bonds, CBP may be able to identify one or more neutral criteria as the basis for enhanced bonding, but such criteria must be selected and applied with care to avoid being set aside as arbitrary and capricious.

Section 623 of the Tariff Act of 1930 provides CBP with broad authority to require bonds to protect the revenue in import transactions. Meanwhile, the Department of Commerce (DOC) has been given broad authority to investigate and establish AD duty rates and require security for such duties at entry. It has been and continues to be a subject of judicial inquiry as to how these separate authorities interrelate. CBP continues to consider adopting an enhanced bonding policy that would protect the revenue, as well as ensure compliance with the laws, and that would withstand judicial and international scrutiny.

Question. In your statement, you say that CBP is taking additional steps such as working with DOC on releasing information to help verify the legitimacy of goods suspected of transshipment and to tighten the "new shipper" requirements, as clarifying the responsibility of customs brokers. When are these planned to be completed and executed?

Answer. Our work with DOC on transshipment issues is ongoing, and we will continue to work with DOC on any goods suspected of transshipment. We are discussing new shipper-related issues with DOC.

In regards to clarifying the responsibilities of customs brokers, CBP meets regularly with representatives of the National Customs Broker and Forwarders Association of America to redefine the role of the broker in the 21st century. This project will identify regulatory revisions that may be necessary to reflect current business practices and determine the appropriate response to existing gaps or needs.

You state that you have asked your staff to develop internal guidance to ensure that STBs are required whenever CBP suspects that a risk of revenue loss exists.

Question. You state that you have asked your staff to develop internal guidance to ensure that STBs are required whenever CBP suspects that a risk of revenue loss exists. Please describe this process in greater detail. What are the benefits to industry of this process? Do you have estimates of additional revenue that could be collected, or potential losses of revenue prevented, by using these types of bonds versus a continuous bond?

Answer. CBP staff is reviewing all of the potential scenarios to ensure that STBs are required whenever CBP suspects that a risk of revenue loss exists for AD/CVD imports. These scenarios will be incorporated into the final internal guidance on this topic.

This process will protect the revenue due to the United States on AD/CVD imports, including AD/CVDs. AD/CVDs are intended to offset the dumping and subsidization of foreign imports, and create a level playing field for U.S. manufacturers.

Under the retrospective AD/CVD system, it is not possible to predict the final AD/CVD assessment rate on entries covered by an STB or any other type of bond. Therefore, it is not possible to estimate any additional revenue that could be collected, or potential losses of revenue prevented, by using STBs.

Question. Regarding clearing account balances—does CBP actually hold these dollars in a separate account pending final orders?

Answer. Yes, pending liquidation.

Question. In a May 5 hearing, CBP's Commissioner of International Trade stated that CBP is developing internal guidance to require that shippers at risk of evasion take out one-time bonds (STBs) that cover at least the full value of the shipment.

How will CBP identify "shippers at risk?" How will this reduce the risk of uncollected duties?

Answer. CBP will identify shippers and importers at risk of evasion by analyzing trends in import information, previous instances of noncompliance, and allegations from outside sources, including U.S. industry.

CBP currently has authority to protect the revenue through the requirement of STBs that is set at the full value of a shipment. CBP is providing further guidance on the use of these bonds to our ports of entry to ensure their use when potential evasion has been identified.

Question. In one of the questions for the record from the subcommittee's March 2, 2011, hearing regarding improved AD revenue collections, you only responded to the question about what laws could be changed or amended to enhance CBP's AD investigations. Please respond to the following questions:

Can CBP take administrative actions to improve AD collections?

Can CBP take administrative actions to improve AD collections in the absence of legislation?

In the absence of changes in legislative authorities to existing laws and practices, can CBP do more to collect and distribute AD receipts to injured U.S. businesses if it was provided with additional resources?

If so, what resources would be required and what more could be achieved?

Answer. CBP continues to explore the existing tools it possesses, i.e., live entry, sanction, bond sufficiency, and targeting, to remain aggressive in its revenue collection.

Additional resources cannot fix the most prevalent issue with collecting AD duties which is the retrospective collection system and passage of time between entry and liquidation.

Question. I'm pleased that you acknowledge that "CBP has a statutory responsibility to collect all revenue due to the U.S. Government that arises from the importation of goods". I am very concerned, however, that despite this statutory responsibility, CBP has made virtually no effort to collect nearly $1 billion in AD duties that are due to the United States in connection with the AD duty orders on honey, fresh garlic, preserved mushrooms, crawfish, and wooden bedroom furniture from China.

What is your agency's strategy for promptly recovering these AD duties?

Answer. As part of the debt collection process, CBP sends out dunning notices to the principal. CBP issues formal demand on the respective surety for payment of the delinquent amount and pursues litigation against delinquent debtors and sureties. CBP also conducts research to determine if the company is still actively operating.

NEW SHIPPER

Question. Another problem we have is with new shipper reviews, where companies enjoy the privilege of only having to post a bond, and not cash deposits, while a new shipper review is pending. How much of the problem of under collection do you think is due to new shippers versus other evasion schemes?

This new shipper bonding privilege is currently provided for by statute. Would you support a statutory change that would require new shippers to post cash deposits—like is done for everyone else?

Answer. According to the March 2008 report on AD/CVDs prepared by the Government Accountability Office (GAO) importers that purchased goods from new shippers are responsible for approximately 40 percent of uncollected AD/CVDs.

In December 2006, section 1632 of the Pension Protection Act (Public Law 109–280) was implemented, suspending the option for new shippers to bond for estimated AD/CVD from April 1, 2006 through June 30, 2009. The importers were required to submit a cash deposit to cover the total estimated AD/CVD for merchandise exported by a new shipper during this "test" period. This cash deposit provision of Public Law 109–280 excluded new shippers from Canada and Mexico. On June 20, 2009, this test period ended and the provision lapsed. As noted in CBP's fiscal year 2010 Report to Congress on Antidumping and Countervailing Duty Enforcement: Fiscal Year 2009, the Department of the Treasury decided not to seek extension of the cash deposit for new shipper provision because there was no discernible benefit to the collection of cash over duties secured by a bond at the time of final assessment of AD/CVD.

Question. As you are well aware, foreign producers and importers have resorted to a wide variety of tactics to evade AD/CVDs, and the nonpayment of duties we know about is only part of the problem. Illegal transshipment, undervaluation of product being shipped, failure to manifest or to declare an export, misclassification, and setting up shell companies all contribute to the acute duty collection shortfall that we are discussing today.

In your estimate, which transgression contributes the most to the overall duty collection problem?

What tools do you need to better address this problem? Is it a funding issue or something else?

Do you need better ways to collect or access information?

Do you need more tools to give you greater leverage with importers and foreign producers?

What else could be helpful?

Answer. When CBP issues a bill for AD/CVDs, an importer can easily exit out of the market, and not pay any duties due. This applies to both foreign and domestic companies. When companies evade AD/CVDs to prevent bills from being issued, it is difficult to estimate which issue contributes the most to the overall duty collection problem as CBP does not have complete data on AD/CVDs not collected for each of these various issues.

Under the retrospective AD/CVD system, CBP faces many challenges in AD/CVD administration and collection. CBP devotes significant resources to administering AD/CVD entries under the AD/CVD retrospective system. By the time CBP issues a bill for the final AD/CVDs due, many importers are unwilling or unable to pay these duties, or no longer exist.

CBP is working with U.S. industry, ICE, DOC, and our international partners to develop new sources of information to identify AD/CVD circumvention. We are exploring many options that will give us additional information and new tools to protect U.S. revenue.

Data will help identify new targets and schemes, but verification of schemes is crucial to the success of AD/CVD enforcement. Without proof, CBP cannot take enforcement action and data alone may not always provide the proof needed. CBP is working on integrated analysis within CBP and other agencies including ICE and DOC.

CBP is currently exploring many options that will give us additional information and new tools. For example, CBP is developing internal guidance to ensure that STBs are required whenever we suspect that a risk of revenue loss exists.

CBP needs information to verify AD/CVD circumvention schemes in order to take AD/CVD enforcement action. This often can be very challenging for CBP; for example, determining a product's country of origin through visual inspection or through verification of shipping documents can be very difficult, especially if cargo has been manipulated prior to import, completely masking the connection back to the true source country. Information regarding the movement of goods from one foreign location to another foreign location (which is usually not available to CBP when AD/

CVD circumvention occurs) may assist in this process. CBP is currently looking at our entire process in dealing with AD/CVD administration and circumvention enforcement. We continue to seek ways to better identify circumvention and to verify the origin of the merchandise.

Question. I understand that companies sometimes apply for "new shipper" status from DOC, secure very favorable AD/CVD margins, and then proceed to ship massively at unfair prices.

Does CBP have information about these companies that might be useful to DOC in considering whether to approve a "new shipper" application?

Does CBP have authority to make this information available to DOC?

Answer. CBP may have information about foreign companies that apply for "new shipper" status, and provides such information when needed.

CBP has the authority to make this information available to DOC.

Question. What is being done to improve coordination between CBP and DOC concerning notice of final rates, liquidation instructions, scope determinations, and other day-to-day work of administering the AD/CVD laws?

In your experience, how long does it usually take to obtain a decision from ICE and the Department of Justice (DOJ) on whether there will be a prosecution in a typical case? Does CBP have to hold back on its own actions while waiting for these decisions?

Answer. In February 2010, CBP launched the AD/CVD Module of CBP's Automated Commercial Environment (ACE), which provides a modern communication system for CBP to communicate with DOC on AD/CVD enforcement. The ACE AD/CVD Module incorporates a joint AD/CVD case management system for CBP and DOC, and communication systems to facilitate coordination between CBP and DOC on AD/CVD enforcement and administration issues. CBP personnel also hold regular meetings with DOC's Customs Liaison Unit and communicate throughout every work day on AD/CVD-related matters.

The timeframe varies widely with respect to how long it takes to obtain a decision from ICE and DOJ regarding whether a case will be prosecuted. Several factors—including the severity of the violation, the evidence that is available, and the complexity of the investigation—impact the timeline for receiving a decision. CBP works with partners at ICE and with DOJ throughout this process.

CBP and ICE have civil and criminal enforcement legal authorities available to pursue enforcement action against those who violate the customs laws, including AD duty evasion. When criminal enforcement is pursued, CBP coordinates with ICE during the investigative phase of these cases, and coordinates with DOJ when litigation is commenced. CBP also has authority to assess civil penalties, as appropriate.

DIFFICULTY COLLECTING DUTIES

Question. In responses to questions for the record from the subcommittee's March 2, 2011, hearing, CBP responded that one of the difficulties encountered in collecting all duties, taxes, and fees once it issues a bill for final AD/CVDs, is that at least two sureties issuing bonds covering substantial amounts of these duties are in receivership, further complicating collections. Why is that? Please give us specific examples.

Answer. Under the retrospective AD/CVD scheme, by the time CBP issues a bill for the final AD/CVDs due, many importers are unwilling or unable to pay these duties, or no longer exist, which requires CBP to resort to available bond coverage to collect from the appropriate sureties. Much like any other business, sureties are vulnerable to insolvency, which may force the surety to enter receivership. Two sureties—Highlands Insurance Company and Frontier Insurance Company—have entered receivership proceedings under State insurance law. In these proceedings, the Federal Priority Statute, 31 U.S.C. 3713, often does not apply as a result of the pre-emption exemption in the McCarran-Ferguson Act. The Government's bond claims may then receive either less priority than policyholders, or equal priority. Thus, collection is complicated not only by the absence of the importer and the insolvency of the surety, but also by the fact that the Government's bond claims may be subject to a State priority scheme that yields the Government a lesser payout on its claims than what might be available under the Federal Priority Statute. Moreover, these receivership proceedings take years to resolve, during which time the Government's claims are stayed in Federal court until the State insurance insolvency proceedings are resolved, and the Government often has no legal means to accelerate the process to receive payment on its claims.

VERIFICATION TEAMS

Question. CBP uses textile production verification teams to help address the problem of duty evasion for textile transshipments.

What, if any, additional authority would CBP require to send verification teams to foreign manufacturing sites to inspect and verify that those manufacturers are in fact capable of making the goods that are theoretically being exported to the United States?

Are such teams feasible for products such as shrimp, seafood, garlic, honey, and others? What legal authorities, if any, do you need to create such teams, or can these teams be created administratively?

Answer. CBP would be able to send verification teams to foreign manufacturing sites as long as it has the consent of the governments where those sites are located. CBP has customs mutual assistance agreements authorities with many foreign customs authorities which could provide an avenue for conducting these visits. In many cases, the United States may need to negotiate separate treaty language with foreign governments to provide the authority to conduct these visits.

Such teams are feasible for any product to confirm that manufacturing is actually taking place at foreign sites so long as CBP has access to the foreign manufacturing facility.

These teams can be created administratively based on the ability to gain consent from foreign countries.

STATUTE OF LIMITATIONS

Question. I am concerned that CBP's failure to take action promptly to collect certain duties hinders the United States' ability to collect any AD duties under the bonds associated with those shipments, due to the applicable statute of limitations.

Given your recognition of the importance of vigorous enforcement of the U.S. AD laws to protect the vitality of U.S. industries, is CBP committed to taking action quickly to collect these duties and ensure that the U.S. industries involved receive the relief they are due under the AD orders?

In instances where the U.S. importers default on the AD duties that are due, what specific actions has CBP taken to ensure that the bonding companies responsible for securing those liabilities are meeting their obligations?

Answer. Yes, CBP is committed to taking quick action. CBP makes a formal demand on surety when the principal fails to pay. CBP provides copies of the documents obligating the associated bond. CBP uses a dunning letter and follow-up phone calls to also remind the surety of their obligation. If they still fail to pay, CBP pursues legal action against the surety.

Question. It can be difficult to identify country of origin or exporter/manufacturer for certain products, such as agriculture/aquaculture products like shrimp or honey.

How does CBP test these products at entry to know which duties to apply to them?

Answer. CBP's laboratories use a variety of scientific techniques to identify the country of origin for certain products, to ensure that the correct duties are applied to these products. For certain products, such as steel products, CBP cannot identify the country of origin using current scientific techniques.

There are a large number of products that are covered under AD duties. Different products have different tests to determine compliance. For example for AD duties involving seafood CBP's Office of Information & Technology Laboratories and Scientific Services Division (CBP/OIT/LSS) usually tests for country of origin using either DNA or protein electrophoresis. For steel AD duties CBP/OIT/LSS determines the composition of the steel using either exray diffraction or xray fluorescence. This process determines whether the steel product violates U.S. requirements. The type of test used to measure compliance is dependant upon the product.

SHARING INFORMATION WITH AGENCIES

Question. Apparently, both CBP and DOC have been concerned about the treatment of confidential business information, trade secrets, and materials under protective orders for which they are responsible.

Has CBP prepared any assessments of its authority to share information with partner agencies? If so, what are the results?

Would CBP find it useful to have greater access to DOC information obtained during its investigations and verifications?

Answer. CBP is in the process of preparing its assessment of its authority to share information with partner agencies.

CBP has access to DOC information obtained during its proceedings under 19 U.S.C. 1677f(b)(1)(A)(ii). This section provides that DOC may disclose proprietary information "to an officer of the employee of the U.S. Customs Service who is directly involved in conducting an investigation regarding fraud under this title". CBP has concerns that this could be interpreted to limit disclosure of information only to officers or employees of CBP (the successor agency to the U.S. Customs Service) conducting criminal investigations. CBP does not normally conduct criminal investigations, so this interpretation could limit CBP's access to DOC proprietary information.

DEEMED LIQUIDATIONS

Question. Untimely action by DOC and CBP can impede CBP's ability to process the appropriate amount of AD/CVDs within the required 6-month period. When entries are not liquidated within the specified timeframe, CBP is unable to collect any supplemental duties that might have been owed because of an increase in the AD/CVD rate.

What is the amount of lost revenue due to deemed liquidations?

What steps are CBP and DOC taking to reduce the amount of uncollected duties attributable to deemed liquidation?

Answer. In fiscal year 2010, CBP processed 16,105 deemed liquidations of AD/CVD entries out of a total of 141,896 liquidated AD/CVD entries. We note that CBP has the legal authority under 19 U.S.C. 1501 to reliquidate deemed liquidated entries at the appropriate final AD/CVD rate, and therefore mitigate the effect of the deemed liquidation.

From fiscal year 2006 through fiscal year 2010, CBP wrote-off more than $113 million in uncollectible debt. Of the more than $113 million, $28.9 million was lost due to deemed liquidations or untimely liquidations.

In February 2010, CBP launched the AD/CVD Module of CBP's Automated Commercial Environment (ACE), which provides a modern communication system for CBP to communicate with DOC on AD/CVD enforcement. The ACE AD/CVD Module incorporates a joint AD/CVD case management, messaging and inquiry system for CBP and DOC. These communication systems facilitate coordination between CBP and DOC on AD/CVD messaging issues, and reduce delays which lead to deemed liquidation. CBP personnel also hold regular meetings with DOC's Customs Liaison Unit and communicate throughout every work day on AD/CVD-related matters, including deemed liquidation issues.

FASTER REACTION TO INDUSTRY PROTESTS

Question. The June 2010, AD enforcement report indicated that CBP and DOC were working on plans to increase AD collections. One area both agencies agreed to review and update was how you can quickly address protests by industries so that you can begin duty collection activities. The report indicated that DOC had increased staffing levels to process these protests.

Has CBP also refocused its staffing? Have your agencies noticed an improvement in this process over the past year?

Answer. CBP reviewed and enhanced its internal AD/CVD protest management process in fiscal year 2010. CBP is also focusing on addressing those AD/CVD protests that CBP can rule on under its own authority, so collection actions can commence as quickly as possible. CBP and DOC are continuing to closely coordinate those protests that CBP sends to DOC for recommendation.

We have noticed a significant improvement in this process over the past year. The number of protests with DOC for an AD/CVD recommendation has continued to decrease over the past year, from more than 50 protests to 18.

HUMAN CAPITAL AND PLANNING

Question. In a readout conference, CBP stated that it has no information on what is likely to happen the next day—it could get a few dozen instructions from DOC that cover a limited number of ports and products, or it could get an enormous set of instructions that would require enormous effort to get the liquidation instructions completed.

Can you explain the challenges associated with this type of system and suggest the kind of information that would help make this process work better?

Answer. Each AD/CVD instruction could potentially require CBP to manually calculate the amount of AD/CVDs due for thousands of import records at a single or numerous ports of entry within the statutory 6-month time limit to prevent deemed liquidation. CBP sometimes has much less than this 6 months time limit to process these records because it does not receive the instructions until after the 6-month

clock was initiated. The more information that CBP has about potential AD/CVD instructions at the earliest point of time possible could help CBP plan for this substantial workload.

BONDING REQUIREMENTS

Question. Right now, even if DOC has preliminarily determined that the final dumping rate is likely to be higher than the cash deposit rate, we don't immediately change the bonding requirements to reflect that. Even where DOC has reached a final determination of increased liability, we still don't update our bonding requirements if that determination is appealed to the courts.

Can the bonding requirements for an individual company be updated in a more timely fashion? Given that it often takes an importer years to be held accountable for their violations, do you think that the outcome of an investigation still makes an impact on the market? What could be done to expedite these types of investigations?

Would you support a change that requires bonding requirements to be enhanced after a DOC determination that the margins are likely to exceed cash deposits, even if the determination is only preliminary or being appealed? Isn't it better to err on the side of protecting the revenue once we have an indication from DOC that cash deposits may not cover an importer's ultimate liability?

Answer. The ability to bond is finalized prior to CBP releasing any merchandise. Policies may/could be implemented to require that bonds be adjusted after the investigations are completed. However, if a surety chooses to adjust the bond, they would more than likely require collateral from the importer in the amount of the bond adjustment to protect their financial interests.

CBP attempted to accomplish this with the Enhanced Bonding Requirement bonding formula. Unfortunately, WTO and CIT overturned this formula.

COMPLAINTS OF JONES ACT VIOLATIONS

Question. I am aware that CBP has specific complaints of Jones Act violations in the offshore energy sector—unrelated to any vessel equipment issue.

What steps is CBP taking to actively resolve these complaints?

Answer. When an alleged Jones Act violation is discovered or reported, CBP ports of entry attempt to resolve matters through an administrative process. CBP reviews the evidence presented, performs a physical boarding of the vessel (when possible), conducts interviews and when available, accesses automatic identification system data to track the movement of suspect vessels. When a determination is made that a violation occurred, the CBP local port of entry begins administrative penalty proceedings. In those cases where substantial evidence does not support punitive action, the CBP port of entry retains the information for future consideration and no penalty is issued. Input throughout this process is provided by CBP HQ OFO/CCS, OFO/APTL/FP&F, and the Penalties Branch of RR/OT.

NOTICE OF ARRIVAL IN THE OUTER CONTINENTAL SHELF—BURDENSOME COAST GUARD REGULATION

Question. For many years, foreign vessels entered the Exclusive Economic Zone of the United States to work on the OCS without notifying the United States Coast Guard (USCG) in advance, even though notification was required for entry into U.S. ports. That changed in 2006 with the passage of the SAFE Ports Act, which included a provision that required foreign vessels to provide information to USCG about their crew and cargo at least 24 hours before arriving in the OCS. This information is necessary to help USCG maintain Maritime Domain Awareness in the strategically vital Outer Continental Shelf of the United States (OCS), where critical infrastructure like the Louisiana Offshore Oil Port is located.

Unfortunately though, the Department of Homeland Security (DHS) promulgated a final rule in January of this year that imposes the same requirement on the domestic fleet, which was never the Congress's intention. Whereas foreign vessels are generally only engaged in production or construction activities because of the Jones Act, U.S. vessels spend a significant amount of time moving equipment and personnel between platforms and the shore. Only U.S.-flagged vessels are allowed to transport equipment and personnel under the law. In a given day, the average platform supply vessel may cross an OCS lease block numerous times. Under USCG's existing rules, the vessel would have to provide advance notification for each one of these movements. Movements are based on fluid operational requirements that industry cannot possibly predict in this level of detail. USCG somehow determined that this regulation would not significantly impact the U.S. economy. Obviously that determination was inaccurate. The existing rule is not being enforced because head-

quarters has not offered guidance down the chain of command about how to implement it, and in practice many vessels aren't even aware when they cross arbitrarily drawn lease block lines in the gulf. This burdensome requirement is impossible to implement, it contradicts congressional intent, and it has been leveled upon the only part of the U.S. maritime fleet that is growing right now. This seems to reflect a fundamental misunderstanding of how the offshore industry operates, and it poses a significant threat to energy production and economic output in the OCS. Chairman Don Young held a hearing in the House Transportation and Infrastructure Committee wherein this issue was raised with USCG. And while USCG is not here today, DHS is represented, and this is an important issue to the U.S. maritime industry that requires the Congress's attention.

Please discuss the impact of this USCG rule on the offshore energy production and the U.S. maritime fleet, and offer any suggestions you may have on how USCG may more efficiently achieve its objective to obtain Maritime Domain Awareness on the OCS without crippling energy production in the process.

Answer. USCG has issued additional regulations for notice of arrival (NOA) for OCS activities in response to security measures as required by the SAFE Port Act of 2006. This rulemaking requires owners or operators of floating facilities, mobile offshore drilling units, and vessels to submit NOA information to the National Vessel Movement Center prior to engaging in OCS activities. The amendments are intended to enhance maritime security, safety, and environmental protection by increasing maritime domain awareness (MDA) on units and personnel engaging in OCS activities. USCG published a Notice of Proposed Rulemaking in June 2009 and made some adaptations to enhance clarity based on the comments received, and no significant impact on energy production was or is anticipated. The final rule published in the Federal Register on January 13, 2011; effective date is February 14 (76 Fed. Reg. 2254).

USCG's intent is to gain compliance from both foreign and domestic vessels in order to enhance situational awareness and overall MDA on the U.S. OCS. According to industry sources, there are an estimated 1,500 offshore supply vessels operating on the OCS, often operating in close proximity to key components of the Nation's energy infrastructure. The information required to be submitted by this final rule will greatly assist USCG in evaluating risk associated with OCS activities and to manage appropriate resources should a significant incident occur (e.g., environmental or national security), and a coordinated response is necessary. With this information USCG is better able to provide security for the energy infrastructure. For these reasons, USCG intends to move forward with the implementation of this rule.

Upon publication and implementation of the final rule, industry noted significant concerns. In response, the USCG has initiated a redesign of the form used to collect the data, effectively suspending enforcement, and convened a working group under the partnership with the Offshore Marine Service Association (OMSA) to specifically address the design of an OCS-specific reporting form, as well as alternatives to the electronic submission of an NOA. USCG has made great strides towards creating a process and reporting form that is both workable for industry, while also providing USCG the critical information it needs to maintain safety and security without impairing the commerce of offshore energy production. This form would potentially include: creating an offline option; third party vendor option; and an import function so that vessels operating on the OCS have the ability to copy, save, and email the required information.

Finally, USCG is committed to working with the regulated public to find a way forward, in terms of policy and procedures, which will both achieve greater MDA and minimize any regulatory burden.

COOPERATIVE ENFORCEMENT—CBP FAILURE TO ASSESS PENALTIES FOR JONES ACT VIOLATIONS

Question. OMSA has created a Jones Act Compliance Program that relies upon the United States fleet to be the Nation's "eyes and ears" in the strategically vital Gulf of Mexico/OCS region. Through this program, OMSA monitors the location and movement of every foreign vessel in the Gulf of Mexico and provides CBP with regular reports of vessels in violation along with photographic evidence.

This is an excellent example of Government and industry working together to accomplish their mutual objectives. After all, CBP does not have a large water-borne fleet, and the Coast Guard doesn't have the capacity to recognize violations as readily as offshore work crews who know the industry best.

We received testimony a subcommittee hearing that penalties have not yet been assessed by CBP in at least six cases of Jones Act violations in the Gulf of Mexico,

which according to our understanding, have been investigated and verified by the agency.

Please provide information on the status of these cases and the date when CBP plans to assess penalties for them.

Answer. All alleged Jones Act cases are reviewed and investigated based on their own merits, beginning at the CBP port of entry level. After close consultation between CBP ports of entry, CBP HQ, ICE, and USCG, the facts of each case are weighed. If the circumstances disclose a violation, CBP may initiate formal penalty proceedings. This includes cases referred to CBP by industry partners such as OMSA.

Currently, several CBP ports of entry located along the Gulf of Mexico are pursing potential Jones Act violations as a result of information provided by OMSA. A number of ongoing cases are in various stages of the penalty administrative process at the CBP port of entry level. CBP continues to gather details and evidence on several cases as the formal review and approval process advances. CBP feels it would be prudent for all current Jones Act cases to be formally reviewed and vetted prior to providing further information.

Question. In CBP's statement, it discusses how easy it is for an importer to find and collude with a producer to avoid paying dumping duties. It lists some of these schemes including illegal transshipment, undervaluation, failure to manifest, and misclassification. If a company—or a country—deliberately sets out to engage in these kinds of trade fraud, how can the U.S. Government appropriately tackle this issue?

Answer. [A joint response for CBP and ICE follows:]

Importers of record are responsible for the duties owed to the United States for each importation. Currently, the laws of the United States allow foreign importers to make importations, and accordingly, a foreign importer can be the importer of record. Unfortunately, many foreign importers do not pay the required duties, and the U.S. Government currently has little recourse to enforce and obtain these duties.

Nonetheless, ICE works closely with CBP to enforce customs laws applicable to companies and individuals involved in trade fraud. If an ICE special agent has a reasonable suspicion that a company committed customs violations, ICE will conduct an investigation to identify, detect, and dismantle that company's transshipping to address the undervaluing, failure to manifest, and misclassification of imported products. ICE's 69 foreign offices assist by obtaining information and evidence on foreign investigative targets located in their area of responsibility. ICE has also increased its interaction with the private sector, and received several useful leads of potential violations from U.S.-based industries.

ICE recognizes that there are many challenges associated with conducting an investigation into trade fraud, particularly when the target of the investigation is not based in the United States. ICE will continue to take a proactive stance to combat these crimes and protect the U.S. economy from unfair trade practices. ICE defers to the Department of State and the U.S. Trade Representative's Office to determine the appropriate actions when another country is suspected of deliberately engaging in illegal trade activities.

The U.S. Government needs a unified approach to appropriately tackle this challenging issue, and CBP and ICE are working with our partners in other agencies (including DOC) to stop AD/CVD circumvention. CBP and ICE are also working with U.S. industry and our international partners to develop new sources of information to identify AD/CVD circumvention. CBP and ICE are constantly developing new approaches to AD/CVD enforcement to meet the challenges posed by complex AD/CVD circumvention schemes. We are exploring many options that will give us additional information and new tools to protect U.S. revenue and identify those who would use our system for illicit gains.

PRODUCT CONCENTRATION

Question. CBP reported that uncollected AD duties are highly concentrated among a few products (crawfish, fresh garlic, mushrooms, honey, and wooden bedroom furniture). These five products represent more than 80 percent of the uncollected duties.

Why are uncollected AD duties concentrated among these products? Why don't you focus your limited resources on these products and create task forces as was done for textiles?

Answer. The Department of the Treasury's July 2007 report on Duty Collection Problems, Fiscal Year 2003–2006 notes that "Although a particular imported product may be associated with a high default rate (for example, crawfish imports), the most likely explanation for the varied default rates lies with the type of firms that

are importing the product. If importers of a particular product are typically lightly capitalized firms or parties with minimal assets in the United States, one might expect a lower collection rate. For example, when CBP reviewed its duty collection program, CBP determined that defaults on AD duty supplemental bills (bills issued to collect retroactively assessed duties) had increased substantially from previous years. CBP also determined that the principal entities responsible for uncollected duties were importers of agriculture/aquaculture merchandise subject to AD duties. Based on CBP's analysis, the collection problem with respect to this merchandise appeared to be attributable to the fact that importers of agriculture/aquaculture merchandise tended to be undercapitalized, and that by the time final liability was assessed (typically 1 or more years after the goods had entered), many of the companies were no longer in operation. Because the AD duties finally assessed often significantly exceeded both the cash deposit and the bond amount, CBP was left unable to collect the unsecured (retrospectively assessed) portion of the duties assessed."

In 2004, CBP recognized the collection issues related to AD/CVD agriculture and aquaculture imports, and therefore applied to AD/CVD shrimp imports a revised bond policy which increased the bond requirements commensurate to the risk of such imports. However, the enhanced bond policy was challenged at CIT and at WTO. In April 2009, following the adoption of the WTO Appellate Body's report finding that the enhanced bonding requirement was WTO-inconsistent, CBP ended this program.

Because of WTO and CIT rulings, CBP has been limited in its ability to apply enhanced bonding measures to a broad category of imports (such as a single commodity). In addition, under the retrospective AD/CVD system, CBP does not know what the final AD/CVD rates will be until years after the initial importations, and cannot predict based on the initial importation the amount of the final AD/CVD bills, nor the ability of the importer to pay the bills.

CBP staff is reviewing all of the potential scenarios to ensure that STBs are required whenever CBP suspects that a risk of revenue loss exists for AD/CVD imports.

WILLFUL CIRCUMVENTION

Question. As noted in the background section, companies willfully circumvent the provisions of the AD/CVD laws by illegally transshipping goods through an intermediate destination to mask the true country of origin; undervaluing goods to reduce the amount of AD/CVD owed; misclassifying or misdescribing merchandise outside the scope of the order and, therefore, not subject to AD/CVD; and failing to manifest (smuggling) goods. What remedies are there to pursue those who willfully circumvent the laws?

Can the U.S. Government issue—in essence—a "stop importing" order against the company or the individual? Recognizing it is difficult to collect revenues and conduct inspections overseas, what can we do to the U.S.-based representatives of these illegal importers?

Answer. CBP has the statutory authority to assess monetary penalties to culpable parties who willfully circumvent the laws enforced by CBP. In addition, CBP has the statutory authority to seize and forfeit merchandise in cases of inadmissibility into the country. CBP also levies duties and imposes certain bonding requirements consistent with law and regulations. CBP also refers cases to ICE for investigation of criminal violations.

We are not aware of legal authority on which the U.S. Government could rely to prohibit importation generally by a person or company.

The United States does not have any reciprocal revenue agreements with any country in the world. For revenue purposes, even if we know that an importer which is not physically present in the United States, is viable and operating in another country, CBP cannot go after them to collect any revenues.

TIME LAG

Question. According to a 2008 GAO report, there is a 3-year lag time by DOC and CBP, between the time goods arrive at the border and the final assessment of duties. This lag allows illegitimate importers to avoid paying duties by ceasing operations or claiming bankruptcy. GAO recommendations to improve duty collection include better communications between the agencies, modifying CBP's standards for reviewing new shippers, and assessing CBP's process for setting bond requirements. What steps have your agency's taken over the past 3 years to implement these recommendations?

CBP also notes that some importers no longer exist by the time CBP issues a bill. If we know these companies will disappear, why is there a delay in issuing the bill? Can this process be expedited administratively or does a law need to be changed?

Answer. CBP is constantly reviewing its bonding requirements, and adjusting these bonding requirements as necessary consistent with its statutory authority. CBP has improved communication with DOC through the implementation of the ACE system and meeting regularly with DOC. We note that DOC, and not CBP, reviews new shippers.

CBP cannot issue a bill for final AD/CVDs until CBP receives instructions from DOC on the final AD/CVD amount. CBP cannot predict whether an importer will disappear by the time a bill is issued, which according to the GAO in its 2008 report, took on average about 3.3 years from the date of importation (but could be significantly longer).

Under the current retrospective AD/CVD scheme, CBP, for its part, cannot issue a bill for final AD/CVDs until CBP receives instructions from DOC on the final AD/CVD amount.

SIDE PAYMENTS

Question. The Wall Street Journal reported in February 2011, that some U.S. furniture makers have received cash payments from their Chinese competitors in exchange for not asking for an AD review. GAO similarly found that shrimp exporters made cash payments to the domestic U.S. industry.

What are the agencies' view on the legality of this issue and the loss of revenue to the U.S. Treasury as a result of these side payments?

Answer. [A joint response for CBP and ICE follows:]

ICE defers to the Department of Justice on questions of legality and the Department of the Treasury on issues related to loss of revenue.

CBP is not aware of any legal authority that prohibits such "side payments". For entries prior to October 1, 2007, i.e., subject to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), any such "side payments" may result in a small loss to the U.S. Treasury to the extent that AD duty collections would have exceeded claims for disbursement under the CDSOA. For entries after October 1, 2007, i.e., after the CDSOA was repealed, any such "side payments" would likely result in a loss of revenue to the U.S. Treasury. However, no loss may occur if DOC proceeds with an AD review for the subject merchandise at the request of another party. Regardless of any lost revenue from these "side payments", CBP understands that the primary purpose of the dumping laws is intended to be the protection of domestic industries from unfair competition, not the generation of revenue to the U.S. Treasury.

EFFECTIVE COMMUNICATIONS

Question. In 2008, GAO reported that there were frequent delays in DOC's transmission of liquidation instructions to CBP and that about 80 percent of the time, DOC failed to send liquidation instructions within its self-imposed 15-day deadline.

How have the agencies improved communication since 2008?

Answer. In February 2010, CBP launched the AD/CVD Module of CBP's Automated Commercial Environment (ACE), which provides a modern communication system for CBP to communicate with DOC on AD/CVD enforcement. The ACE AD/CVD Module incorporates a joint AD/CVD case management, messaging and inquiry system for CBP and DOC. These communication systems facilitate coordination between CBP and DOC on AD/CVD messaging issues, and reduce delays. CBP personnel also hold regular meetings with DOC's Customs Liaison Unit and communicate throughout every work day on AD/CVD-related matters, including deemed liquidation issues.

Question. What additional information from DOC or interagency processes would help CBP's ability to collect unpaid bills?

Answer. Under the current retrospective AD/CVD system, any changes in information or interagency processes would not compensate for the underlying issues (such as time lags between entry and final billing, and large increases in final AD/CVD rates) with the retrospective system.

QUESTION SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Question. When CBP seizes materials that were illegally imported from China, what steps does it take to ensure that such materials do not re-enter the U.S. market and further damage the business of other legitimate suppliers of such materials?

Answer. When CBP seizes merchandise that has been illegally imported into the United States, if the goods are not legally required to be destroyed, they are sold for exportation only, and the terms of sale will state that the goods must be exported to a noncontiguous country.

QUESTIONS SUBMITTED BY SENATOR DANIEL COATS

Question. I have requested information on the exact level of personnel and funding being used to enforce AD/CVDs, which CBP has failed to supply to the subcommittee. Recently, CBP supplied information only on the level of effort going towards overall trade enforcement and only for fiscal year 2010. Is CBP unable to supply basic information about how it spends the resources provided by the Congress? Can CBP tell this subcommittee exactly how much was spent on AD last fiscal year as compared to each of the previous 5 fiscal years and what is requested for fiscal year 2012?

Answer. CBP takes an agency-wide approach to AD/CVD enforcement, and CBP has more than 9,000 employees who are involved in trade enforcement, and whose responsibilities may include AD/CVD enforcement. These include more than 1,000 employees solely dedicated to the Office of International Trade, and other nonuniformed positions including attorneys, attachés, auditors, entry specialists, field analytical specialists, financial systems specialists, fines, penalties, and forfeiture officers, import specialists, and seized property specialists. These individuals are augmented by more than 5,000 CBP Officers and more than 2,000 agricultural specialists.

CBP does not specifically track the expenditures being used to enforce AD/CVD because this is part of CBP's overall trade enforcement responsibilities, and part of the duties of all CBP trade enforcement employees. To respond to this question and provide the data requested in questions 112, 114, and 115, CBP estimated how much was spent on AD/CVD enforcement over the last 5 years, a projection for fiscal year 2011, and how much was requested for fiscal year 2012. The spending estimate is based on an estimate of the full-time equivalent (FTE) personnel involved in AD/CVD enforcement in fiscal year 2011 and the number of FTE personnel requested in fiscal year 2012.

This estimate includes data on personnel dedicated exclusively or almost exclusively to AD/CVD enforcement within the Office of International Trade, the Office of Information Technology, and the Office of Administration. The estimate also includes data on personnel from the Office of Field Operations, based on the total number of hours coded for AD/CVD in the Office of Field Operation's activity-based costing system, and converted into the corresponding number of FTE positions. The Office of Chief Counsel also devotes resources to AD/CVD enforcement and has opened 459 AD/CVD cases from fiscal year 2005 to present.

[In millions of dollars]

Fiscal year	Estimated amount
2006	20
2007	21
2008	14
2009	15
2010	14
2011 (projected)	17
2012 (requested)	18

Question. Is the level of resources within the Office of International Trade at CBP adequate for enforcement of AD orders? If not, what is being spent now and what additional amount is needed? How many dollars and personnel are going towards AD this fiscal year? How many dollars and personnel are included in the fiscal year 2012 request?

Answer. CBP's fiscal year 2012 request for trade enforcement resources, including AD/CVD enforcement resources, was included in the President's fiscal year 2012 budget request submitted to the Congress.

In fiscal year 2011, CBP projects spending $17 million, with 172 FTE, on AD activities.

In 2012, CBP anticipates filling some vacant positions, which will result in spending $18 million with 177 FTE.

Question. Some of the testimony today has touched on information sharing—among Federal agencies as well as with private industry. Is CBP able to share information with private industry or rights holders when examining or seizing merchandise in intellectual property rights (IPR) enforcement cases?

Answer. Currently, the Trade Secrets Act may be interpreted to prevent CBP from sharing certain information, including unredacted samples, with right holders prior to seizure. This creates a hurdle for CBP's IPR enforcement capabilities because right holders know their products better than anyone and can provide valuable information to assist with determining the authenticity of suspect goods. CBP worked with the Intellectual Property Enforcement Coordinator to develop legislative recommendations that will resolve this issue and authorize DHS to share information with right holders during examinations and prior to seizure. CBP shares the goals set forth in the recent Senate bill S. 968, "Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011". After seizure, CBP is required to share information with rights holders that includes the identifying information for the importer and manufacturer if available.

Question. Last year, CBP submitted a 5-year enforcement strategy to reduce IPR violations. What progress has been made in implementing this strategy to expand training, improve targeting models, expand post audit reviews, and implement an IPR component as a part of the Importer Self Assessment program?

Answer. CBP has been working to implement its 5-year IPR Strategy and thanks the Congress for supporting us through funding for IPR in the fiscal year 2011 appropriation. CBP envisions an effective IPR enforcement process in which legitimate cargo is released without delay, IPR infringing goods are intercepted, and violators are deterred or put out of business. The Strategy submitted to the Congress described a three-pronged strategy for moving toward this vision. It laid out objectives to:

—facilitate entry of legitimate cargo prior to its arrival;
—to strengthen IPR enforcement as goods arrive at our borders; and
—to deter future illicit imports by counterfeiters and pirates after goods have arrived.

CBP has taken steps to carry out this vision by:

—CBP is reviewing the benefits of developing an IPR component to the Importer Self Assessment program. In addition to looking at this form of partnership program, CBP is exploring other options to partner with the trade community through other types of supply and distribution chain management programs. CBP has been seeking input from the trade community to ensure any program developed from this initiative would not only prove effective in interdicting counterfeit goods, but would also help facilitate legitimate trade.
—CBP implemented a Pharmaceutical Center for Excellence and Expertise (CEE) pilot on November 1, 2010. Through the CEE, we are partnering with the pharmaceutical industry and gaining intelligence to segment low-risk, trusted importers from those that present higher risk for IPR violations. This allows us to facilitate entry of these low risk shipments without inspection, and frees CBP to focus IPR enforcement resources on inspecting goods entered by high-risk importers.
—CBP's enforcement methods are based on a risk assessment of incoming shipments to determine the shipments most likely to contain counterfeit goods. CBP is currently modifying its risk model for deployment in the ocean cargo environment to enhance targeting.
—In addition to updating our risk model, in April 2011, CBP began an admissibility compliance measurement (ACM) program that assesses import compliance rates. The ACM is currently running in international mail and will be implemented in express courier facilities in the fall. CBP plans to administer the ACM in ocean cargo in the first one-half of fiscal year 2012.
—To better equip officers in our ports of entry to enforce IPR, CBP designed and began providing Integrated IPR Field Training in March 2011. This full-day, live instructor-led course covers IPR policy, law, and operations. CBP is also in the process of recording short training sessions on very specific topics that can be delivered on-demand over the Internet to field personnel.
—To deter IPR violators postentry, one of the things we are doing is revamping the IPR penalty process. This includes collaboration with ICE to identify assets that could be pursued for collection on IPR penalties.

CBP formed an internal working group to identify the underlying issues that affecting the effectiveness of post entry audits and to consider their overall impact on IPR enforcement. Component offices within CBP are drafting proposals.

ANTI-DUMPING AND COUNTERVAILING DUTIES ENFORCEMENT

Question. What steps are CBP, ICE, and DOC taking to improve communication about AD/CVD enforcement efforts with private industry?

Answer. [A joint response for CBP and ICE follows:]

CBP refers potentially actionable allegations received from private industry to ICE during monthly commercial enforcement and analysis response meetings at both headquarters and local field office levels. In addition, ICE and CBP regularly conduct meetings with private industry at both the headquarters and local office levels to receive allegations and concerns regarding AD/CVD enforcement.

CBP shares industry concerns about the importance of countering AD/CVD circumvention. We also understand that U.S. industry wants more transparency in CBP's AD/CVD circumvention efforts. We are examining ways to timely release information to the public about our enforcement activities. At the same time, there is necessarily information that we cannot make public when there is a criminal case under development. Such cases usually require time to develop as CBP, in cooperation with ICE, fully investigates and prosecutes the parties that are not properly paying their AD/CVDs. Such public prosecution sends a very strong message worldwide about the U.S. Government's AD/CVD enforcement efforts. All of this notwithstanding, we are taking all necessary steps to find ways that will allow us to release information to petitioners to make our process more transparent.

Question. What is the state of information sharing between CBP, ICE, and DOC? Are there barriers to sharing information that each agency obtains during AD/CVDs investigations and verifications? As an example, does CBP have information about shippers that would be useful to DOC?

Answer. [A joint response for CBP and ICE follows:]

ICE works in close cooperation with relevant interagency partners, the private sector, and international counterparts to investigate a broad spectrum of crimes related to commercial fraud. Attempts to circumvent payments of AD/CVDs may be investigated by ICE based upon the multidisciplinary commercial enforcement analysis and response (CEAR) process evaluation. CEAR meetings are conducted in most major cities throughout the United States on a monthly basis by members of ICE and CBP. The purpose of the meetings is to coordinate information sharing between ICE and CBP regarding potential trade violations. The role of the CEAR process is to make an early determination as to the nature, extent, and impact of instances of noncompliance, select the response best suited to remedy the problem, and follow up on that action to ensure that the noncompliance problem is solved.

CBP, ICE, and DOC all share extensive information related to AD/CVD enforcement, and CBP actively responds to requests for information from these agencies. Much of the data sharing relates to specific enforcement activities. Additionally, CBP, ICE, and DOC discuss broader information sharing efforts to improve AD/CVD enforcement.

ICE is limited in sharing information concerning ongoing investigations with DOC or any other agency outside of DHS due to Federal Rules of Criminal Procedure and secrecy requirements placed on matters pending before a grand jury.

DOC AD/CVD orders are issued by DOC and collected and distributed by CBP. ICE works closely with DOC and CBP to share noncase-related information regarding AD/CVD orders. ICE also actively participates in the CBP-led multidisciplinary CEAR process to coordinate information sharing between ICE and CBP regarding potential trade violations.

ICE, as the investigative arm of DHS, is responsible for investigating importers who evade the payment of AD/CVD on imported merchandise. AD/CVD cases are long-term, transnational investigations that require significant coordination between domestic and international ICE offices and with foreign law enforcement counterparts. ICE special agents also work closely with CBP officers, import specialists, and regulatory auditors during AD/CVD investigations.

CBP has no specific barriers to sharing such information with DOC. CBP often has information about shippers that would be useful to DOC, and shares this information with DOC.

LENGTH OF TIME DEVOTED TO REVIEWS AND INVESTIGATIONS

Question. Each witness has testified on the length of time it takes to do reviews or investigations involving trade enforcement, specifically AD/CVDs. In prepared testimony, Deputy Assistant Secretary Lorentzen mentions the October 2006 final affirmative determination of circumvention of the AD order on petroleum wax candles from China—but the complaint alleging possible circumvention was filed in 2004; and Deputy Assistant Director Ballman speaks to the case alleging transshipment of Chinese honey which began in February 2008 and has resulted in fines

and prison sentences—but the most significant indictments did not come for 2.5 years—until September 2010. What can be done to shorten these timeframes so that enforcement has a deterrent effect on others across the trade community?

Answer. [A joint response for CBP and ICE follows:]

There is an inherent delay in criminal investigations and prosecutions involving trade enforcement. ICE criminal investigations are the last line of defense against the evasion of AD/CVD. These cases are long-term, transnational investigations that require significant coordination between domestic and international offices, with foreign law enforcement counterparts. By the time ICE investigators are involved in a particular case, the alleged violators have already committed customs fraud by evading or attempting to evade dumping duties. ICE is committed to shortening timeframes wherever possible, but many aspects of these investigations, such as the assistance of foreign law enforcement counterparts, and the prosecution of cases by the United States Attorney's Office, are outside of ICE's control.

To further deter these types of customs violations and protect U.S. business interests in the global economy, the United States Government should continue to inform the public and foreign industry, about successful prosecutions and awarded penalties resulting from ICE's investigations and enforcement actions.

CBP continues to work with our partner agencies in the Federal Government as well as with foreign law enforcement and the private sector to bring quick and effective legal actions against those that we suspect are circumventing the AD/CVD system. We will continue to build the relationships that will help to streamline the process and demonstrate our collective efforts as a credible deterrent.

UNCOLLECTED ANTI-DUMPING DUTIES

Question. The Government Accountability Office mentioned in testimony the more than $1 billion in AD duties that have not been collected. These duties are related primarily to just five products—honey, fresh garlic, preserved mushrooms, crawfish, and bedroom furniture from China. What can be done at this point to collect these duties, some of which I believe stretch back to 2004? Some of these collections would go back to the U.S. Treasury to finance the Government—some would actually go back to these industries that have been damaged under the "Byrd amendment". I realize that CBP has a process it follows for debt collection—which on average can take 300 days before even referring the case to attorneys—but if some of these duties were imposed in 2004, that would be 7 years ago which is a considerable length of time beyond 300 days. What exactly is the central issue preventing either collection or the liquidation of any bonds posted by the importers? Please give us more transparency into whether these amounts are collectible; what is the process; and what is the plan at DOC and CBP to resolve this situation.

Answer. CBP is pursuing all of the collection tools available. Most of the debts associated with these products are in litigation against the surety, principal, or both. Also, the principal would be on sanction and they would have immediate suspension of delivery privileges.

The central issue preventing CBP from collecting the full amount of the debt is the ease in which a company can exit the market either foreign or domestic. While the debt collection process can add a significant amount of time to the overall collection process, many companies ceased to exist prior to the creation of the debt leaving only the surety to pursue in active collection. Collections from the surety may result in collecting 10 percent of the overall amount due to CBP. Sureties assert many legal justifications to prevent payment to CBP which requires legal review from CBP.

Question. What suggestions do CBP and DOC have to get China to focus on solving this problem?

Answer. CBP continues to work with our partner countries to identify areas of common risk and concern. We work through the World Customs Organization to identify best practices and to develop common action plans. This work with other countries is important to try and address the issue of AD/CVD evasion. We will continue to work with our Federal partners within the executive branch to ensure that they are working with their Chinese colleagues.

QUESTIONS SUBMITTED TO J. SCOTT BALLMAN, JR.

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

INVESTIGATIONS AND ACCESS TO OTHER COUNTRIES

Question. How does the process of investigating anti-dumping (AD) allegations differ from other Immigration and Customs Enforcement (ICE) investigations in terms of time, manpower, and evidence requirements?

What authority does ICE have to enter a country to conduct an AD investigation? Can countries deny you entry and/or access to a company with which you have suspicions? If so, what leverage does the U.S. Government have to get the country to reconsider its entry denial?

Answer. AD investigations are long-term, transnational investigations. These investigations are also very document-intensive. ICE agents expend a substantial amount of time to review numerous complex documents (i.e., bank records, import/export documents, and foreign customs documents) and verify the information contained in the documents.

AD investigations typically require significant coordination between domestic and international offices. If information is needed from foreign sources, the legal process to obtain and translate evidence from other countries to support a criminal prosecution can also be lengthy.

Additionally, AD rates are determined by the Department of Commerce (DOC). Thus, ICE investigations into AD allegations may be impacted if the dumping duty rate changes during the course of the investigation. This volatility makes AD investigations unique among other ICE investigative authorities.

Because of the complex nature of AD investigations, they are often more resource and time intensive than other types of investigations.

ICE has no authority to conduct a law enforcement investigation outside of the jurisdiction of the United States unless ICE obtains express permission from a foreign government. ICE has two primary methods to request assistance from foreign governments. ICE can submit the request through formal legal channels such as customs mutual assistance agreements, mutual legal assistance agreements, or letters rogatory. ICE may also obtain information through informal channels based on relationships with foreign law enforcement officials.

Yes, countries can deny access. As sovereign nations, foreign countries may limit the ability that ICE has to conduct law enforcement-related activities and to enter or access a company located outside of the United States. ICE has two primary methods to request assistance from foreign governments. ICE can submit the request through formal legal channels such as customs mutual assistance agreements, mutual legal assistance agreements, or letters rogatory. ICE may also obtain information through informal channels based on relationships with foreign law enforcement officials.

The Department of Homeland Security (DHS) would defer to the Department of State or the U.S. Trade Representative to have the country reconsider the denied entry or access.

Question. In your statement you describe a number of investigative cases ICE has conducted in recent years. Of these cases, who/which agency brings them to you—CBP? If so, how long does it take CBP to get it to ICE after it has come to CBP's attention?

Does ICE have the authority to initiate investigations on its own or must it wait for charges to be brought by CBP and/or DOC?

Answer. ICE may obtain leads for AD investigations through a variety of sources; the majority of the AD cases are received from CBP, including those described in the statement given on May 25, 2011. Occasionally, AD cases are referred to ICE directly by industry representatives. Other possible methods of referral include foreign customs services, the ICE tip hotline, and self-generated ICE investigations. CBP will make referrals to ICE which may result in a new criminal investigation or which may help bolster an existing ICE investigation.

CBP directly refers allegations timely to ICE through the commercial enforcement analysis and response (CEAR) process. Local CEAR meetings are held on a regular basis and are a platform for referring significant trade violations to ICE. In addition, CBP will immediately refer egregious or time-sensitive allegations to ICE field offices through established communications channels. Contact with ICE can be made outside of the monthly CEAR meeting if a significant violation is detected and waiting for the monthly meeting might jeopardize the investigation. The violation/violator would still be discussed at the next meeting to ensure that the appropriate

agency decisionmakers agree with the course of action selected to address the violation or violator.

ICE's Office of Homeland Security Investigations (HSI) has the authority to initiate investigations on its own. ICE HSI's investigations are both self-generated and a result of received allegations of evasion from sources, to include CBP, industry, foreign customs, and law enforcement agencies. The self-generated investigations can be the result of information received from criminal informants, criminal defendants, current or former employees, competitors, other criminal investigations, or observations of HSI special agents.

Question. Over the last 12 months, how many seizures has ICE made of merchandise that was entered into the United States in ways meant to evade AD/CVD orders?

Would you agree that AD/CVDs are in place because industry has demonstrated that unfair imports are proven—by the independent International Trade Commission (ITC)—to be harming American producers?

Is ICE challenged for resources to enforce the trade laws?

CBP is responsible for AD/CVD targeting, examinations and revenue collection, while ICE investigates possible criminal violations. How are CBP and ICE working to coordinate their enforcement activities?

In your testimony, you gave a couple of examples of high-profile arrests and indictments. Generally, how long did it take ICE to build these cases?

How many cases over the past 2 years has ICE spent time examining, but not taken to indictment, and how long has this delayed effective civil enforcement action to stop the evasion?

Answer. ICE is responsible for the criminal investigations of cases involving evasion of AD/CVD orders. ICE's goal in these investigations is to secure criminal charges against suspected violators. Under rare circumstances, ICE does conduct seizures of merchandise independent of CBP in furtherance of a criminal investigation. From June 1, 2010, to May 31, 2011, ICE conducted three seizures consisting of 96 packages of polyethylene bags with a domestic value of $230,400; 192 55-gallon drums of malt sweetener; and 28,017 aluminum shower door frames and profiles with a domestic value of $69,514. All of the seized contraband entered the United States through schemes meant to evade AD/CVDs.

DOC sets the duties for AD. ICE is not involved in the review process within the ITC. ICE does not review any evidence or documents given to DOC by the industry when reporting AD violations. Once DOC makes a determination that a duty should be instituted, CBP collects the duties, and ICE, as the investigative arm of DHS, investigates allegations of evasion of those duties.

ICE, as the investigative arm of DHS, is responsible for investigating more than 400 criminal offenses related to violations of customs and immigration laws to include AD/CVD evasion, intellectual property rights, North American Free Trade Agreement, and textile violations. Despite such broad authority, ICE aggressively pursues AD/CVD evasion investigations resulting from viable commercial fraud leads regardless of the primary predicate offense. Maintaining the current pace, ICE will increase commercial fraud investigations by approximately 20 percent in fiscal year 2011. ICE is able to deploy all the necessary resources needed to bring an investigation to a successful conclusion.

ICE works closely with CBP to enforce customs laws applicable to companies and individuals involved in trade fraud. ICE and CBP regularly conduct meetings with private industry to receive allegations and discuss concerns regarding AD/CVD enforcement. To better coordinate enforcement activities, ICE and CBP also hold a monthly CEAR meeting at various ports throughout the United States. Moreover, ICE special agents work closely with CBP officers, import specialists, and regulatory auditors when developing and pursuing AD/CVD investigations. ICE also has a special agent assigned to the CBP Office of International Trade to assist them with commercial fraud issues. Additionally, the National Intellectual Property Rights Coordination Center houses the ICE-led Commercial Fraud Programs Unit with co-located CBP personnel, which enables improved coordination between ICE and CBP.

The investigations cited in ICE's May 25, 2011, testimony took between 16 to 38 months to complete, and one investigation is still ongoing. However, each case conducted by ICE involves unique circumstances that may shorten or lengthen the time of the case. AD investigations, in particular, involve multijurisdictional and international components as well as the review of voluminous amounts of historical records. As a result, these investigations often take months or years to resolve and conclude.

Delays to civil enforcement actions are often necessary in order to effectively conduct a criminal investigation. During the past 2 years, ICE conducted 232 AD/CVD investigations, resulting in 40 indictments of domestic and international subjects.

International arrests present far more complex legal hurdles and challenges relating to extradition and eventual trial. Investigations that have not been brought to indictment may be ongoing, may have been closed, or may have been referred to CBP for civil enforcement action.

As noted in the previous answer, ICE and CBP hold CEAR process meetings on a monthly basis at various ports throughout the United States to coordinate enforcement activities. Through these meetings and routine communication channels, ICE refers any cases that will not be taken to criminal indictment back to CBP, allowing CBP to proceed with civil enforcement action.

INVESTIGATIVE EFFORT

Question. The ICE AD/CVD program is one way that ICE protects U.S. businesses from fraudulent trade practices. AD/CVD orders are issued by DOC and collected and distributed by CBP. AD duties are assessed when importers sell merchandise at less than fair market value, which causes material injury to a domestic industry producing a comparable product. ICE is responsible for investigating importers who evade payment of AD/CVD on imported merchandise. These cases are long-term, transnational investigations that require significant coordination between domestic and international offices and with foreign law enforcement counterparts.

In general, how long does a case take from initiation to conclusion? Are there any ways the investigative process can be expedited?

Answer. Each case is unique. Therefore, the amount of time required to complete an AD/CVD case will vary due to a number of factors, such as whether the case requires information from foreign law enforcement, translation of foreign documents, multijurisdictional requirements, and the voluminous amounts of historical records that require review. In general, these investigations take approximately 1 to 5 years from initiation to conclusion.

AD/CVD cases are complex and often transnational requiring significant coordination between domestic and international ICE offices and foreign law enforcement counterparts. The unique challenge each of these cases presents contributes to the time intensive nature of AD/CVD cases. Thus, the amount of time to complete a case may vary from 1 to 5 years or longer.

By increasing cooperation between ICE and foreign governments the investigative process has been expedited, thus accelerating the response time to information requests. Another method used by ICE to expedite the investigative process is by conducting site verifications of foreign manufacturers to ensure that the country of origin information reported in customs documents is accurate.

Question. In some cases, after ICE has invested resources in developing a case and final finding of liability, some of these fly-by-night importers may have disappeared altogether, and the bond they got doesn't come close to covering their final liability.

How often do you encounter this problem?

What is your investigative threshold for investigating these types of matters?

How often do you have to decide not to pursue a case because you lack the necessary information or resources?

Answer. Although CBP is responsible for the assessment and collection of duties, ICE regularly encounters fly-by-night importers during investigations. Many of these companies were established in the United States by people who have few, if any, ties to the United States. Their corporate addresses are often post office boxes or other locations that provide limited investigative leads. Moreover, importers are not required to have a U.S. address, making it difficult to verify the information that they submit to CBP. This allows the importer to evade paying duties with little or no recourse for the U.S. Government.

Operation Mirage provides an example of how ICE has used its trade fraud authority to combat fly-by-night importers. ICE and CBP conducted Operation Mirage in 2009, targeting 176 importers of record identified as having potential involvement with the undervaluation of textile products imported from the People's Republic of China. Of the 176, ICE and CBP identified 90 importers of record who either did not have a legitimate interest in the goods, or were fictitious importers. These efforts resulted in 32 investigations. While ICE does not have specific data regarding a similar AD operation, the percentages would likely be consistent across the board, as similar smuggling and illegal importation schemes are utilized in both textile smuggling and AD investigations.

Prior to opening a criminal case, ICE must verify the information related to AD allegations made either by CBP or private industry. ICE special agents calculate a projection of the loss of revenue to the United States to demonstrate whether the

loss exceeds the prosecution threshold set by the local United States Attorney's Office (USAO).

ICE does not set the threshold of amounts for criminal prosecutions. The USAO independently set thresholds for prosecution and ICE is bound by the USAO recommendations. These thresholds vary from USAO district to district.

ICE does not set a threshold for investigating civil cases but the loss of revenue to the Federal Government is weighed against the available manpower at the specific ICE office, case load restraints, and prosecutorial discretion.

ICE does not maintain statistics on unopened cases. ICE investigates potential AD/CVD violations only when it has a reasonable suspicion to believe that the information provided may result in an enforcement action (arrest, indictment, conviction, seizure, fine, or forfeiture). If a lead is viable, cases opened by ICE are investigated to the fullest extent possible based on the resources available. Some of the possible actions taken in furtherance of an AD/CVD case may include reviewing United States and foreign shipping documents, conducting interviews, and working with CBP officers to inspect shipments and to examine comparable samples of imported material from source countries at CBP laboratories to determine country of origin. All ICE cases are opened to determine the facts of any potential violation, to include AD/CVD investigations.

Question. In CBP's statement, it discusses how easy it is for an importer to find and collude with a producer to avoid paying dumping duties. It lists some of these schemes including illegal transshipment, undervaluation, failure to manifest, and misclassification. If a company—or a country—deliberately sets out to engage in these kinds of trade fraud, how can the U.S. Government appropriately tackle this issue?

Answer. [A joint response for ICE and CBP follows:]

Importers of record are responsible for the duties owed to the United States for each importation. Currently, the laws of the United States allow foreign importers to make importations, and accordingly, a foreign importer can be the importer of record. Unfortunately, many foreign importers do not pay the required duties, and the U.S. Government currently has little recourse to enforce and obtain these duties.

Nonetheless, ICE works closely with CBP to enforce customs laws applicable to companies and individuals involved in trade fraud. If an ICE special agent has a reasonable suspicion that a company committed customs violations, ICE will conduct an investigation to identify, detect, and dismantle that company's transshipping to address the undervaluing, failure to manifest, and misclassification of imported products. ICE's 69 foreign offices assist by obtaining information and evidence on foreign investigative targets located in their area of responsibility. ICE has also increased its interaction with the private sector, and received several useful leads of potential violations from U.S.-based industries.

ICE recognizes that there are many challenges associated with conducting an investigation into trade fraud, particularly when the target of the investigation is not based in the United States. ICE will continue to take a proactive stance to combat these crimes and protect the U.S. economy from unfair trade practices. ICE defers to the Department of State and the U.S. Trade Representative's Office to determine the appropriate actions when another country is suspected of deliberately engaging in illegal trade activities.

The U.S. Government needs a unified approach to appropriately tackle this challenging issue, and CBP and ICE are working with our partners in other agencies (including DOC) to stop AD/CVD circumvention. CBP and ICE are also working with U.S. industry and our international partners to develop new sources of information to identify AD/CVD circumvention. CBP and ICE are constantly developing new approaches to AD/CVD enforcement to meet the challenges posed by complex AD/CVD circumvention schemes. We are exploring many options that will give us additional information and new tools to protect U.S. revenue and identify those who would use our system for illicit gains.

PRODUCT CONCENTRATION

Question. CBP reported that uncollected AD duties are highly concentrated among a few products (crawfish, fresh garlic, mushrooms, honey, and wooden bedroom furniture). These five products represent more than 80 percent of the uncollected duties.

Why are uncollected AD duties concentrated among these products? Why don't you focus your limited resources on these products and create task forces as was done for textiles?

Answer. [A joint response for ICE and CBP follows:]

The Department of the Treasury's July 2007 report on Duty Collection Problems, Fiscal Year 2003–2006 notes that "Although a particular imported product may be associated with a high default rate (for example, crawfish imports), the most likely explanation for the varied default rates lies with the type of firms that are importing the product. If importers of a particular product are typically lightly capitalized firms or parties with minimal assets in the United States, one might expect a lower collection rate. For example, when CBP reviewed its duty collection program, CBP determined that defaults on AD duty supplemental bills (bills issued to collect retroactively assessed duties) had increased substantially from previous years. CBP also determined that the principal entities responsible for uncollected duties were importers of agriculture/aquaculture merchandise subject to AD duties. Based on CBP's analysis, the collection problem with respect to this merchandise appeared to be attributable to the fact that importers of agriculture/aquaculture merchandise tended to be undercapitalized, and that by the time final liability was assessed (typically 1 or more years after the goods had entered), many of the companies were no longer in operation. Because the AD duties finally assessed often significantly exceeded both the cash deposit and the bond amount, CBP was left unable to collect the unsecured (retrospectively assessed) portion of the duties assessed."

In 2004, CBP recognized the collection issues related to AD/CVD agriculture and aquaculture imports, and therefore applied to AD/CVD shrimp imports a revised bond policy which increased the bond requirements commensurate to the risk of such imports. However, the enhanced bond policy was challenged at the U.S. Court of International Trade (CIT) and at the World Trade Organization (WTO). In April 2009, following the adoption of the WTO Appellate Body's report finding that the enhanced bonding requirement was WTO-inconsistent, CBP ended this program.

Because of WTO and CIT rulings, CBP has been limited in its ability to apply enhanced bonding measures to a broad category of imports (such as a single commodity). In addition, under the retrospective AD/CVD system, CBP does not know what the final AD/CVD rates will be until years after the initial importations, and cannot predict based on the initial importation the amount of the final AD/CVD bills, nor the ability of the importer to pay the bills.

CBP staff is reviewing all of the potential scenarios to ensure that single-transaction bonds are required whenever CBP suspects that a risk of revenue loss exists for AD/CVD imports.

WILLFUL CIRCUMVENTION

Question. As noted in the background section, companies willfully circumvent the provisions of the AD/CVD laws by illegally transshipping goods through an intermediate destination to mask the true country of origin; undervaluing goods to reduce the amount of AD/CVD owed; misclassifying or misdescribing merchandise outside the scope of the order and, therefore, not subject to AD/CVD; and failing to manifest (smuggling) goods. What remedies are there to pursue those who willfully circumvent the laws?

Can the U.S. Government issue—in essence—a "stop importing" order against the company or the individual? Recognizing it is difficult to collect revenues and conduct inspections overseas, what can we do to the U.S.-based representatives of these illegal importers?

Answer. [A joint response for ICE and CBP follows:]

CBP has the statutory authority to assess monetary penalties to culpable parties who willfully circumvent the laws enforced by CBP. In addition, CBP has the statutory authority to seize and forfeit merchandise in cases of inadmissibility into the country. CBP also levies duties and imposes certain bonding requirements consistent with law and regulations. CBP also refers cases to ICE for investigation of criminal violations.

We are not aware of legal authority on which the U.S. Government could rely to prohibit importation generally by a person or company.

The United States does not have any reciprocal revenue agreements with any country in the world. For revenue purposes, even if we know that an importer which is not physically present in the United States, is viable and operating in another country, CBP cannot go after them to collect any revenues.

TIME LAG

Question. According to a 2008 GAO report, there is a 3-year lag time by DOC and CBP, between the time goods arrive at the border and the final assessment of duties. This lag allows illegitimate importers to avoid paying duties by ceasing operations or claiming bankruptcy. GAO recommendations to improve duty collection include better communications between the agencies, modifying CBP's standards for

reviewing new shippers, and assessing CBP's process for setting bond requirements. What steps have your agency's taken over the past 3 years to implement these recommendations?

CBP also notes that some importers no longer exist by the time CBP issues a bill. If we know these companies will disappear, why is there a delay in issuing the bill? Can this process be expedited administratively or does a law need to be changed?

Answer. [A joint response for ICE and CBP follows:]

CBP is constantly reviewing its bonding requirements, and adjusting these bonding requirements as necessary consistent with its statutory authority. CBP has improved communication with DOC through the implementation of the ACE system and meeting regularly with DOC. We note that DOC, and not CBP, reviews new shippers.

CBP cannot issue a bill for final AD/CVDs until CBP receives instructions from DOC on the final AD/CVD amount. CBP cannot predict whether an importer will disappear by the time a bill is issued, which according to the GAO in its 2008 report, took on average about 3.3 years from the date of importation (but could be significantly longer).

Under the current retrospective AD/CVD scheme, CBP, for its part, cannot issue a bill for final AD/CVDs until CBP receives instructions from DOC on the final AD/CVD amount.

SIDE PAYMENTS

Question. The Wall Street Journal reported in February 2011, that some United States furniture makers have received cash payments from their Chinese competitors in exchange for not asking for an AD review. GAO similarly found that shrimp exporters made cash payments to the domestic U.S. industry.

What are the agencies' view on the legality of this issue and the loss of revenue to the U.S. Treasury as a result of these side payments?

Answer. [A joint response for ICE and CBP follows:]

ICE defers to the Department of Justice on questions of legality and the Department of the Treasury on issues related to loss of revenue.

CBP is not aware of any legal authority that prohibits such "side payments". For entries prior to October 1, 2007, i.e., subject to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), any such "side payments" may result in a small loss to the U.S. Treasury to the extent that AD duty collections would have exceeded claims for disbursement under the CDSOA. For entries after October 1, 2007, i.e., after the CDSOA was repealed, any such "side payments" would likely result in a loss of revenue to the U.S. Treasury. However, no loss may occur if DOC proceeds with an AD review for the subject merchandise at the request of another party. Regardless of any lost revenue from these "side payments", CBP understands that the primary purpose of the dumping laws is intended to be the protection of domestic industries from unfair competition, not the generation of revenue to the U.S. Treasury.

EFFECTIVE COMMUNICATIONS

Question. In 2008, GAO reported that there were frequent delays in DOC's transmission of liquidation instructions to CBP and that about 80 percent of the time, DOC failed to send liquidation instructions within its self-imposed 15-day deadline.

How have the agencies improved communication since 2008?

Answer. [A joint response for ICE and CBP follows:]

In February 2010, CBP launched the AD/CVD Module of CBP's Automated Commercial Environment (ACE), which provides a modern communication system for CBP to communicate with DOC on AD/CVD enforcement. The ACE AD/CVD Module incorporates a joint AD/CVD case management, messaging and inquiry system for CBP and DOC. These communication systems facilitate coordination between CBP and DOC on AD/CVD messaging issues, and reduce delays. CBP personnel also hold regular meetings with DOC's Customs Liaison Unit and communicate throughout every work day on AD/CVD-related matters, including deemed liquidation issues.

QUESTION SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Question. An investigation by the Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) found a deliberate scheme by the company ESM to illegally import magnesium powder, a critical component in the production of infrared countermeasure flares, thereby circumventing payment of antidumping duties. How do DHS and CBP intend to guard against the unlawful impor-

tation into the United States of hazardous materials with potential military applications? Does CBP have sufficient remedies against those who attempt to unlawfully import potentially dangerous materials in large volumes (i.e., multiple container loads)? If not, what additional remedies are needed?

Answer. Hazardous material importations with a military application may require a license or permit. For those goods where a license or permit is required, CBP would ensure the proper documents are in place prior to releasing the shipment from CBP custody.

CBP uses its resources to ensure that dangerous materials regardless of volume do not enter into the United States. CBP has comprehensive plans to inspect targeted goods that pose a threat. Upon discovery of dangerous materials, CBP would use locally available resources as well as national expertise to properly deal with the cargo.

QUESTIONS SUBMITTED BY SENATOR DANIEL COATS

Question. It is my understanding that within the resources available to ICE to conduct AD/CVDs investigations, Commercial Fraud receives on average about 5 percent of the total dollars each year. Commercial Fraud covers 24 areas, one of which is AD/CVD enforcement. Within Commercial Fraud what personnel, full-time equivalents (FTEs), and dollars were devoted to AD/CVD enforcement for each of fiscal years 2009 and 2010, planned for fiscal year 2011, and requested for fiscal year 2012?

Answer. The following table provides the total numbers of FTE personnel and dollars expended on AD/CVD enforcement activities for fiscal year 2009 and fiscal year 2010 and the projected expenditures for fiscal year 2011. No additional resources are requested in fiscal year 2012.

	Investigative full-time equivalent personnel	Investigative program expenditures
Fiscal year 2009	12	$3,108,000
Fiscal year 2010	12	2,863,000
Fiscal year 2011 (full-year projected)	12	2,961,000

NOTE.—Individual ICE Homeland Security Investigations special agents are not permanently assigned to any specific case type or workload and these FTE levels do not represent fixed allocations from year to year to a specific investigative mission area. The actual expenditures and level of investigative FTE in any specific investigative area may vary significantly due to changing threats to public safety or national security and/or mission re-prioritization by a higher authority.

Question. ICE has many responsibilities; however, it is hard to see how ICE is putting any priority on trade enforcement when so few dollars (5 percent) are being used to investigate it. Trade and customs enforcement is important work. Trade enforcement is not shared with other Federal law enforcement agencies. These investigations are not the responsibility of the Drug Enforcement Agency, the Secret Service, or the Bureau of Alcohol, Tobacco and Firearms—but ICE's responsibility. How does ICE justify putting such a small level of resources into Commercial Fraud, and such a small level of resources into AD/CVD enforcement?

Answer. As the investigative arm of DHS, ICE is responsible for investigating more than 400 criminal offenses related to violations of customs and immigration laws, which includes more than 20 commercial fraud related violations. ICE aggressively pursues commercial fraud cases, investigating all viable commercial fraud leads, regardless of the primary predicate offense. ICE is currently on pace to increase its commercial fraud arrests by nearly 70 percent in fiscal year 2011.

Question. Does ICE have agents and other personnel outside of Commercial Fraud dedicated to AD/CVD enforcement? If so, how many? Provide numbers of personnel, FTEs, and dollars for each of fiscal years 2009 and 2010, planned for fiscal year 2011, and requested for fiscal year 2012.

Answer. ICE Homeland Security Investigations (HSI) commercial fraud investigative groups investigate a wide range of illegal activities, including AD/CVD enforcement. HSI has commercial fraud groups in each of its 26 Special Agent in Charge (SAC) offices. Each SAC office regularly evaluates personnel assignments to effectively allocate resources to address the broad range of criminal violations HSI is responsible for investigating.

The following table provides the total numbers of FTE personnel and dollars expended on trade enforcement for fiscal year 2009 and fiscal year 2010 and the projected expenditures for fiscal year 2011. No additional resources are requested in fiscal year 2012.

	Investigative full-time equivalent personnel	Investigative program expenditures
Fiscal year 2009	271	$72,362,000
Fiscal year 2010	269	71,787,000
Fiscal year 2011 (full-year projected)	335	81,884,000

NOTE.—Individual ICE Homeland Security Investigations special agents are not permanently assigned to any specific case type or workload and these FTE levels do not represent fixed allocations from year to year to a specific investigative mission area. The actual expenditures and level of investigative FTE in any specific investigative area may vary significantly due to changing threats to public safety or national security and/or mission re-prioritization by a higher authority.

Question. How is ICE working to coordinate its enforcement activities with CBP? Does CBP have to hold off on taking administrative actions while ICE is pursuing an investigation? How long is the delay between a final determination from ICE and CBP being able to take action? Is ICE communicating with CBP in a timely fashion when an investigation is concluded?

Answer. ICE works closely with CBP to enforce customs laws applicable to companies and individuals involved in trade fraud. ICE and CBP regularly conduct meetings with private industry to receive allegations and discuss concerns regarding AD/CVD enforcement. To better coordinate enforcement activities, ICE and CBP also hold a monthly CEAR meeting at various ports throughout the United States.

Moreover, ICE special agents work closely with CBP officers, import specialists, and regulatory auditors when developing and pursuing AD/CVD investigations. ICE also has a special agent assigned to the CBP Office of International Trade to assist them with commercial fraud issues. Additionally, the National Intellectual Property Rights Coordination Center houses the ICE-led Commercial Fraud Programs Unit with co-located CBP personnel, which enables improved coordination between ICE and CBP.

CBP and ICE work closely on most, if not all, AD investigations. CBP does not pursue administrative actions independently while ICE is pursuing a criminal case. CBP may postpone a civil enforcement action until ICE has completed its investigation. This CBP action, or inaction, is to ensure that CBP's administrative process does not jeopardize a criminal investigation. The appropriate enforcement action is determined on a case-by-case basis and is closely coordinated through the local CEAR groups to ensure that the right enforcement actions, whether criminal or civil, are taken at the right time as to not hinder either process.

ICE notifies CBP of criminal investigations within 1 month of CBP referrals. These notifications are made either through the formal CEAR process or through informal notification. ICE does not maintain statistical data on actions taken by CBP if a case is pursued for civil penalties.

Through monthly CEAR meetings, ICE and CBP share information related to violations concerning both agencies. Additionally, ICE and CBP personnel communicate regularly during criminal investigations and ICE often shares information with CBP personnel informally at the conclusion of an investigation. ICE notifies CBP of criminal investigations within a month of CBP referrals. These notifications are made either through the formal CEAR process or through informal notification.

INTELLECTUAL PROPERTY RIGHTS

Question. The National Intellectual Property Rights Coordination Center (IPR Center) is located within ICE, but is staffed by many different Federal agencies. In the past there have been significant issues with staffing the Center and gaining the cooperation of the partner agencies. Have those issues been resolved?

Answer. The IPR Center brings together 16 key Federal investigative agencies, Interpol, and the Governments of Canada and Mexico in a task force setting. The task force structure enables the IPR Center to efficiently and effectively leverage the resources, skills, and authorities of each participating agency and provide a comprehensive response to intellectual property (IP) theft.

Cooperation among IPR Center partners has continued to grow over the past year, with member agencies participating in several joint operations and investigations. This cooperation includes the recently announced Operation Chain Reaction in which nine IPR Center partner agencies and prosecutors from DOJ are working together to target counterfeit items entering the supply chains of the Department of Defense and other U.S. Government agencies.

In addition, the IPR Center has recently added several agencies to more comprehensively address the mission of the IPR Center to combat predatory and unfair trade practices that threaten our economic stability and national security, restrict the competitiveness of U.S. industry in world markets, and place the public's health and safety at risk.

Thus far in 2011, the IPR Center has welcomed the following partners:
—the U.S. Consumer Product Safety Commission;
—the Defense Logistics Agency Office of Inspector General;
—the Department of State Office of International Intellectual Property Enforcement;
—the Air Force Office of Special Investigations;
—the National Aeronautics and Space Administration Office of the Inspector General; and
—our third international partner, the Royal Canadian Mounted Police.

While DOJ is not an official partner at the IPR Center, Federal prosecutors work closely with all agency partners at the IPR Center; this close relationship has resulted in a one-stop shop for industry and victims of IP theft, reducing duplication and allowing us to leverage and benefit from our unique missions and areas of expertise.

ANTI-DUMPING AND COUNTERVAILING DUTIES ENFORCEMENT

Question. What steps are CBP, ICE, and DOC taking to improve communication about AD/CVD enforcement efforts with private industry?

Answer. [A joint response for ICE and CBP follows:]

CBP refers potentially actionable allegations received from private industry to ICE during monthly commercial enforcement and analysis response meetings at both headquarters and local field office levels. In addition, ICE and CBP regularly conduct meetings with private industry at both the headquarters and local office levels to receive allegations and concerns regarding AD/CVD enforcement.

CBP shares industry concerns about the importance of countering AD/CVD circumvention. We also understand that U.S. industry wants more transparency in CBP's AD/CVD circumvention efforts. We are examining ways to timely release information to the public about our enforcement activities. At the same time, there is necessarily information that we cannot make public when there is a criminal case under development. Such cases usually require time to develop as CBP, in cooperation with ICE, fully investigates and prosecutes the parties that are not properly paying their AD/CVDs. Such public prosecution sends a very strong message worldwide about the U.S. Government's AD/CVD enforcement efforts. All of this notwithstanding, we are taking all necessary steps to find ways that will allow us to release information to petitioners to make our process more transparent.

Question. What is the state of information sharing between CBP, ICE, and DOC? Are there barriers to sharing information that each agency obtains during AD/CVDs investigations and verifications? As an example, does CBP have information about shippers that would be useful to DOC?

Answer. [A joint response for ICE and CBP follows:]

ICE works in close cooperation with relevant interagency partners, the private sector, and international counterparts to investigate a broad spectrum of crimes related to commercial fraud. Attempts to circumvent payments of AD/CVDs may be investigated by ICE based upon the multidisciplinary CEAR process evaluation. CEAR meetings are conducted in most major cities throughout the United States on a monthly basis by members of ICE and CBP. The purpose of the meetings is to coordinate information sharing between ICE and CBP regarding potential trade violations. The role of the CEAR process is to make an early determination as to the nature, extent, and impact of instances of noncompliance, select the response best suited to remedy the problem, and follow up on that action to ensure that the noncompliance problem is solved.

CBP, ICE, and DOC all share extensive information related to AD/CVD enforcement, and CBP actively responds to requests for information from these agencies. Much of the data sharing relates to specific enforcement activities. Additionally, CBP, ICE, and DOC discuss broader information sharing efforts to improve AD/CVD enforcement.

ICE is limited in sharing information concerning ongoing investigations with DOC or any other agency outside of DHS due to Federal Rules of Criminal Procedure and secrecy requirements placed on matters pending before a grand jury.

DOC AD/CVD orders are issued by DOC and collected and distributed by CBP. ICE works closely with DOC and CBP to share noncase-related information regarding AD/CVD orders. ICE also actively participates in the CBP-led multidisciplinary CEAR process to coordinate information sharing between ICE and CBP regarding potential trade violations.

ICE, as the investigative arm of DHS, is responsible for investigating importers who evade the payment of AD/CVD on imported merchandise. AD/CVD cases are long-term, transnational investigations that require significant coordination between

domestic and international ICE offices and with foreign law enforcement counterparts. ICE special agents also work closely with CBP officers, import specialists, and regulatory auditors during AD/CVD investigations.

CBP has no specific barriers to sharing such information with DOC. CBP often has information about shippers that would be useful to DOC, and shares this information with DOC.

LENGTH OF TIME DEVOTED TO REVIEWS AND INVESTIGATIONS

Question. Each witness has testified on the length of time it takes to do reviews or investigations involving trade enforcement, specifically AD/CVDs. In prepared testimony, Deputy Assistant Secretary Lorentzen mentions the October 2006 final affirmative determination of circumvention of the AD order on petroleum wax candles from China—but the complaint alleging possible circumvention was filed in 2004; and Deputy Assistant Director Ballman speaks to the case alleging transshipment of Chinese honey which began in February 2008 and has resulted in fines and prison sentences—but the most significant indictments did not come for 2.5 years—until September 2010. What can be done to shorten these timeframes so that enforcement has a deterrent effect on others across the trade community?

Answer. [A joint response for ICE and CBP follows:]

There is an inherent delay in criminal investigations and prosecutions involving trade enforcement. ICE criminal investigations are the last line of defense against the evasion of AD/CVD. These cases are long-term, transnational investigations that require significant coordination between domestic and international offices, with foreign law enforcement counterparts. By the time ICE investigators are involved in a particular case, the alleged violators have already committed customs fraud by evading or attempting to evade dumping duties. ICE is committed to shortening timeframes wherever possible, but many aspects of these investigations, such as the assistance of foreign law enforcement counterparts, and the prosecution of cases by the United States Attorney's Office, are outside of ICE's control.

To further deter these types of customs violations and protect U.S. business interests in the global economy, the U.S. Government should continue to inform the public and foreign industry, about successful prosecutions and awarded penalties resulting from ICE's investigations and enforcement actions.

CBP continues to work with our partner agencies in the Federal Government as well as with foreign law enforcement and the private sector to bring quick and effective legal actions against those that we suspect are circumventing the AD/CVD system. We will continue to build the relationships that will help to streamline the process and demonstrate our collective efforts as a credible deterrent.

UNCOLLECTED ANTI-DUMPING DUTIES

Question. The GAO mentioned in testimony the more than $1 billion in AD duties that have not been collected. These duties are related primarily to just five products—honey, fresh garlic, preserved mushrooms, crawfish, and bedroom furniture from China. What can be done at this point to collect these duties, some of which I believe stretch back to 2004? Some of these collections would go back to the U.S. Treasury to finance the Government—some would actually go back to these industries that have been damaged under the "Byrd amendment". I realize that CBP has a process it follows for debt collection—which on average can take 300 days before even referring the case to attorneys—but if some of these duties were imposed in 2004, that would be 7 years ago which is a considerable length of time beyond 300 days. What exactly is the central issue preventing either collection or the liquidation of any bonds posted by the importers? Please give us more transparency into whether these amounts are collectible; what is the process; and what is the plan at DOC and CBP to resolve this situation.

Answer. [A joint response for ICE and CBP follows:]

CBP is pursuing all of the collection tools available. Most of the debts associated with these products are in litigation against the surety, principal, or both. Also, the principal would be on sanction and they would have immediate suspension of delivery privileges.

Some of these collections would go back to the U.S. Treasury to finance the Government—some would actually go back to these industries that have been damaged under the "Byrd amendment". I realize that CBP has a process it follows for debt collection—which on average can take 300 days before even referring the case to attorneys—but if some of these duties were imposed in 2004, that would be 7 years ago which is a considerable length of time beyond 300 days.

The central issue preventing CBP from collecting the full amount of the debt is the ease in which a company can exit the market either foreign or domestic. While

the debt collection process can add a significant amount of time to the overall collection process, many companies ceased to exist prior to the creation of the debt leaving only the surety to pursue in active collection. Collections from the surety may result in collecting 10 percent of the overall amount due to CBP. Sureties assert many legal justifications to prevent payment to CBP which requires legal review from CBP.

Question. What suggestions do CBP and DOC have to get China to focus on solving this problem?

Answer. [A joint response for ICE and CBP follows:]

CBP continues to work with our partner countries to identify areas of common risk and concern. We work through the World Customs Organization to identify best practices and to develop common action plans. This work with other countries is important to try and address the issue of AD/CVD evasion. We will continue to work with our Federal partners within the executive branch to ensure that they are working with their Chinese colleagues.

QUESTIONS SUBMITTED TO RONALD LORENTZEN

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

CHINESE CIRCUMVENTION

Question. In your testimony, you mentioned that the Department of Commerce (DOC) is currently investigating several allegations of circumvention. Of those, how many involve products from China. Circumvention appears to be a China-centric problem.

Should we have a specific solution to deal with China?

Answer. Although there are many allegations of circumvention involving products from China, attempts at circumvention of our anti-dumping and countervailing duty (AD/CVD) orders are not limited to any particular country. Any laws or regulations pertaining to circumvention should be broad enough to address circumvention in any instance.

What more should we be doing to ensure that products from China do not continue to circumvent and evade our trade laws?

Answer. In our bilateral discussions with foreign governments we must stress the importance of adherence to and enforcement of our trade laws. DOC will continue to work in close cooperation with Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and the Department of Justice to improve information sharing and communication, assist in each others' investigations, and improve our enforcement procedures.

ISSUING DUTY ORDERS

Question. In your testimony, you discuss the process by which you issue AD orders and annually review the entries from the previous year to determine the actual level of dumping or subsidization during the prior 1-year period. Is this process as expeditious as it can be? Can DOC further improve its process to be more responsive to the concerns of U.S. industries?

Answer. DOC requires complete use of the time allotted by the statute in which to gather information and provide all interested parties the opportunity to comment and participate meaningfully in the administrative review process. These proceedings are conducted as expeditiously as possible within existing timeframes, but their complexity and the need to reach legally defensible outcomes results in few instances in which we can finish our work early. However, DOC successfully issues all its preliminary and final results in AD/CVD reviews within the statutory deadlines.

Question. In your testimony, you discuss an investigation of Chinese tissue paper which resulted in DOC directing CBP to suspend liquidation and collect cash deposits. When the liquidation suspension order is issued, does it give the violating company time to "disappear", or is it automatic?

Answer. Once the preliminary affirmative determination of circumvention (preliminary determination) in this case was published in the Federal Register, liquidation was suspended retroactive to the date the circumvention investigation was initiated by DOC. Any subject entries which entered prior to the publication of the preliminary determination in the Federal Register will be reclassified by CBP as AD/CVD entries and suspended from liquidation and the importer will be asked to post cash deposits. While I cannot speculate as to the possibility of an importer "disappearing" and not paying the required cash deposit, any entries on or after the

date of publication of the preliminary determination will automatically require the posting of cash deposits equal to the PRC-wide rate of 112.64 percent.

Question. I understand you have the ability to share information from your proceedings with CBP, and CBP has the same ability. Do you view the current level of information-sharing as adequate?

Answer. Both DOC and CBP willingly share information. However, the sharing of information may be restricted by existing law.

In AD/CVD proceedings, pursuant to 19 U.S.C. 1677f(b)(1)(A)(ii), DOC may disclose proprietary information that it receives "to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle". In light of the new and different factual scenarios that DOC and CBP must evaluate and respond to, the Congress may wish to evaluate whether the linkage to a fraud investigation is the appropriate statutory standard.

CBP regularly shares import information with DOC and provides DOC with access to both the Automated Commercial Environment and the Automated Commercial System. Upon request, CBP also provides entry documentation. When CBP shares data with DOC it is subject to the provisions of the Trade Secrets Act, and typically can only be released under Administrative Protective Order (APO). Under DOC's current practice, this may limit the usefulness of certain information provided by CBP in AD/CVD proceedings. For example, CBP may have information showing that a particular exporter from a country subject to an AD or CVD order is potentially circumventing that order through minor alternations of the merchandise that are performed in a third country. That information, however, may only be made available to DOC officials directly involved in the case and to parties covered under an APO in the proceeding. Such parties generally include counsel for foreign producers, importers, and the U.S. domestic industry. Because the information is proprietary, counsel cannot share it with their clients, who are not covered by an APO. This precludes the domestic industry from filing an anti-circumvention inquiry with DOC.

In other situations, CBP and ICE may be prevented from sharing fraud and evasion information in order to protect the legal integrity of ongoing fraud and evasion investigations. Given that these are criminal investigations, it is reasonable that CBP and ICE do not share such information with DOC as it could become necessary for DOC to place the information on the proprietary case record, at which point it could be viewed by all parties under an APO in the proceeding.

NEW SHIPPERS

Question. GAO has reported that new shippers represent 40 percent of uncollected duties, and has suggested that adjusting the requirements for new shipper reviews so that companies would have to make a minimum amount or value of exports to qualify for an individual AD/CVD rate. DOC agreed with this idea in a November 2010 report to the Congress.

What kinds of changes in authority does DOC believe it needs in order to adjust the minimum amount or value of exports from companies requesting a new shipper review?

Answer. DOC recommends that companies requesting new shipper reviews should be required to meet certain minimum volume and value requirements, requirements which are currently not in the statute. While DOC does conduct a bona fides analysis to determine whether the sale was in commercial quantities, the adoption of volume and value requirements would tighten our standards and help prevent foreign companies from exploiting the new shipper provision in the statue.

What options has DOC explored to reduce the amount of time it takes to complete a new shipper review?

Answer. It would be difficult for DOC to shorten the time required to complete a new shipper review. DOC conducts its proceedings according to the statute and our regulations, which provide deadlines for our preliminary and final determinations. Significant time is required for DOC to collect the necessary data, analyze this information and calculate a dumping margin for the final result. As part of our new shipper review proceedings, DOC issues questionnaires that often require follow-up questions, and gives parties a chance to comment on submissions. While DOC works in an expeditious manner with the resources available, the information and data required to conduct a new shipper review often do not allow DOC to complete its review sooner than the time allowed by statute.

IMPORTANCE OF AUTOMATED COMMERCIAL ENVIRONMENT

Question. How important and valuable to your Department's work on AD enforcement is development and expansion of CBP's Automated Commercial Environment (ACE)?

Answer. ACE is valuable because it allows for more efficient and timely communication between CBP and DOC in the implementation and application of the AD/CVD rates. For example, ACE allows DOC to apply AD/CVD rates on a per-unit amount basis, in addition to the typical ad valorem rates. The application of a per-unit amount is important to counter situations where companies may understate the value of their imported merchandise. ACE is also much more user-friendly and flexible than the old automated commercial system (ACS). Moreover, there are nearly five times as many analysts who have been permitted "write access" to ACE than the number of analysts who had similar access to ACS.

TIME LAG

Question. According to a 2008 GAO report, there is a 3-year lag time by DOC and CBP, between the time goods arrive at the border and the final assessment of duties. This lag allows illegitimate importers to avoid paying duties by ceasing operations or claiming bankruptcy. GAO recommendations to improve duty collection include better communications between the agencies, modifying CBP's standards for reviewing new shippers, and assessing CBP's process for setting bond requirements. What steps have your agency's taken over the past 3 years to implement these recommendations?

Answer. DOC and CBP worked together to design and implement the AD/CVD module of the ACE, CBP's new trade processing system. This part of ACE was deployed on February 14, 2010, and has fostered improved and more efficient communication between the two agencies. Specifically, an inquiry system was built into ACE to address the issue of clarity of duty liquidation instructions. CBP port personnel rely on this system to submit questions to DOC regarding liquidation and other issues, enabling more accurate implementation of DOC's AD/CVD programs. Also a messaging system was built to track the sending and posting of DOC's liquidation instructions. This aspect of ACE enables quicker processing of liquidation instructions by CBP.

Further, DOC's Customs Liaison Unit and members of CBP's AD/CVD Policy and Programs Office meet on a regular basis to discuss AD/CVD enforcement matters. In addition, on-going meetings are now taking place between senior Import Administration (IA) and Department of Homeland Security (DHS) officials to strengthen the dialogue on issues of mutual interest.

CBP also notes that some importers no longer exist by the time CBP issues a bill. If we know these companies will disappear, why is there a delay in issuing the bill? Can this process be expedited administratively or does a law need to be changed?

Answer. The delay in issuing the bill which identifies the final assessment amount owed on entries subject to an AD or CVD administrative review is due to the fact that, until DOC finishes an administrative review covering those entries and any subsequent litigation is completed, the final assessment amount is unknowable. Until the final assessment amount is known a bill cannot be issued. The law provides that after an AD or CVD order has been put in place, the importer must pay a cash deposit of the estimated duties.

Therefore, at the time of entry, CBP does collect a cash deposit on entries at the amount of dumping or subsidization DOC determined to exist in the investigation or subsequent reviews. The amount of potentially uncollectable duties at issue here is the amount, if any, by which the final assessment rate exceeds that cash deposit rate already collected by CBP. In theory, the general import bond required by CBP was supposed to be the secondary source for payment of duties if the importer for whatever reason was not able to pay. However, sometimes those general bonds are insufficient. We understand that CBP requires single-transaction bonds for specific importers to reflect the risk associated with their entries of merchandise, including entries covered by AD/CVD proceedings.

SIDE PAYMENTS

Question. The Wall Street Journal reported in February 2011, that some United States furniture makers have received cash payments from their Chinese competitors in exchange for not asking for an AD review. GAO similarly found that shrimp exporters made cash payments to the domestic U.S. industry.

What are the agencies' view on the legality of this issue and the loss of revenue to the U.S. Treasury as a result of these side payments?

Answer. The alleged cash payments at issue have been described by various parties in terms ranging from "negotiated settlements" to "extortion" and the legality of any such arrangement has not been formally determined by the courts. The Department neither encourages nor condones such agreements, but neither do we have any authority to regulate or prohibit them. The trade remedy laws prescribe specific relief to domestic industries that are injured by unfairly traded foreign imports in the form of duties that are imposed on imported merchandise. The Government has sole authority to provide such relief to harmed U.S. industries and we do so exclusively based on information and grounds which the law permits us to consider. We cannot categorically state that every agreement results in a reduction of revenue to the Treasury because an AD review so avoided may not have resulted in an increase in AD duties due.

DEEMED LIQUIDATIONS

Question. Untimely action by DOC and CBP can impede CBP's ability to process the appropriate amount of AD/CVDs within the required 6-month period. When entries are not liquidated within the specified timeframe, CBP is unable to collect any supplemental duties that might have been owed because of an increase in the AD/CVD rate.

What is the amount of lost revenue due to deemed liquidations?

Answer. GAO's Report to Congress on Antidumping and Countervailing Duties, (GAO–08–391) (March 2008) identified more than 37,000 entries (1.19 percent) out of a total of approximately 3.1 million entries subject to AD duties liquidated from October 2004 through June 2007 that were deemed liquidated. Of those 37,000 entries, the GAO identified 507 entries (1.37 percent) which should have resulted in the collection of additional duties, amounting to $106,000 in lost revenue.

What steps are CBP and DOC taking to reduce the amount of uncollected duties attributable to deemed liquidation?

Answer. As cited in the GAO's 2008 Report to Congress, IA established internal performance metrics on the timely issuance of liquidation instructions, defined as being no later than 15 days after the publication of the pertinent Federal Register notice. IA's Customs Unit regularly works to clarify instructions where necessary for processing by CBP and, on a daily basis, addresses inquiries on liquidation issues raised by CBP.

FASTER REACTION TO INDUSTRY PROTESTS

Question. The June 2010, AD enforcement report indicated that CBP and DOC were working on plans to increase AD collections. One area both agencies agreed to review and update was how you can quickly address protests by industries so that you can begin duty collection activities. The report indicated that DOC had increased staffing levels to process these protests.

Has CBP also refocused its staffing? Have your agencies noticed an improvement in this process over the past year?

Answer. I am not in a position to address questions pertaining to CBP staffing issues. I can note, however, that while DOC had 55 unprocessed protests pending as of December 2010, as of November 2011, due to the increased cooperation and communication between DOC and CBP, there remain only 9 unprocessed protests now under review by DOC.

HUMAN CAPITAL AND PLANNING

Question. In a readout conference, CBP stated that it has no information on what is likely to happen the next day—it could get a few dozen instructions from DOC that cover a limited number of ports and products, or it could get an enormous set of instructions that would require enormous effort to get the liquidation instructions completed.

What kinds of information can you provide to CBP to better enable them to anticipate the workloads that are likely to affect their ability to perform their functions?

Answer. DOC's Customs Liaison Unit and other IA staff will continue to build upon existing efforts to communicate regularly and work with CBP to ensure that CBP is aware of all upcoming DOC decisions that involve the issuance of CBP instructions. The volume of instructions sent to CBP will ebb and flow depending on the number of final results, preliminary determinations, etc. that DOC issues.

Question. DOC allows domestic parties to access confidential information learned in your proceedings under a protective order. Do you feel these protective orders function well? What if these parties could also use that information with CBP, and access CBP information to use with DOC? Would this be helpful?

Answer. The administrative protective orders (APO) administered by DOC function well. APOs encourage interested parties to provide thorough responses to our requests for information while at the same time providing adequate protection of their business proprietary information (BPI).

As stated in my written testimony, DOC works in close cooperation with CBP and ICE to assist them in enforcing the customs laws and ensuring our border measures are effective. DOC regularly exchanges BPI with CBP. Specifically, 19 CFR 351.306(a) of DOC's regulations currently permits the disclosure of an interested party's BPI to an employee of CBP involved in conducting a fraud investigation relating to an AD/CVD proceeding. In turn, CBP transmits BPI to DOC on a regular basis in the form of CBP entry summary forms and supporting documentation. Pursuant to agreements governing the exchange of information between the two agencies, DOC treats such information received from CBP as business proprietary and such information is releasable only under APO in its proceedings. We find such exchanges of information to be very helpful in conducting our proceedings.

This existing exchange of information between DOC and CBP has resulted in indictments, convictions and prison sentences for evaders of AD/CVD orders. To that end, we believe it has been effective is assisting in the enforcement of our unfair trade laws. For example, in June 2011, such cooperation resulted in a 6-year conviction for an individual who attempted to evade anti-dumping duties on steel wire hangers from China through illegal third country mislabeling and wire fraud. This individual was ordered to pay nearly $8 million in restitution and forfeiture as a result.

The Trade Secrets Act generally governs DOC's handling of BPI and the trade laws permit DOC to share BPI with Customs officials "directly involved in conducting an investigation regarding fraud". Thus, while DOC will share with Customs public information it obtains, DOC cannot share BPI with Customs for nonfraud purposes, such as to improve duty collection.

Question. I understand that DOC is proposing to require cash deposits, instead of just bonds, between preliminary and final determinations in original investigations. This appears to be a positive decision. Do you see any reason we shouldn't make a similar change by eliminating the bonding privilege for new shipper reviews? What else can you do administratively to minimize abuse of the new shipper review process?

Answer. Adopting minimum requirements for new shipper reviews will likely increase the reliability of calculated new shipper rates, making it less likely that the rate will be based on a single, unrepresentative high-priced sale.

CHARACTERISTICS OF A GOOD ANTI-DUMPING SYSTEM

Question. GAO reported in 2008 on the U.S. AD system and recommended that DOC create a study on the possible advantages and disadvantages of alternative systems.

What are some criteria the Congress should keep in mind as it considers ways to improve collection of AD duties?

What progress has DOC made on such a study?

Answer. On November 19, 2010, the Department delivered its Report to Congress on the Relative Advantages and Disadvantages of Retrospective and Prospective Antidumping (AD) and Countervailing Duty (CVD) Collection Systems.[1] This detailed report was prepared in response to the conference report accompanying the 2010 Consolidated Appropriations Act.[2]

In preparing its report, the Department sought public comment and held a hearing on April 27, 2010. Those submitting comments ranged from large manufacturers

[1] The United States is the only major World Trade Organization member that uses a retrospective trade remedy system. Under such a system, duties are assessed, not at the time of entry, but rather some time after importation following the opportunity for interested parties to request an administrative review to determine the exact amount of duties to collect based on the level of dumping or subsidization that occurred during the review period. Conversely, under a prospective system, duties are collected at the time of entry based on previously calculated AD margins and CVD rates or, in some countries, previously determined normal values.

[2] The conferees requested that the report address the extent to which each type of system would:

—Likely achieve the goals of remedying injurious dumped or subsidized exports;
—Minimize uncollected duties;
—Reduce incentives and opportunities for importers to evade AD/CVDs;
—Effectively target high-risk importers;
—Address the impact of retrospective rate increases on U.S. importers and their employees; and
—Create a minimal administrative burden.

to small family-owned businesses as well as unions, retailers, trade associations, and members of the trade bar. Comments and hearing participants were divided between proponents of both systems. Generally, representatives of domestic petitioning industries and workers favored the existing retrospective system, arguing that it more accurately and fully offsets foreign dumping and subsidization, while representatives of consuming industries, retailers and importers favored prospective systems because of the greater certainty of duty liability at the time of importation.

The report, available at http://ia.ita.doc.gov/download/rvp/rvp-final-report-to-congress-20101119.pdf, provides general background information on the retrospective and prospective systems and details the certain advantages and disadvantages associated with retrospect and prospective AD/CVD systems. The report also discusses alternative means of addressing the problem of uncollected duties and the steps that DOC and DHS are taking to increase duty collection. Although the administration has not taken a position on possible reforms needed in this area, the November report provides important input for understanding and evaluating this complex issue. An overview of possible advantages and disadvantages of prospective and retrospective systems is set out below.

Retrospective system proponents argued that such systems are better able to remedy dumping because the full amount of dumping can be offset through the administrative review process. Increased dumping that occurs between reviews in a prospective ad valorem system cannot be addressed because any changes in the rate are prospective. Prospective system proponents argued that this situation can be addressed through more frequent reviews or the use of a prospective normal value system which encourages exporters to price at the fair value or be liable for additional duties if they price below that level.

Prospective system proponents argued that the delay between importation and final assessment of duties results in large amounts of uncollected duties which would be eliminated in a prospective system. However, critics of a prospective system counter that the maximum amount collected under a prospective ad valorem system, for example, would be the minimum amount collected under a retrospective system. As noted in the November 2010 report, our examination of collection data found that, under such an ad valorem prospective system, an additional $426 million in Government revenue would have been foregone over a 4-year period. The report goes on to note that the amount of foregone revenue is likely to be reduced but not necessarily eliminated in other types of prospective systems.

Prospective system proponents noted that the system's immediacy and certainty of duty assessment not only benefit consuming industries, retailers and importers by eliminating the risk of substantial retrospective rate increases years after the good is imported, but also reduce incentives and opportunities for duty evasion. CBP also noted that the reduction in administrative burden would free up resources for increased enforcement efforts. However, the November 2010 report notes that while certain administrative burdens, particularly those on CBP, could be reduced under a prospective system, others might increase, depending on the type of system adopted. For example, as noted in the November 2010 report, if a prospective normal value system were adopted, the large number of AD orders and the complexity of some products could result in the issuance of thousands, if not hundreds of thousands, of normal values that would have to be administered by CBP.

EFFECTIVE COMMUNICATIONS

Question. In 2008, GAO reported that there were frequent delays in DOC's transmission of liquidation instructions to CBP and that about 80 percent of the time, DOC failed to send liquidation instructions within its self-imposed 15-day deadline.

How have the agencies improved communication since 2008?

Answer. Timely issuance of liquidation instructions is an element that is included in performance plans and monitored in the annual performance appraisal process. Accordingly, IA Operations issues liquidation instructions to CBP as soon as it can under its current policy and practice. IA's Customs Liaison Unit works closely with CBP to address liquidation questions raised by CBP.

Question. In CBP's statement, it discusses how easy it is for an importer to find and collude with a producer to avoid paying dumping duties. It lists some of these schemes including illegal transshipment, undervaluation, failure to manifest, and misclassification. If a company—or a country—deliberately sets out to engage in these kinds of trade fraud, how can the U.S. Government appropriately tackle this issue?

Answer. If presented with evidence of potential fraud, DOC alerts CBP immediately to that possibility and shares the evidence with CBP. If sufficient to trigger an investigation into commercial fraud, CBP works in conjunction with ICE and

DOJ, with assistance from DOC, in pursuing the investigation, which, as has been noted, has resulted in a number of indictments, convictions, and prison sentences for evaders of our trade laws. For example, in June 2011, such cooperation resulted in a 6-year conviction for an individual who attempted to evade AD duties on steel wire hangers from China through illegal third-country mislabeling and wire fraud. This individual was ordered to pay nearly $8 million in restitution and forfeiture as a result.

PRODUCT CONCENTRATION

Question. CBP reported that uncollected AD duties are highly concentrated among a few products (crawfish, fresh garlic, mushrooms, honey, and wooden bedroom furniture). These five products represent more than 80 percent of the uncollected duties.

Why are uncollected AD duties concentrated among these products? Why don't you focus your limited resources on these products and create task forces as was done for textiles?

Answer. DOC is diligent in its calculation of cash deposit and liquidation instructions, but CBP handles issues of duty evasion and fraud. We continue to work closely with CBP to share information we collect that relates to the above issues. We also have applied a per unit liquidation rate in a number of proceedings in order to counter situations where companies regularly understate the value of their imported merchandise. We note that litigation in proceedings involving the above cases has also delayed the collection of AD duties.

WILLFUL CIRCUMVENTION

Question. As noted in the background section, companies willfully circumvent the provisions of the AD/CVD laws by illegally transshipping goods through an intermediate destination to mask the true country of origin; undervaluing goods to reduce the amount of AD/CVD owed; misclassifying or misdescribing merchandise outside the scope of the order and, therefore, not subject to AD/CVD; and failing to manifest (smuggling) goods. What remedies are there to pursue those who willfully circumvent the laws?

Answer. The issues listed in this question concern customs fraud, which is within the authority of CBP, not that of DOC, and thus would be better addressed by CBP. However, to the extent record evidence is obtained by or submitted to DOC concerning such activity under the unfair trade laws, DOC, by statute, is permitted to and does share the information with CBP's customs fraud division and can take such information into consideration in reaching its AD/CVD determinations.

For example, in an AD or CVD proceeding, if DOC found that a party withheld or did not disclose necessary information during its proceeding, DOC has authority to reject the respondent's submitted data and select and apply an inference that is adverse to that party in determining the appropriate duty rate.

Question. Can the U.S. Government issue, in essence, a "stop importing" order against the company or the individual? Recognizing it is difficult to collect revenues and conduct inspections overseas, what can we do to the U.S.-based representatives of these illegal importers?

Answer. DOC is responsible for administering the AD/CVD laws. The duty rates determined by DOC in its AD/CVD proceedings form the basis of its instructions to CBP to impose cash deposits and collect duties from U.S. importers. While DOC is charged with administering the AD/CVD laws, only CBP is charged with overseeing importer status and behavior.

QUESTIONS SUBMITTED BY SENATOR DANIEL COATS

ANTI-DUMPING AND COUNTERVAILING DUTIES ENFORCEMENT

Question. What steps are CBP, ICE, and DOC taking to improve communication about AD/CVD enforcement efforts with private industry?

Answer. DOC frequently meets with domestic parties who wish to discuss AD/CVD enforcement issues. If it is determined the issue in question may be addressable under the provisions of section 781 of the Tariff Act of 1930 for which DOC is responsible, we may initiate a circumvention investigation. However, if it involves an issue such as transshipment, we will refer the outside party to CBP insofar as that typically indicates an infraction of customs law. In these instances, we will provide the outside party the name of the appropriate office and official at CBP to contact. Occasionally, we will coordinate the scheduling of a meeting between the outside party and CBP and, typically, a member of the Import Administration Customs

Unit will participate in the meeting. If CBP or ICE initiates an investigation, we will frequently request updates on the progress of the investigation. However, CBP and/or ICE cannot always provide us with an update because the ongoing investigation may be confidential or the release of information may be restricted by law.

Question. What is the state of information sharing between CBP, ICE, and DOC? Are there barriers to sharing information that each agency obtains during AD/CVD investigations and verifications? As an example, does CBP have information about shippers that would be useful to DOC?

Answer. DOC, CBP, and ICE maintain strong working relationships and routinely share information to the extent allowed under current laws. When DOC uncovers information that indicates possible evasion of the AD/CVD laws, the information is provided to CBP pursuant to 19 U.S.C. 1677f(b)(1)(a)(ii) which states "Commerce may provide information received in the context of an investigation or administrative proceeding to CBP, to assist the Department of Homeland Security with an investigation into fraud and evasion." Under this same provision, DOC makes available to CBP and/or ICE information in support of those agencies' investigations into possible fraudulent activities by importers of merchandise subject to AD/CVD orders.

For its part, CBP maintains information about exporters, manufacturers, importers, etc., that is critical to DOC's conduct of AD/CVD proceedings, including the conduct of new shipper reviews. CBP regularly shares this information with DOC. Such information is subject to the provisions of the Trade Secrets Act, and typically can only be released under Administrative Protective Order (APO). This may limit the usefulness of the information under current DOC practice. For example, CBP may have information showing that a particular exporter from a country subject to an AD or CVD order is potentially circumventing that order through minor alternations of the merchandise that are performed in a third country. That information, however, may only be made available to DOC officials directly involved in the case and to parties covered under an APO in the proceeding. This impedes DOC's ability to initiate a formal anti-circumvention inquiry into the exporter's activities.

LENGTH OF TIME DEVOTED TO REVIEWS AND INVESTIGATIONS

Question. Each witness has testified on the length of time it takes to do reviews or investigations involving trade enforcement, specifically AD/CVDs. In prepared testimony, Deputy Assistant Secretary Lorentzen mentions the October 2006 final affirmative determination of circumvention of the AD order on petroleum wax candles from China—but the complaint alleging possible circumvention was filed in 2004; and Deputy Assistant Director Ballman speaks to the case alleging transshipment of Chinese honey which began in February 2008 and has resulted in fines and prison sentences—but the most significant indictments did not come for 2.5 years—until September 2010. What can be done to shorten these timeframes so that enforcement has a deterrent effect on others across the trade community?

Answer. DOC, in administering the AD/CVD laws, conducts scope inquiries, including four specific types of statutory anti-circumvention inquiries for:

—merchandise assembled in third countries;
—merchandise assembled in the United States;
—later developed products; and
—products altered in some minor fashion.

DOC is very aware of the potential impact the results of one of these inquires may have and strives to complete all such inquiries within the timelines established for these proceedings. However, occasionally (in some rare or unusual cases), due to the complexity of the issues or in order to most efficiently utilize available resources, the final results of a scope or anti-circumvention inquiry may be delayed.

DOC plays no role in the setting of deadlines for customs fraud cases such as the case involving the transshipment of Chinese honey.

UNCOLLECTED ANTI-DUMPING DUTIES

Question. GAO mentioned in testimony the more than $1 billion in AD duties that have not been collected. These duties are related primarily to just five products—honey, fresh garlic, preserved mushrooms, crawfish, and bedroom furniture from China. What can be done at this point to collect these duties, some of which I believe stretch back to 2004? Some of these collections would go back to the U.S. Treasury to finance the Government—some would actually go back to these industries that have been damaged under the "Byrd amendment". I realize that U.S. Customs and Border Protection has a process it follows for debt collection—which on average can take 300 days before even referring the case to attorneys—but if some of these duties were imposed in 2004, that would be 7 years ago which is a consider-

able length of time beyond 300 days. What exactly is the central issue preventing either collection or the liquidation of any bonds posted by the importers? Please give us more transparency into whether these amounts are collectible; what is the process; and what is the plan at DOC and CBP to resolve this situation.

Answer. Part of the explanation is the manner in which the AD/CVD laws generally operate. For example, a retrospective duty collection system, such as that provided for under U.S. law, allows imports to enter the United States at a cash deposit rate, and then at a later date, after an administrative review proceeding, the final duty assessment is determined and imposed on the entry. At the time of entry, an importer must submit an estimated cash deposit rate based on a prior DOC determination. However, neither the importer nor the U.S. Government knows the exact amount of the final assessment that will be due for that entry until DOC has completed its administrative review. Given the importance of thorough investigation and the delays in assessment that litigation may introduce to assure due process, DOC may not be able to issue a final decision for some time, from 18 to 30 months. Therefore, it is difficult to determine the amount of bonding to require upon entry of the import. In the time between the entry date and final assessment date, the importer may file for bankruptcy or simply disappear. CBP must then resort to trying to collect from the surety that issued a general import bond or a special AD or CVD bond. Because the final duty assessment was not known at the time of entry, these bonds may not cover the total amount of the duty to be collected, resulting in cases of under-collection.

Some suggest the problem could be resolved with the adoption of a prospective system, which other countries employ. A prospective system, however, could present a different set of questions and challenges. In a prospective system the final duties are assessed upon entry at the estimated cash deposit rate calculated in the original investigation or a subsequent review. In such systems, the governments do not impose duties based on the actual margin of dumping calculated for the entry in question; instead, they merely apply the duty rates calculated for prior entries to future entries. As a result, in a prospective system, while there is little question that the actual amount of duty owed will be paid, there is no certainty that the amount of duty owed equals the extent of dumping occurring.

Question. What suggestions do CBP and DOC have to get China to focus on solving this problem?

Answer. We engage China regularly on trade remedy issues in various forums, such as in the Trade Remedies Working Group of the United States-China Joint Commission on Commerce and Trade, as well as in the context of informal bilateral exchanges and meetings. We will continue to engage China on areas of concern regarding our respective AD/CVD regimes, including with respect to systemic issues of evasion and uncollected duties.

Question. Last August, DOC announced 14 proposals to strengthen the administration of the Nation's AD/CVDs laws that could be accomplished through administrative and regulatory changes. Among the proposals were strengthening the certification process for submission of information and adoption of a new methodology for valuing wage rates in nonmarket economies. What is the status of implementation of these proposed changes? How do these proposed changes relate to DOC's enforcement mission?

Answer. We issued a Federal Register notice on February 18, 2011, inviting public comment on the issue of wage rates. After reviewing all of these comments, the Department decided to use a wage rate source which is inclusive of all labor costs, and changed our methodology to use labor costs from a single surrogate country. The Federal Register announcing this change in practice was published on June 20, 2011.

With regard to the certification process, on February 10, 2011, in an interim rule (Interim Final Rule), the Department amended its regulations to strengthen the certifications that accompany the submission of factual information in AD/CVD proceedings. The Department revised the text of both the certification for company or Government officials, as well as the certification for legal counsel or other representatives. On March 14, 2011, the Interim Final Rule became effective for all segments of all proceedings initiated on or after that date. As such, all submissions containing factual information were required to include the revised certifications.

In response to the Department's request for comments on the Interim Final Rule, some commenters discussed the appropriateness of requiring foreign governments and their officials to submit a certification that one commenter claims includes an acknowledgement that the certifying individual may be subject to criminal sanctions under U.S. law. Some parties contend that it is inappropriate for the Department to impose a certification requirement that, these parties claim, subjects foreign governments to potential liability from which they are immune, absent limited excep-

tions, pursuant to U.S. statutory law (e.g., the Foreign Sovereign Immunities Act) and common law. In addition, the new certification requirements include language which certain parties claim impose additional enforceable legal obligations on foreign governments, such as the notation that the Department may preserve the submission for purposes of determining the accuracy of a certification, even if a party otherwise withdraws the submission from the record, and also the language indicating that the submitter must maintain the original of the certification for a 5-year period. These parties contend that the purported additional legal obligations which this language imposes are also contrary to principles of sovereign immunity.

In order for the Department to consider those comments fully and not to impede the progress of ongoing AD/CVD proceedings, which are conducted under strict statutory deadlines, on September 2, 2011, the Department issued the Supplemental Interim Final Rule which permits foreign governments to file certifications in either the format that was in use prior to the effective date of the Interim Final Rule or in the format provided in the Interim Final Rule. The Department also allowed interested parties to submit comments on the Supplemental Interim Final Rule, and the comment period closed on October 3, 2011.

The Supplemental Interim Final Rule is effective as of September 2, 2011, and will remain in effect until such time as a final rule is promulgated. This Supplemental Interim Final Rule only affects the certifications required by foreign governments and does not affect the certifications that other interested parties (i.e., company officials and legal representatives) must file. As such, all other aspects of the Interim Final Rule remain in effect and fully apply to all company officials and representatives.

The Department intends to publish a final rule within 1 year from the publication of the Supplemental Interim Final Rule. This time period is necessary in order to consider fully all aspects of the rule as well as to address all of the comments received, not only the comments submitted in response to the Supplemental Interim Final Rule, but also all of the comments received in response to our request for comments on the Interim Final Rule published last February.

Question. As DOC continues to investigate allegations of circumvention—and these allegations often involve China—has DOC developed any ideas as to what more could be done to prevent these companies from circumventing and evading our trade laws? Please summarize the suggestions made.

Answer. DOC, CBP, and ICE are the agencies primarily responsible for AD/CVD enforcement. DOC conducts the initial investigations and subsequent reviews to determine the actual amount of AD/CVDs to be assessed and also investigates circumvention inquiries. CBP collects AD/CVDs on imports of goods based on the instructions of DOC, pursues those parties that evade the payment of AD/CVDs, and imposes penalties through CBP's civil authorities. CBP also refers potential criminal violations of AD/CVD laws to ICE, which investigates such violations and works together with the Department of Justice (DOJ) to prosecute the responsible parties.

DOC takes these matters seriously and will more aggressively work in close cooperation with CBP, ICE, and DOJ to share information and assist in each others' investigations, and persist in the continued improvement of our methodology and communications.

Question. There are many private and public programs that provide new applicants extensive materials before allowing individuals or companies to participate. Often the information may include the potential penalties for violation of the rules of the program. When a company applies for a new shipper rate with DOC what process does the company go through? Is there an opportunity to educate these new shippers on the penalties for violating our laws and on what constitutes circumvention and why it is a violation of law?

Answer. DOC's regulations at 19 CFR 351.214 set forth in detail the requirements that must be met by exporters requesting new shipper reviews. These requirements include various types of documentation supporting their request, as well as explicit certifications that the requester meets the statutory requirements for being considered a new shipper. The requester must submit documentation that establishes the date of the sale and/or the date it was imported into the United States. In addition, the documentation must show the volume of the first shipment and any subsequent shipments, as well as the date of the first sale to an unaffiliated party. The requester must certify that it was not affiliated with any company that shipped during the investigation and if the requesting exporter is not the producer of the merchandise, the producer must provide the same certification. If the exporter or producer is in an NME country, it must certify that it is not under the control of the central government.

In addition to the documentation and new shipper-specific certifications, the requesting exporter and its counsel must file with the request a certification attesting

to the accuracy and completeness of the information contained in the request. On February 10, 2011, DOC published an interim final regulation (Interim Final Rule) enhancing the certification requirements for all submissions filed in any AD or CVD proceeding, including requests for new shipper reviews. Although parties who knowingly and willingly submitted false statements to DOC were always subject to possible criminal sanctions, these enhanced certifications now include an explicit acknowledgement that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government.

In order for the Department to consider comments regarding foreign sovereign immunity that it received in response to the Interim Final Rule, and not to impede the progress of ongoing AD/CVD proceedings, which are conducted under strict statutory deadlines, on September 2, 2011, the Department issued the Supplemental Interim Final Rule. The Supplemental Interim Final Rule permits foreign governments to file certifications in either the format that was in use prior to the effective date of the Interim Final Rule or in the format provided in the Interim Final Rule. This Supplemental Interim Final Rule only affects the certifications required by foreign governments and does not affect the certifications that other interested parties (i.e., company officials and legal representatives) must file. As such, all other aspects of the Interim Final Rule remain in effect and fully apply to all company officials and representatives.

DOC has posted on its Web site a checklist detailing the requirements for requesting a new shipper review. As such, companies can review the checklist to determine if they meet the requirements. In addition, during the course of new shipper reviews, DOC conducts an exhaustive investigation into the bona fides of the new shipper sale and the new shipper itself, and only if we determine that the new shipper sale was a legitimate commercial transaction and the new shipper is a bona fide business do we calculate an individual dumping margin for the company.

QUESTIONS SUBMITTED TO EDDY HAYES

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

IMPORTANCE OF ANTI-DUMPING DUTIES

Question. Would the American shrimp industry survive without anti-dumping (AD) duties in place to combat unfair foreign trade practices? Please provide an overview of why the U.S. trade remedy laws are important to the U.S. shrimp and other industries.

You noted that the gulf shrimp and crawfish have been hit hard with unpaid duties—43 percent of all unpaid duties since 2001 are in seafood, primarily those two industries. Why have these critical gulf seafood industries been hit so hard with unpaid duties?

Answer. The American shrimp industry would not survive without AD duties on unfairly traded shrimp imports. Nearly 90 percent of the shrimp consumed in the United States is imported. The small market share of domestic producers makes them particularly susceptible to unfair trade practices. In addition, the U.S. shrimp industry is a wild-catch industry, which in our industry's view ensures a higher-quality product than that of foreign producers' farmed shrimp. This fact also means that processors must sell from inventory for that part of the year when the shrimp fishery is out of season. This makes processors very vulnerable to price undercutting in the off-season, when they have already paid for their inventory and must compete for customers on the basis of price.

In the early 2000s, a surge of imports at dumped prices drove the industry to the brink of collapse. The domestic industry was forced to follow the downward spiral in prices, depriving processors of the ability to offer dockside prices that could sustain shrimp fishermen. When fishermen could not receive prices for their shrimp that would cover their costs of fuel and boat maintenance, many of them were forced to tie up their boats rather than catch shrimp. The industry was only able to survive because of the AD duties they obtained on shrimp from six countries. The duties put a floor on prices, moderated import volumes, and stabilized the market for domestic producers.

The shrimp industry is typical of many American industries that need trade relief to remedy distortions caused by unfair trade practices. Effective enforcement of the domestic trade remedy laws ensures that firms and workers can compete on a level playing field on the basis of their productivity, innovation, and efficiency, rather than their willingness to resort to injurious dumping or subsidies. In order for these

remedies to fulfill their intended purpose, however, it is essential that orders be enforced and that AD and countervailing duties (CVDs) be fully collected. Otherwise, the Government is not only deprived of revenue, but the market disciplining effects of the orders are corroded, the integrity of the system is compromised, and industries suffer continued injury even with orders in place.

The shrimp and crawfish industries have borne the brunt of uncollected duties, at least according to public data on the rate of undercollection published by Customs. Overall, orders on agricultural and aquacultured products have been most vulnerable to duty undercollection. One of the reasons is that such sectors of the economy tend to be more fragmented than manufacturing industries such as steel. Foreign producers and importers in these industries appear and disappear and with much more frequency, making it much harder to track which firms are legitimate producers, who the producer/exporter is in fact on imports entering the United States (making collection of the correct cash deposits more difficult), preventing gaming of the system through surges in imports allegedly from an exporter with a low-cash deposit rate which are later found to be dumped at much higher rates, and the inability to collect moneys owed from importers (partially attributable to the fact that exporters, through an agent, can be an importer without any physical presence in the United States) if they are thinly capitalized.

REQUIRE CASH DEPOSITS

Question. You suggest U.S. Customs and Border Protection (CBP) eliminate the posting of bonds for new shippers and require cash deposits instead.

Do you know if CBP can make this change administratively or does it require a change in law? Would this have a negative impact on other U.S. companies?

Answer. The statute gives CBP the option of allowing new shippers to post bonds rather than cash deposits during the pendency of a new shipper review. The privilege has become the standard practice, with all new shippers enjoying the ability to import under bonds while a review is pending. While it may technically be permissible for CBP to not allow new shippers to take advantage of the bonding privilege, a legislative solution that eliminates the privilege will be much easier to administer with more legal certainty. Indeed, the Congress did once suspend the bonding privilege before on a temporary basis from August 2006 to July 2009 as part of legislation, the Pension Protection Act which passed the Congress in 2006. The privilege can just as easily be revoked permanently with a similar legislative change.

The change would not have a negative impact on legitimate importers, as they will be entitled to a return of any overpaid cash deposits, with interest, if their final duty liability determined at the end of a review is less than the cash deposit amount. The major impact of the change would be to provide better security for Government revenue that is owed and ensure that new shipper reviews are not abused to bring in dumped product but evade duty liability.

Question. You speak of CBP being unable or unwilling to share (or use) information provided by shippers for security purposes also to use it for trade enforcement.

Do you know why this information wall exists? Has this been raised with CBP?

Answer. CBP is prohibited by law from saving much of the shipping and container information that it collects from importers as part of the enhanced "10 + 2" system for security purposes for trade enforcement purposes. The information wall was imposed as part of the legislation that created the new "10 + 2" requirements, reportedly at the request of the import community. We believe that CBP would like to access this information for trade enforcement purposes, as it would be helpful in identifying circumvention, transshipment, and other evasion schemes. A legislative change would be required to remove the information wall and permit CBP to use this information for trade enforcement.

CONCLUSION OF HEARING

Senator LANDRIEU. Okay? All right. The subcommittee is recessed.

[Whereupon, at 11:54 a.m., Wednesday, May 25, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

○