

STRENGTHENING TRADE ENFORCEMENT TO PROTECT AMERICAN ENTERPRISE AND GROW AMERICAN JOBS

WEDNESDAY, JULY 16, 2014

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

The subcommittee met at 2:39 p.m., in room SD-138, Dirksen Senate Office Building, Hon. Mary L. Landrieu (chairman) presiding.

Present: Senators Landrieu, Coats, and Cochran.

OPENING STATEMENT OF SENATOR MARY L. LANDRIEU

Senator LANDRIEU. Good evening. I welcome the panel to this very important hearing and particularly our witnesses from Louisiana, who I will introduce shortly.

I apologize for the slight delay. We had a vote and just got caught up on the floor. And I thank my colleagues for their patience.

I am very pleased to welcome you all and to hold this very important hearing that Ranking Member Coats and I spoke about in our continued focus on strengthening trade enforcement to protect American jobs and businesses here at home.

For Senator Cochran, who joins us here today, happily, he has been focused on this issue for quite some time and a real partner with me to make sure that the Gulf of Mexico businesses are treated fairly.

So I thank Eddie Hayes and Joe Sanroma, who have braved some weather difficulties to be here today, to bring your perspectives.

I am going to try to go quickly through my statement and submit some of it to the record, and turn to my Ranking Member Coats for his opening statement, and Senator Cochran, if you would like to say anything. And then we will get right to our hearing.

Over 3 years ago, I brought this subcommittee together to examine the impacts of trade enforcement: Are we doing enough? Could we do more? Why is enforcing our trade rules so important for creating and maintaining jobs in America?

This subcommittee is an appropriations subcommittee and has a responsibility for this effort, and we want to make sure it is being done correctly.

I understand from staff this was the first time an appropriations subcommittee has ever called such a hearing, and I understand that some improvements have been made since then.

I have worked closely with members of this subcommittee and the Department of Homeland Security (DHS) to institute several important and necessary changes to our system to better protect American jobs, to collect duties that are owed.

As of today, we are collecting more duties and catching more illegal importers than ever before, although there is much work to be done.

In this hearing, I want to revisit the issue of dumping with a focus on some domestic products that represent some of the most egregious violations.

The Department of Homeland Security has been in the news recently for the role it plays in keeping our borders safe and secure. However, not much recent media attention has been focused on the very important role that Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) play in keeping our domestic producers at a level playing field with the rest of the world.

And in fact, after the Internal Revenue Service, Homeland Security is the Federal Government's second-largest source of collection revenue. In fiscal year 2012, companies imported approximately \$2.37 trillion in goods and deposited \$3 billion in estimated duties into the Treasury.

Together with the Department of Commerce, these agencies assess duty rates on imported goods, collect those duties, and ensure that goods entering the Nation's stream of commerce are traded fairly and are safe for customers.

Unfortunately, many U.S. businesses and their employees are harmed when other countries and companies unfairly and illegally dump their goods on our market. Those actions, which are frequently deliberate, undercut the cost of products made in this country, thereby increasing the cost of production, reducing profits, and, in some extreme cases, putting people completely out of business.

There is no doubt that illegal dumping costs Americans businesses and jobs.

Since the last hearing, we have instituted some changes to the way CBP and ICE tackle these issues.

First, at my request, the commissioner created a division within CBP dedicated solely to the collection of antidumping and countervailing duties.

Second, CBP has created Centers of Excellence and Expertise at ports across the country to focus on specific industries prone to illegal dumping. I hope we have a graph to put up on that.

Third, CBP and ICE have created red teams who are tasked with thinking like international criminals trying to exploit the U.S. trade system. These teams continue to help to identify and close loopholes in our systems.

And finally, Senator Coats and I have appropriated \$9 million additional dollars over the last 3 years for increased use of single transaction bonds, which allow the United States to collect unpaid duties in a more effective manner.

We will hear more about some of these successes that have occurred, but I am still concerned that we could do more, and we can be better at protecting American businesses and jobs, and enforcing the laws that are on our books.

Two of the commodities we will be talking about today, crawfish and shrimp, are very important to Louisiana, to the Gulf Coast, and to other coastal areas, but particularly the Gulf Coast.

They account together for over 15,000 jobs in my State of Louisiana. In 2014, Louisiana produced 68 million pounds of shrimp. During that same time, however, the United States imported 455 million pounds of shrimp from countries like Thailand, Ecuador, India, Indonesia, and China.

Since 2005, importers of shrimp from China have failed to pay more than \$77 million in dumping duties, some of which is supposed to be redistributed to those injured in the United States and to shrimpers in my State. And I want to make sure that we continue to push that issue.

Continued failure to collect these duties is fiscally irresponsible, and it further threatens our Gulf Coast seafood industry, of which we are very proud.

In March 2008, the Government Accountability Office reported that, as of September 2007, CBP had been unable to collect more than \$600 million in antidumping and countervailing duties imposed to remedy unfair trade practice. The number has now grown to \$2 billion.

This is money that is owed to businesses for unfair and illegal dumping.

In addition to these products that are so important to Louisiana, we want to focus today on steel and steel pipe, which is important to both Louisiana and Indiana, steel tubing, catfish in Mississippi, honey, garlic, wooden bedroom furniture. These are just a few of the many industries that are important to the States of Mississippi, Indiana, Louisiana, and others, that are affected when this system that we have designed does not work, or fails to work as well as it could.

We look forward to hearing from our panel today. And again, I thank all of you for the testimony that you have submitted to our subcommittee.

And I am going to continue to stay focused on this issue, because it means jobs for America that are threatened because we at the Federal level are somehow failing to do our duties as well as we should to make sure that you are being protected under the trade laws that we have passed.

Senator Coats.

STATEMENT OF SENATOR DANIEL COATS

Senator COATS. Madam Chairman, I appreciate your statement, particularly our staying engaged on this issue. There are so many things going on now through the Department of Homeland security that potentially could be distracting or take our attention, and it is legitimate, away from this mission of DHS, but this is an important one.

And the Chairman just announced and said that she wants to keep it prominent, and I agree with that. I think it is important

to our economy and the future of our country, and a lot of jobs in America. So I am glad to hear that.

We don't produce crawfish or shrimp in Indiana. If we do, you probably wouldn't want to buy it.

It would not come out of the kind of water that gives you the best shrimp and crawfish.

But we do produce steel. We are the largest steel producing state in the Nation, to the surprise of many people. Nucor is one of the key industries in our State that contributes to that steel.

Rick Blume, I am awful glad that you are here speaking on behalf of Nucor. I know you are also speaking on behalf of the steel industry, in terms of countervailing duties and dumping and a number of other issues, and I am looking forward to hearing from you.

PREPARED STATEMENT

I am going to shorten my remarks also, so that we can go forward here.

Madam Chairman, I will submit my full statement for the record. [The statement follows:]

PREPARED STATEMENT OF SENATOR DANIEL COATS

Madam Chairman, thank you. It is good to see you this afternoon.

I'd like to welcome our witnesses as well—it is a pleasure to have you before the Subcommittee to discuss such an important topic.

As you all know the Department of Homeland Security has a vast mission, from preventing terrorism to enforcing trade laws, to providing disaster relief. Today we will focus narrowly on the Department's mission of trade facilitation and enforcement.

We have with us today on our second panel two of the most relevant agencies to that mission: Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). In addition to facilitating the legitimate flow of people and goods across our borders, CBP is the second-largest generator of revenue for the US government. Every year, CBP's Office of Field Operations collects \$40 billion dollars in duties, fees, and tariffs. ICE, the Department's investigative arm, is the sole agency with the authority to conduct investigations and convict commercial fraud violations. In fiscal year 2013, ICE opened 796 new investigations and made 178 criminal arrests related to commercial fraud. I think this is good progress and I am proud of the work done by the men and women at CBP and ICE.

I mention the Department's myriad responsibilities because in a time of a constrained budgets, there will naturally be a competition for resources. Agencies are being asked to do more with less and I'm eager to hear about innovation and co-operation with the private sector—representatives of which are sitting before us—on how to do just that.

Trade enforcement is important. Whether it is anti-dumping orders, intellectual property rights protection, or safety of commercial merchandise, we must be vigilant. In my State of Indiana, we have a number of industries that rely on anti-dumping and countervailing duties to level the playing field. I look forward to hearing from the private sector on the health of their relationship with the Department of Homeland Security and how the Department is partnering with them.

Madam Chairman, that concludes my statement. Thank you.

Senator LANDRIEU. Thank you, Senator Coats.
Senator Cochran.

STATEMENT OF SENATOR THAD COCHRAN

Senator COCHRAN. Madam Chairman, I am pleased to join you and Senator Coats in welcoming our panel, and we look forward to their testimony and our review of policies and laws that affect the Gulf of Mexico.

Thank you.

Senator LANDRIEU. Thank you very much.

I want to note, before we start the first panel, and I will introduce them just in a moment, I would like the Acting Assistant Commissioner for the Office of International Trade to stand. He is in the room.

Thank you.

And also the Acting Assistant Commissioner of the Office of Field Operations and the Assistant Director of International Affairs, thank you all for being here to listen to the first panel. And we will look forward to your testimony.

Thank you all. You can be seated.

I wanted to have the first panel go first so that our officials responsible for carrying out these duties could hear directly from you all on the ground what is actually happening, have we made some progress, which we believe we have made some, what else needs to be done.

So with that, let me welcome the panel. Mr. Edward Hayes, partner at Leake & Andersson, who is representing many of the shrimpers and the shrimp industry; Mr. John Steinberger, counsel who is going to give us insight into the crawfish situation; Mr. Rick Blume, general manager of commercial steelmaking at Nucor, which not only has an Indiana connection but a Louisiana connection in St. James Parish—we welcome you; and Mr. Joe Sanroma, executive member of the Honey Producers Association, which we thought could use a little attention. And we thank you for coming.

So, if you will start, Mr. Hayes, with a 4- to 5-minute opening statement, and then we will have some questions and then move to the second panel.

STATEMENT OF EDWARD T. HAYES, PARTNER, LEAKE & ANDERSSON, LLP

Mr. HAYES. Thank you, Madam Chairman. Good morning, Madam Chairman, Ranking Member Coats, and Senator Cochran. It is a great pleasure to be here today to testify on these important matters.

My name is Eddie Hayes. I am a partner at the law firm of Leake & Andersson in New Orleans, Louisiana, where I lead the firm's international trade practice. I am also an adjunct professor of law at Tulane University, which is no threat to your football teams, even Indiana, I am sure, certainly not LSU and Ole Miss.

Before I start my testimony, I want to thank the entire subcommittee and especially the staff who has worked so hard on this important legislation. We think this is a very important first step in addressing these important issues, and I wanted to say thank you.

I am very privileged to represent the American Shrimp Processors Association. Most shrimp processors are successful, multigenerational, small businesses. We are concentrated on the Gulf Coast in Louisiana, Mississippi, and Alabama, and often we are the largest employers in our communities. We work closely with the boats and the docks, and our communities understand the importance of trade enforcement and trade remedies to their livelihoods.

Louisiana's shrimp industry supports 14,000 jobs and contributes \$1.3 billion to our economy in Louisiana. In 2012, more than 100 million pounds of shrimp were harvested in Louisiana.

Due to illegally dumped imports, the American shrimp industry has lost jobs and profits, and has fought to obtain and maintain trade relief.

This dumping has occurred at sizable levels. For example, the China-wide dumping margin is almost 113 percent. Basically, that means that they are underselling fair market value by 113 percent, which is astonishing.

We deeply appreciate all of the support that the industry has received from this subcommittee, including the testimony from Chairman Landrieu and Senator Cochran at the International Trade Commission during the sunset review in 2011 and then also the important countervailing duty cases that we brought last year.

We are very grateful that you recognize that systemic government and industry distortion of the shrimp market is only growing in countries like China, India, Indonesia, Malaysia, Thailand, and Vietnam, and it must be stopped.

And we commend Chairman Landrieu and Senator Cochran for their bipartisan leadership for the shrimp industry on a range of issues from Hurricane Katrina to the gulf oil spill and to trade. We have had our fair share of challenges down there. And Madam Chairman and Senator Cochran have been excellent leaders for those battles.

I also want to briefly mention the crawfish industry. There are more than 1,800 crawfish farmers and fishermen in Louisiana alone, and crawfish contributes nearly \$120 million to our economy each year. It is a very important industry.

Like our shrimp industry, America's crawfish industry has lost jobs and profits from illegally dumped imports from China. And it also has secured trade relief.

The China-wide dumping margin on crawfish tail meat is over 200 percent. So if you thought 113 percent was bad, try 200 percent.

But America's seafood industry has not seen the full measure of relief intended under the law due to duty invasion, transshipment, and circumvention. Overall, our seafood industry has been the hardest hit by duty collection shortfalls.

Unpaid duties on seafood alone account for about 40 percent, or \$689 million, of the more than \$1.7 billion in unpaid antidumping and countervailing duties since 2001. Crawfish and shrimp account for the vast majority of that.

And duty nonpayment on shrimp alone has deprived the U.S. Government of \$77 million.

The shrimp industry has worked hard to tackle transshipment and circumvention firsthand, as such schemes are quite common. Recently, there was evidence in a criminal investigation involving Chinese and Vietnamese shrimp producers that indicates transshipment from Vietnam and maybe China through Cambodia.

And remember, members of the subcommittee, that Vietnam is a party to the Trans-Pacific Partnership (TPP) negotiations, which we will hopefully have a chance to discuss later.

A large number of companies, and this is the most shocking of all, actually blatantly advertise providing transshipment services over the Internet. One company, for example, has an actual Web page entitled, "Transshipment: The best way to avoid antidumping."

And let me paraphrase from that Web site: Are you looking for a way to avoid antidumping? We can help you provide the documents to your government, certifying that the products are made in other low-tariff countries instead of China.

This site goes on to mention Malaysia as one of the possible transshipment sites. And I just want to remind the members again that Malaysia is a party to the TPP negotiations.

As you can see, Madam Chairman, my time is up. I have just a few more comments, if I can have another minute. Thank you.

As you can see, these problems have seriously compromised the integrity of our industry trade relief, and they have cheated the Government of revenue at a time when fiscal concerns are as important as ever. We strongly support the trade enforcement objectives provided in S. 2534, and we thank Chairman Landrieu for securing the \$3 million for duty collection and appreciate the emphasis on the uncollected duties from China.

We also thank the Chairman and the subcommittee for urging the Office of the United States Trade Representative (USTR) to include duty evasion and the stopping of it in the principal negotiating objectives of the USTR, and we think that ought to be part of the Trade Promotion Authority (TPA).

One other thing that I will mention before I close is the insufficient bonding requirements are a particularly acute problem in agriculture and aquaculture, where fragmentation in foreign industries allows players to appear and disappear without a trace. And I am sure our Customs colleagues will recognize that.

While all of the measures in your legislation are critically important, the last thing I want to mention is it is critical for us to support the continuation of the current retroactive system of collecting duties.

It is by far the most fair and transparent system in the world, and it is extremely important to actually collect the correct amount of dumping duties.

PREPARED STATEMENT

In conclusion, Madam Chairman, the spotlight today on these issues is welcome. I thank you for the opportunity to provide comments, and I look forward to questions.

[The statement follows:]

PREPARED STATEMENT OF EDWARD T. HAYES

Madam Chairman, Ranking Member Coats, members of the Committee, 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, where I teach a seminar on the WTO. I am a member of the Louisiana District Export Council, part of the U.S. Department of Commerce Commercial Service, and a member of the Board of the New Orleans World Trade Center. I serve on the roster of panelists eligible to adjudicate trade disputes under Chapter 19 of the North American Free Trade Agreement. I also represented the city of New Orleans on the

U.S. Trade Representative's Intergovernmental Policy Advisory Committee from 2011 to 2013.

I am also privileged to serve as counsel to the American Shrimp Processors Association, the largest national organization of shrimp processors. Many of these processors are small businesses. Often, they are the largest employers in their communities. We work closely with the boats and docks, and our communities understand the importance of strong trade enforcement to their livelihoods.

Louisiana's shrimp industry in particular supports over 14,000 jobs and contributes 1.3 billion dollars to Louisiana's economy.

As a result of illegally dumped imports of shrimp from several countries, the American shrimp industry has lost jobs and profits. Over the past decade, the industry has fought to obtain and maintain relief from these imports.

This dumping has occurred at sizeable levels. For example, the China-wide entity dumping margin on shrimp is almost 113 percent.¹

We are deeply appreciative of all of the support the industry has received from this Committee, including the powerful testimony that both Chairman Landrieu and Senator Cochran provided to the U.S. International Trade Commission in its 2011 sunset review of the antidumping orders on shrimp, which resulted in a vote to keep the orders in place.

We also appreciate Chairman Landrieu's and Senator Cochran's testimony supporting the countervailing duty cases against shrimp from seven different countries last year.

We commend Chairman Landrieu and Senator Cochran for their bipartisan leadership for the shrimp industry on a range of issues from Katrina to the Gulf Oil Spill to trade.

I would also like to mention the crawfish industry. There are more than 1,800 crawfish farmers and fishermen in Louisiana alone, and crawfish contributes nearly 120 million dollars to Louisiana's economy each year.

Like our shrimp industry, America's crawfish industry has lost jobs and profits from illegally dumped imports from China, and it has secured trade relief. The China-wide entity dumping margin on crawfish tail meat is over 200 percent.²

But America's seafood industry has not seen the full measure of relief intended under the law, due to duty evasion, transshipment, and circumvention.

In fact, America's seafood industry has been perhaps the hardest hit by duty collection and enforcement shortfalls. As the Committee is aware, Customs has reported more than 1.7 billion dollars in unpaid antidumping and countervailing duties since 2001. Unpaid duties on seafood alone account for about 40 percent, or 689 million dollars, of that total.³ Most of that amount is due to duties that have not been paid by importers of crawfish and shrimp.

Duty non-payment in the shrimp industry alone has deprived the U.S. Government of more than 77 million dollars in tariff revenue since the orders were imposed.⁴

The shrimp industry in particular has also had to tackle transshipment and circumvention firsthand. In recent reviews of the antidumping duty orders on frozen warmwater shrimp from China and Vietnam, a party submitted evidence from a Federal criminal investigation of the president and owner of a U.S. importer that was an affiliate of Chinese and Vietnamese producers, which indicated transshipment of shrimp from Vietnam and possibly China and other countries through Cambodia to avoid duty liability.⁵

Unfortunately, such schemes are quite common.

Indeed, some companies even blatantly advertise providing transshipment services for the purposes of duty evasion over the Internet. One company, for example,

¹ See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 Fed. Reg. 53,586 (Dep't Commerce Sept. 4, 2012) (finding a PRC-wide entity dumping margin of 112.81 percent).

² See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of the Third Expedited Sunset Review of the Antidumping Duty Order, 79 Fed. Reg. 13,278 (finding a PRC-wide entity rate of 201.63 percent).

³ ASPA's calculations based on CDSOA data reported by CBP for fiscal years 2001–2013, available online at <http://www.cbp.gov/trade/priority-issues/adcvd/continued-dumping-and-subsidy-offset-act-cds0a-2000>.

⁴ *Id.*

⁵ Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 Fed. Reg. 53,856, 53,857 (Dep't Commerce Sept. 4, 2012) and accompanying Issues and Decision Memorandum at 2–6, 28.

has a webpage entitled “Transshipment, the Best Way to Avoid Anti-dumping.” It states as follows (typos in the original):

Are you looking for a way to avoid antidumping? Transshipment may be the best way at present.

Nowadays, Transshipment is the best way to avoid anti-dumping duties. Now, we will tell you how it helps you to avoid antidumping and how it reduces your cost.

As we know, your country doesn't charge high tariffs for all the country but China. Now we can help you to provide the documents to your government certifying that the products are made of other low tariff countries instead of China.

How can we do it?

1st: We need to export those products (made in China) to other country (just as Malaysia). It is easy for us to do it and which just need cost your little money.

2nd: We will finish custom clearance for those cargos in Malaysia and then send it to our warehouse. Picking up those to re-load it to the new container (booking with Malaysia).

3rd: Finding a local factory to provide all the original documents to your country. And then export the products to your instruction Post.

After the operation of above, the original will be changed from China to Malaysia. You just need to pay the normal import duty.

We are experienced in it for many years, and we are confident that we have the ability to help you to lower the import tariff.⁶

These problems have seriously compromised the integrity of US trade laws, trade relief for American industries and have cheated the Government of tariff revenue, at a time when fiscal concerns are as important as ever. The losses due to unpaid duties alone exceed 1.7 billion dollars since 2001; it is impossible to quantify the additional amounts lost to transshipment, circumvention, and other schemes.

If the IRS only collected two out every three tax dollars 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.

The Government has tried to beef up enforcement actions, and there have been some headlining cases in recent years. The shrimp importer case I mentioned is one example.

But duty evasion persists, and more must be done.

According to a GAO report, Customs received approximately 400 allegations of evasion from 2008 through August 2011. Of those, about half could not be verified and no further action was taken, roughly one quarter were verified and referred to the appropriate port or to ICE for enforcement, and the rest were still pending as of September 2011.⁷

And according to Customs' own AD/CVD enforcement data, in fiscal year 2012, Customs received 149 allegations of duty evasion and noncompliance. Of those 149 allegations, Customs confirmed and took action on 15 violations and found no violation or insufficient information for 11 allegations.⁸ Thus, Customs either took action or determined no further action was needed within a year or less on only 17 percent of allegations.

For these reasons, we strongly support the trade enforcement objectives provided in Senate Bill 2534, and Chairman Landrieu and this Committee's trade enforcement priorities, and we hope this will provide an opportunity to improve the trade remedies system.

We understand that resource constraints often limit Customs' enforcement efforts, and so we thank Chairman Landrieu first and foremost for securing 3 million dollars for duty collection.

We appreciate Chairman Landrieu's specific emphasis on the need for Customs to work to collect the 1.6 billion dollars in uncollected antidumping and countervailing duties from China. As is the case with uncollected duties overall, imports from China account for the vast majority of uncollected duties on seafood—almost 58.9 million dollars in uncollected duties on shrimp, and 582 million dollars in uncollected duties on crawfish.

We also thank Chairman Landrieu for directing Customs, Commerce, and the Department of Treasury, to report to the Committee on how requiring cash deposits of estimated duties during new shipper reviews would strengthen the administration

⁶“Transshipment, the Best Way to Avoid Anti-dumping,” available on-line at <http://reexport.en.busytrade.com/products/info/1796943/Transshipment-the-Best-Way-To-Avoid-Anti-dumping.html> (last visited July 11, 2014).

⁷Government Accountability Office, Antidumping and Countervailing Duties: Management Enhancements Need to Improve Efforts to Detect and Deter Duty Evasion, GAO Report No. GAO-12-551 (May 2012) at 28-29.

⁸CBP, “Fiscal Year 2012 AD/CVD Enforcement Results” (Jan. 14, 2013).

of the Nation's AD/CVD laws. Currently, a new exporter or producer enjoys the privilege to post bonds rather than cash deposits while it awaits the results of a new shipper review. This should be abolished. Importers of merchandise from new shippers should face the same cash deposit requirements as importers from other companies that have not received individual rates.

The problem is that the bonds 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 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.

Indeed, the GAO has found that the chief obstacle to ensuring collection of retroactively assessed duties is the absence of adequate security, such as bonds.⁹

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. That is one of the reasons why seafood alone accounts for about 40 percent of uncollected duties.

We further thank Chairman Landrieu for directing Customs to review the Advisory Committee on Commercial Operations membership and consider adding affected domestic industries to sit on its Trade Enforcement subcommittee. The domestic industry has the most vested interest in enforcing our trade laws and should have a voice on that committee.

We welcome Chairman Landrieu's directives to Customs to provide public reports on its collection and enforcement efforts, as well as the challenges that prevent collection. So far, Customs has not been required to report on its enforcement activities to the public in a comprehensive or systematic manner.

We support Chairman Landrieu's efforts to urge the United States Trade Representative to include in the principal negotiating objectives of the United States for trade agreements the objectives of preventing evasion of U.S. trade remedy laws through information exchanges and site visits.

We also appreciate Chairman Landrieu's encouragement of a joint legislative proposal from the Department of Commerce and Customs to remove legal barriers to the sharing of information between those two prime trade compliance and enforcement agencies. Customs should forward information about duty evasion to Commerce so it can be part of its own record, and so that parties to the Commerce proceeding can access that information under protective order. Similarly, parties should be allowed to share confidential information learned in a Commerce proceeding with Customs without violating their confidentiality obligations.

In addition to information sharing between the Commerce and Customs, information sharing between the domestic industry and Customs should also be encouraged. The ability of Customs to share useful information with the domestic industry is currently hampered by legal restrictions such as the Trade Secrets Act. Procedures akin to Commerce's administrative protective orders should be available at Customs. Customs should also 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.

Finally, we further support automation of single transaction bonds by Customs to improve duty collection and to develop the necessary expertise to verify the adequacy of such bonds. We hope that Customs will review and reassess bonding requirements based on the expertise it gains from this process.

While these improvements to the trade remedy system are needed, we strongly support the continuation of the current retroactive system for assessing AD/CVD duties. The retroactive system is the most accurate and fair way to determine the proper duty margins. Moving to a prospective system, as some have advocated, would not solve the problem of duty under-collection; it would simply mask the problem, undermining the relief domestic producers are due under the law.

Under the current system, duty margins can be reexamined each year, if an administrative review is requested. Through the administrative review, Commerce can

⁹ Written Testimony of Timothy E. Skud, U.S. Department of the Treasury, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy Before the Subcommittee on Trade, Committee on Ways and Means (May 20, 2010), available at http://waysandmeans.house.gov/media/pdf/111/2010may20_skud_testimony.pdf.

determine whether the dumping or subsidization has increased or decreased retrospectively based on prices, costs, levels of subsidization and other data contemporaneous to the importation of the merchandise. Commerce then can adjust the margins up or down accordingly. This method ensures that the margins reflect the market reality with respect to sales of the particular imported merchandise.

Only a retrospective system provides a remedy for under-assessment of duties due to increased dumping or subsidization. Other countries' current prospective systems permit duty refunds for importers, but do not permit increases in duty assessments after importation where dumping or subsidization has increased. Importers could get a low rate initially and then increase dumping in the future. A prospective system would remove the consequences for increasing dumping or subsidization in the future. Thus, a prospective system could allow—and even encourage—foreign producers to hide increased dumping and subsidization, and give domestic producers no remedy for this practice.

Congress should not permit such a foundational shift that would make our system less accurate and less fair.

And a prospective system would not solve the problem of evasion tactics like transshipment and circumvention. Those tactics are used to falsely claim that imports are not subject to AD/CVD duties at all, and this would persist whether duties are assessed prospectively or retrospectively.

A prospective system is not the answer.

In sum, investment in trade enforcement will bring a concrete revenue return to the Government from companies that do not follow the trade rules, and will save American businesses and jobs. This is money well spent. At a minimum, we should ensure that Customs has the resources it needs, and we should ensure and reinforce the integrity of our trade remedy laws.

I thank the Committee 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 very much, Mr. Hayes.

Mr. Steinberger.

STATEMENT OF JOHN C. STEINBERGER, OF COUNSEL, ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

Mr. STEINBERGER. Thank you very much for having me here today. My name is John Steinberger. I am of counsel with the Washington, DC, law firm of Adduci, Mastriani & Schaumberg. We represent crawfish processors in Louisiana, who collectively account for about 85 percent of that industry, all of which is now in Louisiana.

Customs has a hard job, no doubt about that. But I am here to talk about a small part of that job that ought to be easy, and that is collecting on bonds posted by U.S. insurance companies.

Here is how this is supposed to work. Crawfish tail meat comes in from China. It is subject to antidumping duties. It has been since 1997. The final duty rate is never known at that point when it comes across the border.

So Customs is supposed to collect a security deposit from the importer. And usually that is supposed to be cash, but if it is a new shipper, it can be a bond instead.

The bond has to be from a company approved by the U.S. Treasury to issue bonds to secure payments to the United States. So a big company, like Hartford or Great American or Washington International, issues the bond for that shipment. And the bond says, if the importer does not pay this money to the United States, we will.

The product then goes in. It gets sold. We don't know anything else about it. And a year or 2 later, the final amount of the duty assessment becomes known. Typically, it will be 200 percent or so.

And the importer doesn't pay. The importer may have gone belly up, may have disappeared, may never have existed in the first place. It may have been a shell corporation or whatever.

So at that point, Customs is supposed to go back to the insurance company and say we are calling in this bond, pay up. The conditions for that bond are pretty simple. If the importer does not pay, the bonding company pays, no ifs, ands, or buts about it.

That is the whole idea of a bond. It is security. It is a guarantee. It is supposed to be almost as good as cash. And that is why the U.S. Government doesn't trust just anybody to issue these bonds. It is also why the bonding companies charge importers a lot of money for issuing the bonds.

So the problem is that for some reason Customs is not getting that bond money. Some of it is supposed to go to the industries that are harmed by these imports.

The importers sold its products. They got their money. The bonding company got its premium. They got their money. And the U.S. industry is left there holding the bag, because Customs is not doing its job. And this has been going on for over 10 years, as you all well know, because you have been working on it for about that long.

We are to the point where, depending on which set of figures you look at, you may have \$1 billion or \$2 billion in uncollected duties on things like crawfish, honey, garlic, mushrooms. Those are the four big ones. Now we have shrimp, as you just heard.

Out of that, as best we can tell, at least \$600 million is secured by bonds, over 8,000 of those bonds. And of that, we guess about \$150 million is for crawfish.

And so far, Customs has initiated actions to collect about 10 percent of it.

Chairman Landrieu, you and the subcommittee know about this because you have been trying to get answers and solutions from Customs for a long time. And last year, you did a great thing in the July 2014 appropriations report. You asked Customs, on each order, we want to know the bond number, the date of entry, the face value, the liquidation status, the date of liquidation, the amount of principal. Tell us if you have demanded payment. Tell us if it is in litigation. If so, where is that litigation? If not, how are you going to get the money? And so on.

It is a very long list, highly detailed. And we sure welcome that, because previously, the answers had been mushy.

The deadline for Customs to do that was 180 days from the date of enactment, which I think is today.

I am about out of time. I need about 1 minute longer, if I may?

Senator LANDRIEU. A quick minute.

Mr. STEINBERGER. We also would like to know about some money that seems to have disappeared. \$6.1 million in crawfish duties collected in February 2014, we know that. We have copies of the checks. \$14 million collected in April 2014. We know that, because Customs said so in a letter.

But yet Customs is saying that so far, they think as of the end of April, there is only \$2.7 million to distribute for 2014. We have no idea what happened to the other \$20 million.

PREPARED STATEMENT

Chairman Landrieu, human beings are funny critters. We worry a lot about things like tornadoes and earthquakes, and we should. They get our attention because they are dramatic. But more property damage gets done by rust, which never sleeps, than anything else.

And in human beings, we tend to focus on malice and evil motives, and we should. But incompetence and lack of initiative and lack of imagination can produce just as much harm as malice. It is not as dramatic, but sometimes it is easier to stop a speeding bullet than it is to get a 10 ton weight to move when it don't want to move.

We thank you so much for trying to get that weight to move.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF JOHN STEINBERGER

Thank you for the opportunity to speak today. I'm John Steinberger, Of Counsel with the Washington, D.C., law firm of Adduci, Mastriani & Schaumberg. For many years, I have worked with a partner of that firm, Bill Leonard, on matters related to the U.S. antidumping duty order against imports of crawfish tail meat from the People's Republic of China, which has been in place since September 1997 and is, in my view, the main reason that Louisiana still has a viable crawfish industry.

The businesses that process crawfish in the United States are family businesses, mostly, run by ordinary folks, all of them in Louisiana. It used to be that there were a few crawfish processors in other states, but they got wiped out by the first avalanche of imports from China in the late 1990s. To my knowledge, no new processing operations have been established outside Louisiana since that time.

Our client in the ongoing antidumping case itself, before the U.S. Department of Commerce and the U.S. International Trade Commission, is the Crawfish Processors Alliance, a group of 31 crawfish processors, all in Louisiana, who collectively account for better than 85 percent of all domestic crawfish processing by volume. In court cases and here on the Hill, our law firm also represents, as co-counsel with Kelley Drye & Warren, the individual CPA members who have been eligible to receive offset payments under the Continued Dumping and Subsidy Offset Act (CDSOA). In that effort, our crawfish clients are part of a coalition that includes U.S. producers of honey, mushrooms, and garlic, each represented by Kelley Drye. Those industries have been having the same problem with Customs.

The problem is that a huge proportion of antidumping duties that should have been collected on imports from China that entered the United States prior to October 1, 2007, have not been collected, despite the fact that they are secured by bonds issued by large, U.S.-based insurance companies. That date is important because U.S. law requires a portion of the duties collected prior to October 1, 2007, to be paid to domestic producers who have been injured in their business by the dumping.

People who are unfamiliar with this area of the law are often surprised that there would still be unpaid duties on goods that came into U.S. ports in 2007 or earlier. They don't realize that part of this is just because antidumping duties are assessed retrospectively—so delays of a couple or 3 years are not shocking. However, we're still trying, right now in 2014, to get Customs to collect duties on entries from 2000, 2001, and so on.

Those were very tough years for the U.S. crawfish industry. Domestic crawfish tail meat was selling around \$8.00 or \$9.00 a pound, and even at that price, profits were slim to none. And the local Piggly Wiggly stores down the road from these processors were full of crawfish tail meat from China, being advertised quite often at \$2.99 a pound.

Now, mind you, at this time, the antidumping duty order was in place, and it called for imposing antidumping duties running from 91 percent to more than 200 percent. I remember getting faxes. The U.S. producers would see those ads and tear them out of the paper and fax them to me with a short, handwritten message at the top along the lines of "What is this?" or "Why is this happening?" or "What about the duties?" We know now what was happening: most of the antidumping duties, which we had fought so hard to have imposed, were not actually being collected.

People might say they'd rather have Louisiana crawfish than Chinese crawfish, and they might actually mean it. But everyone has a price. With such a huge price difference, if you're a U.S. processor, you're going to be hard pressed to replace that old truck or upgrade your freezer or pay down your debt. You're just trying to survive another day. The CDSOA was set up to use the antidumping duties to correct that problem, but it only works when Customs actually collects what's owed. Even worse, the people importing the Chinese product—which, oftentimes, were just shell corporations with no real assets in the United States—started noticing that they didn't really have to pay the duties, so they weren't afraid of dumping. Massive volumes of imports kept pouring in, at very low prices. The hole just got deeper and deeper.

The responsible Congressional committees have been trying to fix this problem since at least July 15, 2002, the date of H.R. Report 107-575, in which the Appropriations Committee said: "The Committee is very concerned with the status of tariffs and duties assessed on crawfish. The U.S. Customs Service is therefore directed to begin, using funds currently available, vigorous and active enforcement of the tariff. Additionally, the U.S. Customs Service shall, not later than April 30, 2003, issue to the Committee and make publically available a comprehensive report detailing their efforts to enforce and collect this duty." That was in 2002—twelve years ago.

Since then, there have been many, many more attempts by members of Congress to fix the problems at Customs. In October 2004, the House and Senate Committees on Appropriations (in Conf. Rep. 108-774 on H.R. 4567) again directed Customs to submit a detailed report, this time by January 15, 2005. There have been too many inquiries from Senators and Members of the House to recount here. The answers from Customs, unfortunately, have almost always been vague and unhelpful.

Last year, as part of the 2014 appropriation for Customs, this Committee made a number of highly detailed, specific requests for information from Customs. The details that Customs is supposed to provide are set out in Senate Report 113-77 (July 18, 2013), which was originally to accompany H.R. 2217, the Homeland Security appropriations bill for 2014. H.R. 2217 essentially got rolled into H.R. 3547, the Consolidated Appropriations Act. Senate Report 113-77 provides for Customs to provide several highly detailed reports to the Committee not later than 180 days after the date of enactment. The bill was signed into law on January 17, 2014. If we take January 17 as the date of enactment, the 180th day thereafter is July 16, 2014, the date of this hearing. We are thus eager to know whether Customs is prepared to supply the requested information and, if so, what it will tell us about the nature of the antidumping duty collection problem and how to fix it.

We're also hoping to learn something about what happened with duty collections last year (fiscal year 2013) and what is happening this year (fiscal year 2014). More specifically:

- Last summer, Customs released its report on "Preliminary Amounts Available to Disburse" under the CDSOA for fiscal year 2013, reflecting collections made from October 1, 2012, through April 30, 2013. For crawfish, this "preliminary amount" turned out also to be the final amount, to the penny. In other words, during the last 5 months of fiscal year 2013, Customs did not collect a single penny of additional duties out of the vast backlog owed on entries made prior to October 1, 2007.
- This year, the "preliminary amount" for crawfish is only \$2,687,300.70, reflecting collections through April 30, 2014. Yet we know for certain that Customs collected \$6.1 million from Great American Insurance and Washington International Insurance, in February of this year, in crawfish antidumping duties on imports entered during 2000-01. We have copies of the checks from the sureties. Customs is on record, at the court, as saying that the checks had been received and were being processed in late February. It is unclear why this \$6.1 million has apparently not been included in the "preliminary amount" for fiscal year 2014.
- Customs has also stated, in a letter to Congressman Boustany dated April 11, 2014, that it had fully collected "more than \$14 million" in crawfish antidumping duties on April 7, 2014, one day before the six-year statute of limitations would have expired. From other information in the letter, we know that the money was owed by Hartford, a surety, on entries that came into the United States well before 2007. Although this money was allegedly collected prior to the April 30, 2014, cut-off date for the report on "preliminary amounts," it has obviously been left out. We do not know why.

In connection with the nomination of the current Commissioner of Customs, Mr. Kerlikowske, there was to be a liaison designated who would answer questions such as those I just raised. It is my understanding from our co-counsel at Kelley Drye

& Warren that they have asked about the missing \$6.1 million and \$14 million but have received no answer.

One thing is clear: the problem cannot be solved if no one knows exactly what it is. Much of the past decade has been spent trying to get Customs to provide information at a sufficient level of detail that solutions can be created. The language in the fiscal year 2014 appropriations report was a huge step in the right direction, and we thank Chairman Landrieu and the rest of the subcommittee for it.

Much remains to be done. Our best information right now is that there is still more than \$600 million in bond money to be collected on imports of crawfish tail meat, honey, garlic, and mushrooms from China that entered the United States between May 1998 and August 2006. This debt is secured by over 8,000 bonds. Yet, so far, Customs has filed lawsuits to collect on only about one-tenth of those bonds, representing roughly 12 percent of their face value.

Crawfish antidumping duties account for about \$150 million of the \$600 million. Because the amounts payable to domestic producers under the CDSOA are limited by a formula based on the domestic producers' expenses, it turns out that most of the \$150 million in unpaid crawfish duties would go directly to the U.S. Treasury if actually collected. We hope that this committee will continue to work toward that end.

Senator LANDRIEU. Thank you for that very thoughtful testimony.

Mr. Blume.

STATEMENT OF RICK BLUME, GENERAL MANAGER, COMMERCIAL STEELMAKING GROUP, NUCOR CORPORATION

Mr. BLUME. Chairman Landrieu and Ranking Member Coats, thank you for the opportunity to testify before you today. I am Rick Blume, General Manager of Commercial for Nucor Corporation.

Nucor is the largest steel producer in the United States. It is also North America's largest recycler. We have more than 200 operating facilities throughout North America and employ over 22,000 teammates, including about 200 in Louisiana and 1,400 in Indiana.

Nucor relies on trade remedy laws to combat the unfair trade practices of our foreign competitors, but we face many challenges in using these laws.

First, we have to file and win a trade case. This is no easy task, as cases are complex, burdensome, and notoriously slow. By the time a final determination is reached, the damage to the U.S. industry can be irreversible.

More troubling when dumped or subsidized imports are surging into the U.S. market, which is occurring today across many of our product lines, our Government agencies do not always respond adequately.

For example, in a current case against steel rebar, the Commerce Department found that the Turkish Government is giving its producers energy subsidies, but then concluded that these subsidies have no value. This makes no sense, given the energy-intensive nature of steelmaking.

We disagree with this finding and several of Commerce's other decisions, and we are urging the agency to correct them in the final.

Even when we win a case, too often, the dumped products keep pouring in and causing further injury. After trade relief was granted on oil country tubular goods from China in 2010, Chinese producers shifted finishing operations to other countries to evade the duties.

U.S. pipe producers and their workers suffered as a result, but so did our teammates at Nucor Indiana in Crawfordsville, because we supply steel to the pipe and tube industry.

Commerce eventually closed this loophole, but it took 18 months. We should do better.

We have seen this same kind of cheating on everything from bar grating to mattress springs.

Chinese steel producers also make inconsequential changes to the chemistry of their steel just to evade the duties. We can challenge these circumstances, but the process takes years. U.S. companies and workers deserve to see relief when they finally win a trade case.

We recognize that Customs has taken steps to strengthen its trade enforcement, and we appreciate these efforts.

The steel industry partners with Customs to teach U.S. port inspectors about steel. We travel to several port cities a year to teach the seminars. This year, we have already been to New Orleans, Miami, Laredo, and today, in fact, we are in Newark. Later in the year, we will go to Long Beach.

We also presented a NAFTA-wide fraud seminar here in Washington for Government and industry officials. Nucor and other U.S. producers have spent millions of dollars of our own money to help strengthen enforcement.

Despite these efforts, our trade law agencies can do more. Nucor strongly supports legislation by Chairman Wyden contained in the Senate Customs bill. This bill has broad bipartisan support and would require Customs to investigate industry allegations of evasion, establish timelines for action, and issue public reports on the results.

We strongly support Chairman Landrieu's proposal to fight fraud and increase bonding requirements on importers.

However, we do not believe that replacing the current retrospective system with the so-called prospective system would improve enforcement as Customs has suggested.

The current system is the only accurate way to measure the actual amount of unfair trade. A prospective system would allow abuse and weaken trade enforcement.

PREPARED STATEMENT

I want to close by emphasizing that Nucor is betting on the American economy for the long term. Since 2008, Nucor has invested nearly \$8 billion in new and existing U.S. facilities in order to better serve our customers and the markets. These investments include our \$820 million direct reduced iron facility in St. James Parish, Louisiana, that started in December.

So Nucor is doing its part to expand the economy and create jobs. But we are relying on our government to back us up with strong trade enforcement.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF RICK BLUME

Chairman Landrieu and Ranking Member Coats, thank you for this opportunity to testify before you today. I am Rick Blume, General Manager of Commercial

Steelmaking for Nucor Corporation. Nucor is the largest steel producer in the United States, and is also North America's largest recycler. Nucor has more than 200 operating facilities throughout North America and employs over 22,000 teammates, including about 200 in Louisiana and nearly 1,400 in Indiana.

Nucor relies on trade remedy laws to combat the unfair trade practices of our foreign competitors, but we face many challenges in using these laws.

First, we have to file and win a trade case. This is no easy task as cases are complex, burdensome, and notoriously slow. By the time a final determination is reached, the damage to a U.S. industry and its workers can be irreversible.

More troubling, even when dumped or subsidized imports are surging into the U.S. market—which is occurring today across many of our product lines—our government agencies do not always respond adequately. For example, in the current case against steel rebar from Turkey and Mexico, the Commerce Department found that the Turkish government was giving its producers energy subsidies, but then concluded that these subsidies had no value. This makes no sense, given the energy-intensive nature of steelmaking. We disagree with this finding and several of Commerce's other preliminary decisions, and we are urging the agency to correct them in the final determination.

Even when we win a case, too often the dumped products keep pouring in and causing further injury. After trade relief was granted on oil country tubular goods ("OCTG") from China in 2010, Chinese producers shifted minor finishing operations to other countries such as Indonesia to evade the dumping duties. U.S. pipe producers and their workers suffered as a result—but so did Nucor Steel Indiana in Crawfordsville, and our teammates there—because we supply steel to the pipe and tube industry. At the request of the U.S. industry, the Commerce Department closed this loophole, but it took 18 months! We should do better. We have seen this same kind of cheating on everything from bar grating to mattress springs. Chinese steel producers also routinely manipulate the chemistry of their steel to evade duties, by adding boron and other alloys to hot-rolled steel and plate. We can challenge this circumvention, but the process takes years. U.S. companies and workers deserve to see meaningful relief when they finally win a lengthy trade case.

We recognize that Customs has taken steps to strengthen its trade law enforcement, and we appreciate these efforts. There is a greater emphasis on enforcement today. The steel industry actively partners with Customs to teach U.S. port inspectors about steel and trade enforcement. We travel to four to six port cities a year to teach these two-day steel seminars. In 2014, we've already been to New Orleans, Miami, Laredo, and Newark, and we will go to Long Beach later this year. We also presented a NAFTA-wide steel fraud and enforcement seminar here in Washington in April for more than 150 government and industry officials from Canada, Mexico, and the United States. Nucor and other U.S. producers have spent millions of dollars of our own money to help strengthen enforcement.

Despite these efforts, our trade law agencies can do more to address evasion and circumvention. Nucor strongly supports legislation sponsored by Chairman Wyden contained in the Senate Customs reauthorization bill, S. 662. This legislation has broad bipartisan support and would require Customs to investigate industry allegations of evasion, establish reasonable timelines for action, and issue regular public reports disclosing results.

Customs has suggested that changing our duty collection system may also help. We agree with some efforts, such as Chairman Landrieu's proposal to increase bonding requirements on importers. However, we do not believe replacing the current "retrospective" system with a so-called "prospective" system would improve enforcement. The current retrospective system is the only accurate way to measure the actual amount of unfair trade and determine the appropriate relief. In contrast, a prospective system would allow abuse on a massive scale and weaken trade enforcement.

I want to close by emphasizing that Nucor is betting on the American economy for the long term. Since 2008, Nucor has invested nearly \$8 billion in new and existing U.S. facilities in order to better serve our customers and the market. These investments include our new \$820 million direct reduced iron facility in St. James Parish, Louisiana that started up in December. Nucor is doing its part to expand the economy and create jobs. We are relying on our government to back us up with strong trade enforcement. Thank you.

Senator LANDRIEU. Thank you very much.

Mr. Joe Sanroma, is that your family behind you? Would you like to introduce them, please?

Mr. SANROMA. Yes. This is Donna Sanroma, my wife. She is also a beekeeper and has been a great support. And Gracie and Joey Sanroma, my two youngest children.

Senator LANDRIEU. Assistant beekeepers.

Mr. SANROMA. That is right.

Senator LANDRIEU. Please proceed.

**STATEMENT OF JOE SANROMA, EXECUTIVE COMMITTEE MEMBER,
AMERICAN HONEY PRODUCERS ASSOCIATION**

Mr. SANROMA. I want to thank you all for inviting me to testify.

Chairman Landrieu and members of the subcommittee, my name is Joe Sanroma. I have been a professional beekeeper for 30 years, and I currently manage two commercial apiaries in Bunkie, Louisiana, Merrimack Valley Apiaries and Evergreen Honey Company.

My family also operates Sunshine Honeybees in Louisiana. I am also president of the Louisiana Beekeepers Association and a board member of the American Honey Producers Association.

This group represents most of the country's 70 commercial apiaries that employ thousands of Americans in 38 states. Each year, these companies work their bees to produce 150 million pounds of honey and pollinate over 93 vegetable fiber crops worth \$20 billion.

For 20 years, domestic beekeepers have struggled to survive the ongoing surge of extremely low-priced honey imports from China.

The Government first imposed antidumping duties on Chinese honey in 2001 to save our industry.

But until recently, dishonest traders avoided those duties through a series of fraudulent import schemes.

The most serious of these schemes involved the dumping law's new shipper bond provision. Until Congress closed it in 2006, that loophole allowed importers to use a Customs bond instead of cash to meet the substantial collateral required for certain imports subject to dumping duties.

Customs estimates that it is holding over \$600 million in new shipper bonds as security against unpaid dumping duties on imports of honey, fresh garlic, crawfish tail meat, and preserved mushrooms from China. \$150 million of these bonds secure honey imports.

Shockingly, the major insurance companies that issue these bonds all failed to determine whether the sham companies that acted as the U.S. importers were creditworthy or to require that they deposit collateral.

Where Customs eventually assessed substantial duties on these imports, the importers have disappeared. The insurance companies collected tens of millions of dollars in premiums for issuing the bonds, but when Customs demanded payment, the insurance companies flatly refused.

This duty evasion scheme devastated the domestic producers in two ways.

First, the scheme allowed the importers to enter and sell in this country huge volumes of these goods as if the Government imposing substantial dumping duties did not exist. As a result, the domestic producers continued to suffer.

Second, U.S. trade law requires Customs to distribute dumping duties collected on imports that arrive through 2007 to the injured

domestic producers. Thus, some of the injury inflicted by these imports could have been partially offset by Customs' distribution of duties collected under the new shipper bonds. But the insurance companies' refusal to pay as promised has prevented this.

Unfortunately, Customs must bear substantial responsibility for this debacle. Although the insurance companies first started refusing to pay in 2001, Customs by 2009 had failed to file a single collection lawsuit against them until the domestic industry sued Customs.

Customs currently is attempting to recover \$80 million from insurance companies through 30 lawsuits. Rather than pay Customs as promised, the insurance companies are dragging out those lawsuits by raising many empty defenses. One insurance company, Hartford Fire, has filed 350 lawsuits against Customs to avoid paying an estimated \$200 million to \$300 million under its bonds.

Despite Customs' recent actions, its extended delay in suing the insurance companies will likely block recovery under many bonds because of the statute of limitations.

Indeed, in the first collection lawsuit, the court ruled that Customs was time barred from recovering \$3 million secured by three of the nine bonds it issued.

Many members who support our domestic producers have worked to get Customs to account for all new shipper bonds.

Senator Landrieu, we are extremely grateful for your leadership in this effort. Your effort has started to bear fruit, but while Customs recently has provided some general information about the bonds, the agency still has not provided the detailed accounting the subcommittee requested last year.

PREPARED STATEMENT

We desperately need your continued support and leadership.

Despite this glaring collection failure, beekeepers recognize Customs' recent exceptional efforts, the most important of these known as Honeygate. And through that effort, which is ongoing, Customs has combined with ICE and the Justice Department attorneys in Chicago to prosecute dozens of those involved in major duty evasion schemes.

American beekeepers are extremely grateful to these agencies, including, in particular, Customs for its fine work on your behalf.

Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF JOE SANROMA

Chairman Landrieu and Members of the Subcommittee, my name is Joe Sanroma. I have been a professional beekeeper for 30 years, and I currently manage two commercial apiaries in Bunkie, Louisiana: Merrimack Valley Apiaries Inc. and Evergreen Honey Company, which maintain 26,000 honeybee hives and provide pollination services in California and along the East Coast.

I'm also President of the Louisiana Beekeepers Association, and a board member of the American Honey Producers Association—which represents most of our country's 700 commercial apiaries. These typically are relatively small, family-owned outfits that collectively employ thousands of Americans in 38 states. Each year, these companies work their bees to produce 150 million pounds of honey, and pollinate over 90 fruit, vegetable and fiber crops worth 20 billion dollars. Those are services that simply cannot be imported so American commercial beekeepers—in Louisiana and around the country—play a crucial role in our country's farm production.

As many of you know, beekeepers have suffered great losses recently from a widespread decline in bee health that has resulted in beekeepers losing on average more than one third of their hives in a single year. Some individual beekeepers have lost two-thirds of their hives. I note for the Subcommittee that the leading facility doing scientific research on bee health is the USDA facility in Baton Rouge, Louisiana.

Bee health decline, dubbed by some Colony Collapse Disorder, is an enormous threat to the industry. But for twenty years, domestic beekeepers have struggled to survive another threat—the ongoing surge of extremely low-priced honey imports from China. The government first imposed antidumping duties on Chinese honey in 2001 to save our industry. But until recently, dishonest traders avoided those duties through a series of fraudulent import schemes, and deprived domestic beekeepers of the protection intended by Congress.

The most serious of these evasion schemes involved the dumping law’s “New Shipper Bond” provision. Until Congress closed it in 2006, that loophole allowed importers to use a customs bond instead of cash to meet the substantial collateral required for certain imports subject to dumping duties. For Chinese honey imports, the bond value was twice the value of the secured imports.

Customs estimates it is holding over 600 million dollars in thousands of New Shipper Bonds as security against unpaid dumping duties on imports of honey, fresh garlic, crawfish tail meat, and preserved mushrooms from China—150 million dollars of which secure honey imports.

Shockingly, the major insurance companies that issued these bonds all failed to determine whether the sham companies that acted as the U.S. importers were creditworthy, or to require that they deposit any collateral to cover the insurers in case they had to pay under the bonds. When Customs eventually assessed substantial duties on these imports, the importers had disappeared. And the insurance companies—which had collected tens of millions of dollars in premiums for issuing the bonds—uniformly refused Customs’ demands that they pay as promised.

This duty-evasion scheme devastated the domestic producers of these four agricultural products in two ways. First, the scheme allowed the importers to enter and sell in this country huge volumes of these goods over an eight-year period at steeply dumped prices—as if the government orders imposing substantial dumping duties on these products did not exist. As a result, the domestic producers continued to suffer the very economic injury the dumping duties were supposed to prevent.

Second, all of these imports are subject to a provision of US trade law, which requires Customs to distribute dumping duties collected on imports that arrived through 2007 to the injured domestic producers. Thus, some of the injury inflicted by these imports on the honey, garlic, crawfish and mushroom producers could have been partly offset by Customs’ distribution of duties collected under the New Shipper Bonds. But the insurance companies’ refusal to pay as promised under these bonds has prevented this.

Unfortunately, Customs must bear substantial responsibility for this debacle. Although the insurance companies first started refusing to pay under these bonds in 2001, Customs by 2009 had failed to file a single collections lawsuit against them. In fact, the agency filed its first New Shipper Bond collections lawsuit only after being sued to do so by the four domestic industries.

Customs currently is attempting to recover \$80 million from the insurance companies through 30 collections lawsuits. Rather than pay Customs as promised, the insurance companies are dragging out those lawsuits by raising many frivolous defenses.

One insurance company—Hartford Fire—has raised many of the same frivolous defenses in 350 lawsuits it has filed against Customs in its effort to avoid paying an estimated two to three hundred million dollars under its New Shipper Bonds. Indeed, Hartford Fire’s lawsuits now account for 20 percent of all cases before the Court of International Trade.

Despite Customs’ recent actions to recover under the bonds, the agency’s extended delay in suing the issuing insurance companies will likely block it from recovering under many bonds. This is because a bond collections lawsuit must be started within 6 years of the date the first collection lawsuit, the court ruled that Customs was time-barred from recovering three million dollars in duties secured by three of the nine bonds at issue.

Since the domestic producers’ lawsuit against Customs was dismissed by the courts 2 years ago, many Members who support our domestic producers of honey, garlic, crawfish and mushrooms have worked to get Customs to account for all of the New Shipper Bonds, and adopt an effective strategy for recovering from the issuing insurance companies. Senator Landrieu, we are extremely grateful for your leadership in this effort, which has started to bear fruit. But while Customs recently has provided some aggregate and general information about the bonds, the agency

still has not provided the detailed accounting requested last year by the Committee. We desperately need your continued support to bring this problem to a successful conclusion.

Domestic beekeepers have been and remain critical of Customs' poor performance in recovering under the New Shipper Bonds. However, we want to recognize the exceptional work that agency has performed in recent years to foil other major duty-evasion schemes on Chinese honey imports.

The most important of these is known in the trade press as "Honeygate." Through that effort—which is ongoing—Customs has combined with ICE—Immigrations and Customs Enforcement—and the Office of the U.S. Attorney of Northern District of Illinois to criminally prosecute dozens of persons and corporate entities involved in a range of major duty evasion schemes. As a result of Honeygate, there is, for the first time in many years, little duty evasion taking place with Chinese honey imports. American beekeepers are extremely grateful to these agencies—including in particular Customs—for this fine work on our behalf. Thank you.

Senator LANDRIEU. Thank you all for that excellent testimony.

I am going to ask just quickly the same question to all of you, and then turn to Senator Coats. I am anxious to get to the Customs officials, so that we can explore more deeply the testimony that you have given with them and get them on the record as to what they are doing or not doing.

So, Mr. Hayes, starting with you, if you could give this subcommittee one or two immediate suggestions, either additional authority or additional action that we could take that would help in the short term, what would it be? And is there something you can see out in the long term that our subcommittee should look at to help either make sure these duties are set properly and collected in a more timely manner and distributed to those who are injured?

Mr. HAYES. Thank you, Senator Landrieu, and members of the subcommittee.

In the short term, Madam Chairman, I think one of the main things we can do is avoid these issues with the new shipper bonds. That is the primary reason for the massive undercollection of duties from China.

They are the primary user of these new shipper reviews, and they take advantage of them to avoid paying the duties.

Right now, they get the benefit of paying these bonds as opposed to paying the cash deposits. If they are required to pay the cash deposits, they would be less likely to form these shell import companies that disappear.

So I think that is one of the main things that we can do. And your legislation asks Commerce and Customs to take a look at that.

Senator LANDRIEU. And when were the new shipper bonds implemented, and what committee gave them that authorization?

Mr. HAYES. Madam Chairman, I am not exactly sure. It may be part of the original Trade Act legislation as it was amended over time, but I am not exactly sure. I would defer to maybe one of my other colleagues who might know the answer to that. But it may be in the original Trade Act legislation, as amended.

Senator LANDRIEU. Okay, so the old system required cash to be put up. The new system allowed a bond.

Mr. HAYES. Correct.

Senator LANDRIEU. And the bonds are not being appropriately cashed and delivered to those injured.

Mr. HAYES. Correct. And the new shipper process allows either a new shipper or a company that has changed hands to go in and

say, "We are a new company. We shouldn't be subject to the same dumping rate that the other providers are."

They get an advantage for just making that allegation. They get to post these bonds as opposed to paying the cash rate that all the other producers need to pay.

If they pay the cash rate and then, due to our retrospective system, it turns out that their duty is lower, they get the money back. So there is nothing unfair about it. It is just that allowing them the opportunity to have these new shipper bonds causes real problems, not just from our perspective, but, certainly, with Customs as it presents some collection challenges.

I think one of the other immediate things, and there are tons, Chairman Landrieu, but I will just give you another one. The suggestion of the advisory committee on collections I think it is very important. Having industry voice on that committee is key.

Right now, it is made up mostly of importers, and having industry representatives with a vested interest in seeing these laws enforced is key. And I know there are many other detailed ones that I would love to get into, but that is certainly one that I think could bear fruit rather quickly.

Senator LANDRIEU. Thank you for giving those two.

Mr. Steinberger, we will ask you for two or three, and all the other good ideas you have. This record is going to stay open for 2 weeks, so you can submit them in writing to us.

Mr. HAYES. I appreciate that opportunity, Chairman.

Senator LANDRIEU. Mr. Steinberger.

Mr. STEINBERGER. Thank you for the question.

Short term and long term, I am trying to sort those out. Short term, absolutely insist on answers to the questions that are already on the table. As I mentioned earlier, I believe today is the day that some very highly detailed accounting was requested. And in the past, Customs has dragged its feet and been very vague in its answers.

Those answers are important because no one can solve this problem until we know what it is. For 10 years, we have been trying to figure out what is it, what is this issue? So that is one thing.

A solution that I have always been fond of is take it out of Customs' budget, if they can't collect the money. In private industry, that would be done. You get your budget cut if you don't get your job done.

More practically speaking, improved disclosure in every possible way. There are private services like PIERS. There is one I like called Panjiva. They use bill of lading data. And you can get information about shipments down to the container number, and yet Customs still treats this kind of information as some kind of big secret. That has hobbled our efforts for a long time in finding out what is going on.

One final thing, try to look hard at the insurance companies that are issuing the bonds. And if you have one out there that is failing to pay by mounting frivolous defenses, and believe me, there are frivolous defenses to these bonds, cut them off. Say you can't issue bonds to the United States Government anymore.

Those are the ones I can think of.

Senator LANDRIEU. Excellent.

Mr. Blume.

Mr. BLUME. Chairman Landrieu, two or three things that I would state I think are opportunities for improvement. First of all, I would agree in terms of transparency. In many cases, when there are allegations of fraud and circumvention, and evidence of that, in many cases, there is not sufficient feedback given back to the industry, so that we understand that action is being taken and that the circumstances are being taken very seriously. So I would say transparency is a key term to think about.

The other key point I would add is the urgency of the matter. Evasion itself should be addressed much more quickly than it is, recognizing that given the timeframe that is taken to win a trade case, and then ultimately to have evasion occur, in many cases, much of the damage is already done during the process of winning the trade case. So then to add insult to injury, the evasion and circumvention needs to be addressed. And there needs to be, in our view, an urgency around that issue.

And I think the final thing obviously to do an effective job in many cases, it takes greater resources, and commitment to stopping the evasion and the circumvention that is occurring.

Senator LANDRIEU. Okay, and, Joe, just really quickly, so I can get to my ranking member, but I would love your answers, the one or two things we could do.

Mr. SANROMA. I would say, first and foremost, to collect the remaining bonds that we need, because our industry has suffered for 20 years, through this economic injury. And as soon as we got relief a little bit from that, we immediately went to colony collapse disorder (CCD). And we really need to rebuild our industry back up to where it needs to be to support the agricultural industry.

So we really need to collect those bonds.

Second, to continue the efforts through ICE to keep this from happening again.

Senator LANDRIEU. Thank you very much.

Senator Coats.

Senator COATS. Madam Chairman, I am glad that we have the Government witnesses here. I think it is constructive for each side to listen to each other. I am looking forward to their responses. I guess a couple words that come to my mind, based on what has been said here, is transparency, communication, quicker resolution to some of the issues would all be very, very helpful.

Constructive suggestions as to how we can get to that point is probably going to involve a lot of interaction between both the Government agencies as well as the private sector.

So this is a good place to start and hopefully one of the things we will take away from all this is that the doors are open for further discussion in terms of how we can do this better. It is a benefit for the private sector, obviously, but is also a benefit for the Government in terms of being able to address their mission in a more timely and effective way.

Mr. Blume, I wanted to ask a little bit about your program where you reach out to the port inspectors about trade enforcement. Is that an effort that is in cooperation with the agencies?

From a practical standpoint, how does this work? Do you need to get a permit? Do you need to get permission? Is this something

that is a joint public-private initiative? Or something just taken on behalf of the steel industry?

Mr. BLUME. Senator Coats, I think, by and large, the initiative came from the steel industry itself recognizing that steel in many cases can be a complex product, so there was a recognition that we needed to help inform, help work with Customs at the various ports to make sure there was a clear understanding about steel products, what changes a steel product.

For instance, I mentioned earlier some of the inconsequential alloying that occurs from some of the Chinese producers simply to get around a duty. And so in doing so, it is important that we help educate, we help inform the Customs officials through these programs.

So we saw a lot of different types of circumvention, including the alloying issue, but also, frankly, mislabeling, so understanding the difference between wire rod and plate. Some of that is very obvious, but some of it is not. Some of these circumvention schemes are very sophisticated.

So that was primarily an industry sponsor, but we have had broad participation from Commerce and from the Customs officials.

Senator COATS. So they have been very receptive of the effort?

Mr. BLUME. Yes, it has been a very successful program.

Senator COATS. I don't know if any of the other industries do that kind of thing, but it sounds like——

Mr. HAYES. Senator Coats, if I may, we don't in aquaculture and agriculture industry, but that certainly is an example that we are looking at. Because of the problems we are having in that industry, we are going to use the steel industry as an example and work with Senator Landrieu and Senator Cochran to try to have some of those not fact-finding but instructional presentations at the various ports of entry to make sure that they know what they are looking for.

But if I may, Senator Coats, just really briefly on transparency, one of the things short term that we can do is, you mentioned transparency and communication. Right now, we are operating almost in three separate corridors: Customs, Commerce, and the industry.

Now, Commerce and Customs do share information, and they do work well together in their separate spheres. But the industry doesn't really have an opportunity to influence and to give our information that we might have to them. And one of the things that I think comes out in the legislative language is that if we can have some type of a process where we can share business proprietary information under an administrative protective order, where we might have information or Customs might have information that can help enforcement, safety, various numbers of things.

We have the vested interest in enforcing these laws. And if we can put some type of procedure in place to effectuate that communication, I think it is going to go a long way to help in the process.

And I apologize for taking your time, responding to your first point.

Senator COATS. Thank you. Just real quick, Mr. Sanroma, there has been a lot of news lately about a bee shortage, not getting the pollination that we need for agricultural purposes, and so forth. Is

this a direct result of importing honey, and, therefore, the honey industry declines domestically because imports are putting other people out of business? Do the two match up at all?

Mr. SANROMA. These are two separate incidents here. This was our first problem at hand for many years, for 20 years, this economic problem through China dumping their honey here at extremely steep prices. And then, until recently, we had this new phenomenon, colony collapse disorder. That is more related to other factors.

There are several theories out there. Like pesticides is a leading one for that.

Senator COATS. Okay, thank you.

Senator LANDRIEU. Thank you.

Senator Cochran.

Senator COCHRAN. Madam Chair, thank you. Let me join you and Senator Coats in welcoming the panel and thanking you for bringing some of these problems that are very serious to the attention of our subcommittee.

I think you can be assured that as a result of today's exploratory hearing, which is what I think of it as, I think there is a lot more that needs to be done, in terms of getting facts and understanding how the competitors are misusing U.S. laws to make it difficult for American competitors to compete and to sell what they are producing and what they are making available in the market.

So I think this is the beginning of a serious effort to try to find out more and then make sure we are an influence for the purpose of enforcement of U.S. laws to benefit U.S. suppliers, competitors, and marketers of very valuable and important commodities.

Thank you.

Senator LANDRIEU. Thank you very much.

And last, I just want real, real quick, each of you, in your specific industry that you came here to testify about, which country or countries, list no more than three, are the most egregious violators? So what would it be for shrimp and crawfish?

Mr. HAYES. It would be China, by far, Madam Chairman.

Senator LANDRIEU. Okay.

How about you, Mr. Steinberger.

Mr. STEINBERGER. Absolutely China. In fact, crawfish is only made in three countries, the United States, Spain, and China. Spain has not been a big problem. China is the big problem.

Senator LANDRIEU. Mr. Blume.

Mr. BLUME. Madam Chairman, certainly, I would agree. China is the big problem. But we also have serious issues with Korea and Turkey as well.

Senator LANDRIEU. Mr. Sanroma.

Mr. SANROMA. The biggest problem that we would have is with China as well.

Senator LANDRIEU. Okay. Thank you all very, very much for your testimony. We hope that you all can stay and listen to the testimony of CBP and ICE. And if you can't, we understand. Thank you all very much.

As the second panel comes forward, so that we can keep this moving, let me introduce the Acting Assistant Commissioner, Office of International Trade, Richard DiNucci, U.S. Customs and Border

Protection; next, Acting Assistant Commissioner, Office of Field Operations, John Wagner, who is here to answer questions only; and then Assistant Director of International Affairs, Lev Kubiak, U.S. Immigration Customs Enforcement with ICE.

And if you all will take your seats, we will continue with this important hearing. I would like to try to wrap up, if we can, a little bit after 4 o'clock.

And so I think we can begin with you, Mr. DiNucci. We will limit your statement to about 5 minutes.

STATEMENT OF RICHARD DINUCCI, ACTING ASSISTANT COMMISSIONER, OFFICE OF INTERNATIONAL TRADE, CUSTOMS AND BORDER PROTECTION

ACCOMPANIED BY JOHN WAGNER, ACTING ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, CUSTOMS AND BORDER PROTECTION

Mr. DiNUCCI. Thank you very much, Chairman Landrieu, Ranking Member Coats, members of the subcommittee. It is, indeed, an honor to be before you today with Mr. Wagner, our Assistant Commissioner for the Office of Field Operations, and my colleague Lev Kubiak, who is the Director of the IPR Intellectual Property Rights Center commercial fraud efforts over at ICE Homeland Security Investigations (HSI).

Later this month, we celebrate the 225th anniversary of the U.S. Customs Service, its establishment, its importance to the history of our Nation, and its continued importance today as part of CBP's complex trade mission.

I would like to start by thanking the subcommittee for the support of CBP. CBP demonstrated the need for approximately 4,373 additional officers with our workload staffing model, and you responded by funding 2,000 officers in the 2014 Appropriations Act, and by supporting a partial increase in user fees in the fiscal year 2015 DHS appropriation bill that will provide an additional 1,000 officers. So we wanted to thank you very much for that.

Studies have shown the direct economic benefits realized by increasing staffing at our ports of entry, and strategic alignment of staffing is part of CBP's trade transformation initiative to modernize our trade functions and securely facilitate the increasing volume of international trade.

CBP is responsible for enforcing nearly 500 U.S. trade laws and regulations on behalf of 47 separate Federal agencies. We managed 30.4 million commercial transactions in fiscal year 2013. That generally increases by 4 percent to 6 percent each year. It represents approximately \$2.4 trillion in imports. We generate about \$40 billion in duties, fees, and taxes.

Illegal trade activities threaten the competitiveness of U.S. business, national security, and consumer health and safety. In collaboration with U.S. Immigration and Customs Enforcement, specifically Homeland Security Investigations, CBP works to identify and detect fraudulent trade activities, including evasion of lawfully owed duties; importation of counterfeit, pirated, and unsafe merchandise; and false claims for free trade agreement benefits for imported merchandise. Collecting antidumping and countervailing du-

ties, referred to as AD/CVD, and identifying importers who evade them is a priority trade issue for CBP.

Evasion schemes, such as illegal transshipment and use of shell companies to avoid payment, complicate an already complex system of collecting those duties. Our use of single transaction bonds, tactical audits, lab testing, and special operations has increased our ability to detect and deter AD/CVD evasion. And our continued efforts to increase the depth of information we collect from the importing community will help CBP screen for shell companies and detect and deter future evasion.

Strengthening our trade intelligence and our targeting enterprise is critical to our trade enforcement mission and a key aspect of our CBP trade transformation.

We thank Congress for the support in Federal statutes such as the Trade Act of 2002 and the Safe Port Act support for CBP's trade targeting programs by mandating the provision of advanced trade data on cargo shipments prior to vessel lading.

CBP's National Targeting Center for Cargo (NTCC) is a critical centerpiece to our trade targeting regime. The analytic process at the NTCC provides uniform review of cargo shipments for identification of the highest threat shipments and presents data in a comprehensive, flexible format to address specific intelligence threats and trends before shipments reach the United States.

Additionally, we have been joined now by Homeland Security Investigations (HSI) in establishment of an NTCC investigations division, which will enhance collaborations to support investigations targeting interdictions, advancing shared security missions between CBP and ICE.

The NTCC is supported by our National Targeting Analysis Groups (NTAGs). NTAGs are CBP's primary national trade targeting assets. They focus on specific issues, antidumping/counter-vailing duty being one of those issues.

NTAGs provide in-depth analysis for high-risk priorities such as intellectual property rights and antidumping. The NTAGs work in concert with our Centers of Excellence and Expertise, and the National Targeting Center, to address the entire cycle of trade enforcement, including information intake, analysis targeting, investigative case support, and operational assessment.

CBP's Centers of Excellence and Expertise continue to increase CBP's trade intelligence capabilities, while modernizing the way we interact with the industry. U.S. industry representatives share valuable market and product intelligence with us, and we work closely with the trade community to increase our understanding of unique trading environments and potential risks and illicit trade practices.

In 2008, to facilitate the process for the trade community to provide us with critical information on potential unfair or illegal practices, CBP created an online referral process called e-Allegations. Since its inception, CBP has received more than 9,000 commercial allegations via the e-Allegations system.

PREPARED STATEMENT

The Commercial Target Analysis Center located here in DC facilitates information sharing among 11 participating Government agencies to streamline and enhance Federal efforts to address im-

port safety. We were joined on the 16th of June this year by our Consumer Product Safety Commission and Food and Drug Administration at the CTAC Commercial Targeting and Analysis Center.

All these collaborative efforts improve our ability to enforce CBP's efforts and the trade laws, antidumping, intellectual property, free trade agreements.

Thank you, Chairman.

[The statement follows:]

PREPARED STATEMENT OF RICHARD DINUCCI

Chairwoman 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) role in facilitating international trade and enforcing our trade laws.

CBP has a dual mission of protecting national security objectives while facilitating legitimate trade and travel, and plays a vital role in promoting the country's economic prosperity and security. CBP is the second largest revenue collecting source in the Federal government and our operations have a significant impact on the security and facilitation of legitimate international commerce and America's economic competitiveness.

Our trade mission is highly complex. We are responsible for enforcing nearly 500 U.S. trade laws and regulations on behalf of 47 Federal agencies, facilitating compliant trade, collecting revenue, and protecting the U.S. economy and consumers from harmful imports and unfair trade practices. Fraudulent trade activities, including the import of counterfeit and pirated goods, threaten America's innovation economy, the competitiveness of our businesses, the livelihoods of U.S. workers, and, in some cases, national security and the health and safety of consumers.

Annually, CBP manages over 300,000 active unique importer-of-record numbers, accounting for 30.4 million commercial transactions, which represents approximately \$2.4 trillion dollars in imports and generates over \$40 billion dollars in duties, fees and taxes. In addition to applying the multitude of daily tariffs and the processing of mass amount of commercial shipments, CBP must also consider the complexities of enforcing U.S. Free Trade Agreement (FTA) commitments. The United States has existing FTAs with 20 countries and is currently negotiating the Trans-Pacific Partnership Agreement with 11 Asia-Pacific region countries, and the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union. These are important agreements for the United States that will promote U.S. international competitiveness, jobs, and growth. In fiscal year 2013 alone, FTAs accounted for over \$676 billion in imports.

CBP'S LAYERED TRADE ENFORCEMENT STRATEGY

As the nation's border enforcement agency, CBP is responsible for detecting and interdicting goods imported to, exported from, and transiting through the United States by means of fraudulent trade activities intended to avoid the payment of duties, taxes and fees, or activities meant to evade U.S. legal requirements for international trade. Central to all of CBP's multi-layered trade enforcement activities are the continuous enhancements to our targeting programs, the expansion of our trade intelligence, and our ability to identify and understand trade risks whether they affect national security, U.S. business competitiveness, or the collection of revenue. We obtain information about shippers, producers, importers, cargo and vessels, as early as possible in the shipping process. Using advanced targeting techniques, we build and maintain a knowledge base about the people, companies, facilities, conveyances and cargo involved in the supply chain.

Enforcement of trade laws and interdiction of illegal cargo are based on advanced risk-based targeting. CBP performs targeting activities throughout the import process—depending on the pathway—prior to departure from origin, before cargo arrives at a port of entry, at time of entry, and after the cargo is conditionally released. In accordance with the Trade Act of 2002, Public Law 107–210, and the SAFE Port Act of 2006, Public Law 109–347, carriers are required to submit manifest data containing an inventory of all goods, supplies, cargo, and persons on board a conveyance or container in advance of arriving at a port of entry. Filers submit entry/entry summary information to declare specific commodity information to CBP for clearance and payment of duties, and the manifest and entry information is integrated into “shipments” for vetting through CBP's Automated Targeting System (ATS). ATS is a critical decision support tool that CBP uses to assess the risk of goods en-

tering the United States. ATS incorporates information from other CBP systems, as well as, other law enforcement databases to use in its risk assessment. ATS provides a uniform screening of all its cargo transactions and identifies anomalies based on numerous risk factors.

Shipments matching ATS targeting factors are presented to CBP officers assigned overseas with the Container Security Initiative (CSI), targeters at our numerous Advance Targeting Units (ATUs) located at our domestic ports of entry (POEs), as well as our seasoned experts at the National Targeting Center for Cargo Operations (NTC-C). Upon arrival of cargo at a port of entry, using targeting results to prioritize inspection of high risk cargo, CBP has the authority to perform an exam of the goods; detain, seize, or request re-export of the goods; or release the goods. In the post-entry environment, CBP assesses duties, determines statutory and regulatory compliance, and collects import statistics. Effective targeting not only enables CBP to detect and address potential risks before a shipment arrives at a port of entry, but it also enables CBP to separate low-risk and legitimate shipments from those that require additional scrutiny.

When it comes to targeting shipments for potential threats to consumer safety, the Commercial Targeting and Analysis Center (CTAC) is a CBP facility designed to streamline and enhance Federal efforts to address import safety issues. Created in 2009, the CTAC facilitates information sharing amongst 11 participating government agencies (PGAs),¹ while simultaneously developing, implementing and streamlining cohesive import-safety enforcement procedures that drive further interdiction of harmful and inadmissible goods. Supporting CBP's unified trade targeting mission, the NTC-C has an embedded presence at the CTAC facility, driven to heighten the connectivity between the PGAs admissibility mission and the NTC-C's 24/7 operational capabilities.

The National Targeting and Analysis Groups (NTAGs) are the primary national trade targeting assets for CBP. NTAGs provide in-depth risk analysis for high priorities such as Intellectual Property Rights (IPR) and Antidumping and Countervailing Duty (AD/CVD). The NTAGs work in concert with the Centers of Excellence and Expertise (CEE), and the NTC-C Tactical Trade Targeting Unit (T3U), to enhance trade targeting expertise. These entities work with the entire cycle of trade fraud enforcement—from information intake, analysis, targeting, investigative case support, and operational assessments.

Trade intelligence is vital component of effective trade targeting. The establishment of the NTC in December 2001, and the development of partnerships with other agencies, both domestically and abroad, has enabled real-time information sharing between agencies and governments. Partnerships with Immigration and Customs Enforcement Homeland Security Investigations (ICE/HSI), the Drug Enforcement Administration (DEA), the Financial Crimes Enforcement Network (FinCEN), and the Departments of Commerce (Commerce) and Health and Human Services (HHS) promote information sharing and the exchange of best practices. Collaboration with foreign governments results in seizures and detection of threats at our borders and in foreign ports.

The trade community is an essential element to expanding CBP's trade intelligence. Through collaboration with industry, CBP deepens its understanding of the way business and industry operates in the ever changing global marketplace and leverages that information for risk analysis and targeting. CBP has developed effective working relationships with many U.S. industries, which regularly provide intelligence on specific companies and imports as well as technical commodity information. Key to CBP's collaboration with industry and our efforts toward building bidirectional trade education are CBP's 10 Centers of Excellence and Expertise (CEEs). The CEEs are redefining how CBP works collaboratively with industry members to understand trade risks. By focusing on industry-specific issues, CBP is able to provide tailored support to unique trading environments. The CEEs are helping to increase uniformity and expertise across CBP for the administration of industry-specific trade enforcement. The CEEs are just one of CBP's Trade Transformation Initiatives supporting CBP's efforts to target the evasion of U.S. trade laws, protect the revenue of the U.S. Government, and ensure a level playing field for U.S. industry.

¹The 11 Federal agencies that participate in the CTAC include: CBP; U.S. Consumer Product Safety Commission; U.S. Department of Agriculture Animal Plant Health Inspection Service; Food Safety and Inspection Service; U.S. Immigration and Customs Enforcement Homeland Security Investigations (ICE/HSI); U.S. Environmental Protection Agency (EPA); Pipeline and Hazardous Materials Safety Administration (PHMSA); National Highway Traffic Safety Administration (NHTSA); Food and Drug Administration (FDA); U.S. Fish and Wildlife Service (FWS); and the National Marine Fisheries Services (NMFS).

Each of these entities brings a particular targeting skill set to the table. For example, by virtue of the CEEs industry-based knowledge, CBP can utilize critical trade intelligence in our enforcement efforts. Additionally, because of the NTAGs' expertise, CBP can better understand the overlapping risk areas within each industry sector. Integrating these knowledge areas is an enforcement priority for the agency. By creating a common operating picture that identifies risk within the trade arena, CBP can quickly act on fraudulent trade schemes. Moreover, by leveraging expertise within each targeting unit, CBP deepens its trade enforcement posture, resulting in more effective outcomes. For example, in fiscal year 2014, referrals from the T3U resulted in 179 seizures with a Manufacturer's Suggested Retail Price (MSRP) value of over \$5.3 million.

Integration of these national targeting groups is crucial, as each provides support for our law enforcement partners, such as ICE/HSI Agents assigned to the newly formed National Targeting Center for Investigations (NTC-I). Partnerships between T3U and NTC-I personnel are leveraged as a force multiplier which has resulted in more effective sharing of information and increased outcome-based enforcement actions. For example, in fiscal year 2014, the T3U supported \$60.7 million total MSRP from HSI case work, including 31 criminal arrests, 10 indictments, 8 convictions, 35 search warrants and 3 administrative arrests.

ANTIDUMPING AND COUNTERVAILING DUTY: A PRIORITY TRADE ISSUE

In the performance of its trade enforcement operations, CBP has identified several high-risk areas, designated as Priority Trade Issues (PTI) that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people. PTIs drive risk-informed investment of CBP resources and enforcement and facilitation efforts, including the selection of audit candidates, special enforcement operations, outreach, and regulatory initiatives. The five current PTIs are Intellectual Property Rights; Textiles and Apparel; Import Safety; Trade Agreements; and Antidumping and Countervailing Duties (AD/CVD).

Under the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that are sold in the United States at less than fair value ("dumped") or which benefit from subsidies provided through foreign government programs. Under the law, the U.S. Department of Commerce determines whether the dumping or subsidizing exists and, if so, the margin of dumping or amount of the subsidy. The United States International Trade Commission determines whether there is material injury or threat of material injury to the domestic industry by reason of the dumped or subsidized imports. AD/CVD has been identified by CBP as a PTI because collection of these duties is critical to the U.S. economy and U.S. business competitiveness.

While the vast majority of manufacturers, importers, customs brokers, and other parties involved in shipments of goods subject to AD/CVD orders accurately provide their shipment information to CBP and lawfully pay the duties due, CBP has a core statutory responsibility to collect all revenue owed to the U.S. Government that arises from the importation of goods. CBP's AD/CVD trade program works to ensure that CBP implements a concerted, systematic approach to detecting and deterring the circumvention of AD/CVD laws, and liquidating transactions in a timely and accurate manner, while facilitating legitimate trade.

AD/CVD COLLECTION CHALLENGES

CBP's principal challenges with AD/CVD collection include identifying and eliciting payment from the small minority of non-compliant importers—while facilitating the larger universe of compliant importer shipments—and the nature of the AD/CVD system.

Some importers are unwilling or unable to pay the actual duties, and some are no longer in business when CBP issues a bill, leading to uncollected AD/CVD. Other importers, often in the form of shell companies and foreign non-resident importers, have no intention of paying any final duties, and disappear as soon as there is any indication that final duties may increase. This is particularly true for AD/CVD orders covering imports from China, and Chinese agriculture/aquaculture imports in particular. In fiscal year 2013, uncollected AD/CVD on imports from China accounted for 95 percent of the uncollected AD/CVD.

In addition, some importers participate in schemes to intentionally evade AD/CVD liabilities. Evasion schemes take on several forms and often involve the collusion of multiple parties, including the manufacturer, shippers, and the importer. Several schemes, like the ones listed below, may be used simultaneously, to avoid AD/CVD liability and further complicate detection efforts:

- Transshipment involves the illegal manipulation of products, packaging, documents and shipping logistics to disguise the true country of origin of a product.
- Undervaluation is the 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/CVD duties.
- Misclassification involves improperly declaring goods with the proper duty classification, or mis-describing 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.

A particularly challenging scheme importers use to evade AD/CVD is employing “shell companies,” which are companies with no assets or physical presence in the United States, as a primary means of avoiding payment. In addition, CBP has limited legal recourse in collecting debts from importers located in other countries. When CBP cannot collect from the importer, the amount of the bond is often insufficient to cover the additional duties—which can rise above 400 percent of the dutiable value. While the use of bonding as security for the payment of AD/CVD is convenient for the trade, it also presents a set of challenges to the Government, such as legal challenges from sureties whose bonds secure AD/CVD bills. Further, while bonds can provide some assurance to the U.S. Government that duties will be paid, setting bonding levels for AD/CVD imports is a challenge for CBP because the final duty liability and payment risk are unknown at the time of importation of AD/CVD entries. Moreover, bonding alone simply cannot mitigate all of the serious collections issues posed by the current retrospective AD/CVD system.

Internally, the current automated import system used by CBP, the Automated Commercial System (ACS) also provides AD/CVD enforcement challenges. ACS is not designed to track and record AD/CVD liquidations that occur by operation of law, nor does it afford CBP the ability to determine with absolute certainty the amount or existence of single transaction bonds (STBs). However, the continued deployment of CBP’s Automated Commercial Environment (ACE) will address these challenges.

All of these challenges affect CBP’s ability to collect owed duties. Despite these challenges, CBP actively pursues collection of all unpaid AD/CVD claims against delinquent importers and sureties.

AD/CVD ENFORCEMENT

CBP is constantly developing new AD/CVD enforcement protocols to meet the challenges posed by the increasing complexity of AD/CVD evasion schemes. As with other trade areas, quality intelligence and advanced targeting is key to effective enforcement. CBP identifies potential evasion by working with U.S. industry, ICE/HSI, other U.S. government agencies, and our international partners to develop new sources of information to identify AD/CVD circumvention.

To detect AD/CVD evasion, CBP employs significant assets from across the Agency and uses many tools, including import trade trend and valuation analysis, the use of targeted reviews and audits, lab testing, and special operations. In fiscal year 2013, CBP completed 88 AD/CVD audits covering multiple importers of AD/CVD commodities. Through these audits, CBP identified AD/CVD discrepancies with a value of approximately \$71 million, and has collected over \$46 million. CBP is continuing to pursue collections on all money owed to the U.S. Government.

Another effort CBP is pursuing to enhance its trade enforcement capabilities is increasing the quality and integrity of the information collected from the importing community. Additional information would assist CBP in addressing the significant challenge of identifying shell companies who avoid paying large sums of duty, including AD/CVD. CBP is in the process of revising a key importer form to require additional information. With these revisions, CBP expects that it will become more knowledgeable about new importers and be better equipped to screen for shell companies and improve risk assessment for targeting of shipments. The revised form seeks to capture more detailed company information, and more information about individuals involved, such as the importer, company officer, and sole proprietor of the goods being imported. Early identification of shell companies can improve targeting (and ultimately collection), while link analysis can allow better monitoring of behavior that deviates from the corporate identity presented to CBP.

Invaluable to the enforcement of all trade laws, CBP’s Laboratories and Scientific Services Directorate (LSSD) has been part of trade enforcement since 1841. LSSD

plays a key part in the enforcement of such disciplines as AD/CVD, classification, value, transshipment, intellectual property rights and counterfeit materials and finished products. In fiscal year 2013, this division handled 1,298 samples relating to 766 cases of importations of suspect AD/CVD violations. LSSD analyzes a wide range of commodities, including honey, garlic, plastic carrier bags, steel, bearings, wax candles, paper, pasta, hardwood and decorative plywood, and mushrooms.

One of CBP's most valuable partners in AD/CVD enforcement is the trade community. U.S. industry, trade associations, and importers provide critical insight to CBP on enforcement issues related to developments in AD/CVD and other trade sensitive imports, and advise CBP staff on the latest industry-wide changes for such commodities. CBP meets regularly with U.S. industry representatives to discuss AD/CVD circumvention schemes, and U.S. industry representatives share valuable market and product intelligence with us. Partnerships with the trade community are critical to rooting out unfair trading practices. The trade community provides market intelligence and commodity expertise to identify unfair trading practices or illegal trading activity.

In order to facilitate the process for the trade community to provide 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 9,784 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. All allegations that include contact information are followed up to develop more information and to allow CBP to keep the alleged of our enforcement progress.

AD/CVD COLLECTION EFFORTS

CBP, in collaboration with ICE/HSI, has had increasing success in identifying, penalizing, and disrupting distribution channels of imported goods that seek to evade AD/CVD. CBP personnel refer many cases of AD/CVD evasion to ICE/HSI for criminal investigation and, after building the cases until they are ready for investigation, CBP works closely with ICE/HSI to establish the evidence of criminal violations. In fiscal year 2013, ICE/HSI criminal investigations, with CBP support, successfully disrupted distribution networks of numerous types of imported Chinese goods evading AD/CVD, including:

- Operation Honeygate, where ICE/HSI, in collaboration with CBP, exposed a criminal network responsible for evading \$180 million in antidumping duties on imported Chinese honey. Several individuals were imprisoned for their criminal activities and two of the nation's largest honey suppliers paid millions of dollars of fines.
- An ICE/HSI investigation with substantial CBP support that culminated in the criminal indictments of Chinese, Taiwanese, and U.S. companies and company officials for illegally transshipping lined paper from China in order to evade over \$25 million in antidumping duties.
- ICE/HSI agents working jointly with CBP offices arrested five individuals and indicted three companies who allegedly participated in a conspiracy to illegally import aluminum extrusions from China transshipped through Malaysia to avoid over \$25 million in AD/CVD duties.

CBP's targeting and enforcement activities are applied at every stage in the import process. Numerous enforcement activities related to AD/CVD enforcement occur at our Nation's ports of entry when the shipment arrives. For instance, in fiscal year 2013, CBP cargo examinations and entry reviews revealed evasion of AD/CVD duties for aluminum extrusion products from China, which led to the recovery of over \$5 million. Another example is when two port operations on candles from China identified misclassifications, resulting in the receipt of almost \$1.1 million in antidumping duty. A third case involving local operations and blitzes conducted by one CBP field office on multiple AD/CVD commodities recovered a total of over \$6 million in AD/CVD duties. CBP staff at ports of entry are continuously reviewing import information to detect AD/CVD evasion and noncompliance, deter future evasion, and bring importers into compliance with AD/CVD requirement.

CBP aggressively utilizes all available authority under the law to collect AD/CVD. CBP continued in fiscal year 2013 to widely employ its legal authority concerning AD/CVD imports by requiring additional security in the form of single transaction bonds (STBs) to protect the revenue when CBP has reasonable evidence that a risk of revenue loss exists. These measures have been very effective in protecting the revenue and facilitating compliance with AD/CVD. Although each import trans-

action is judged on its own merits, CBP has provided guidance to field personnel on the appropriate and consistent use of the port's authority to enforce against AD/CVD evasion by taking actions such as requiring "live" entry (that is, payment of estimated duties at the time of entry along with entry summary documentation) or additional bonding, such as STB, when the port has developed a reasonable AD/CVD concerns that acceptance of a transaction secured by a continuous bond alone would place the revenue in jeopardy.

A key component of CBP's strategy to resolve AD/CVD debts involves the creation of a team within the Office of Administration dedicated to AD/CVD collections. CBP anticipates that the creation of the AD/CVD Collections team will enhance CBP's technical expertise to deal with the unique complexities of the AD/CVD process; enable CBP to identify importers unwilling or unable to pay outstanding bills earlier; and provide deeper integration of the full AD/CVD processes to anticipate AD/CVD debts rather than simply react to those debts after they are formally established.

Additionally, CBP has developed a 5-year AD/CVD strategic plan to maximize resources for detection and evasion enforcement through advanced targeting and analysis, and to streamline our administrative process.

CBP'S TRADE TRANSFORMATION

CBP recognizes its critical role in the economy and has responded by embarking on a "Trade Transformation"—a series of initiatives that create efficiencies for U.S. businesses, the Government, and the consumer. In addition to imports, CBP is working to modernize its export process in support of both the President's National Export Initiative to streamline the export process and foster growth for U.S. companies and the Export Control Reform Initiative to bolster competitiveness of key U.S. manufacturing and technology sectors. Even as trade volumes continue to rise, these initiatives strengthen CBP's capabilities and the Nation's economic competitiveness by lowering the cost of doing business, strengthening enforcement efforts, and leveling the playing field for U.S. companies.

Through the implementation of CBP's Trade Transformation initiatives, such as the creation of the CEEs, we are working to increase the Nation's economic competitiveness by lowering the cost of doing business, removing barriers to facilitation, and leveling the playing field for U.S. companies. Additionally, these transformative efforts help CBP strengthen trade enforcement efforts and address ongoing challenges such as AD/CVD collection, by improving and modernizing its trade processes.

CBP's Trade Transformation initiatives not only seek to create efficiencies within the agency's business processes, but also seek to develop a consistent "One U.S. Government" approach at the border. CBP, in collaboration with 47 Partner Government Agencies (PGA) that have equities in the trade process, is working toward standardizing Government procedures, streamlining processes, driving efficiencies through automation, and aligning and harmonizing processes with industry business processes.

The need for consistency and harmonization has been a driving force behind our automation efforts. Currently, there are hundreds of paper forms being used to import and export goods. Through the Automated Commercial Environment (ACE), CBP's cargo processing system, we are transforming trade transactions to be more efficient, standardized, simplified, less costly, and more predictable for importers and exporters. ACE will streamline collection and improve enforcement with new automation tools. Electronic bond processing, or e-bond, will be deployed in January next year, and will automate the STB process, enhance tracking ability, and provide enhanced traceability to corresponding transactions for ACE Entry Summaries. ACE will fully replace ACS and improve liquidations, including the ability to indicate and track liquidation by operation of law. ACE also provides for improved communication between CBP, PGAs, and the trading community. ACE's information-sharing capabilities make it easier for importers to file their information with CBP, and enables CBP to target and assess risk earlier in the supply chain. As ACE functionality is introduced, the associated segments of its predecessor, ACS, are being retired. ACE is being developed and deployed in increments, and is expected to be fully functional by December 31, 2016. Through ACE and e-bond, manual processes will be streamlined and automated, paper will be virtually eliminated, and the international trade community will be able to more easily and efficiently comply with U.S. laws and regulations.

In February 2014, President Obama issued an Executive Order (E.O. 13659), Streamlining the Export/Import Process for America's Businesses, which, among other things, directs Federal agencies with a role in trade to design, develop, and integrate their requirements into an electronic "Single Window," known as the International Trade Data System, by December 2016. ACE will ultimately serve as

the “Single Window” and enable businesses to electronically transmit the data required by the U.S. government to import or export cargo, replacing current practices which are often paper-based and sometimes redundant. This approach will ensure cargo is more secure, will reduce transaction costs for both the government and the trade, and will expedite cargo release. The Executive Order also requires agencies to work together to enhance supply chain processes so that the United States can compete more effectively in the world marketplace.

CBP is also working to design a Government-wide ‘trusted trader’ partnership program that would integrate CBP’s Customs-Trade Partnership Against Terrorism (C-TPAT) and the Importer Self-Assessment (ISA) with other U.S. government trusted trader programs. On June 16, 2014, CBP, in collaboration with the U.S. Consumer Product Safety Commission (CPSC) and the U.S. Food and Drug Administration (FDA), announced the joint effort to begin the testing of the Trusted Trader program.² This pilot is expected to inform a comprehensive trusted trader program that standardizes program participation criteria and assists CBP in addressing supply chain security, trade compliance, financial compliance, and enforcement. The program would allow CBP to redirect resources to unknown and high-risk importers, while improving predictability and transparency.

CONCLUSION

CBP will continue to apply advanced risk-based targeting to enforce trade laws and interdict illegal cargo to ensure the implementation of statutory and regulatory authorities and to minimize loss of revenue. CBP will continue to prioritize enforcement actions and compliance initiatives in support of U.S. AD/CVD laws.

CBP works closely with the Department of Commerce, Department of the Treasury, the U.S. Trade Representative, and all other relevant agencies to pursue all available avenues to improve the level of duty collection, ensure importer compliance and prevent loss of revenue. CBP closely collaborates with ICE/HSI to substantiate and act upon duty evasion allegations to support enforcement actions, and to coordinate civil and criminal enforcement of AD/CVD laws. Together, CBP and ICE/HSI continued to train field staff on AD/CVD enforcement.

CBP is committed to working with other government agencies to quickly identify and resolve collection problems, while ensuring that all relevant stakeholders understand these issues and are engaged in developing solutions to facilitate legitimate trade and protect the U.S. economy. CBP will continue to work closely with U.S. industry to obtain the key trade intelligence that is critical to enforcing AD/CVD.

Ongoing enforcement efforts are bolstered by CBP’s trade transformation initiatives, which increase automation, streamline processes, and facilitate trade for low-risk legitimate shipments. These combined efforts, reflect CBP’s recognition of, and commitment to, its vital role in support of the U.S. trade agenda.

Chairwoman Landrieu, Ranking Member Coats, and Members of the Subcommittee, thank you for the opportunity to testify today. I am happy to answer any questions you may have.

Senator LANDRIEU. Thank you.
Mr. Kubiak.

STATEMENT OF LEV KUBIAK, ASSISTANT DIRECTOR OF INTERNATIONAL AFFAIRS, IMMIGRATION AND CUSTOMS ENFORCEMENT

Mr. KUBIAK. Good afternoon, Chairman Landrieu, Ranking Member Coats. Thank you to the witnesses for the earlier testimony from them as well.

It is my privilege to testify today about U.S. Immigration and Customs Enforcement’s Trade Investigation Program, which originates, as you may know, from 1791, when the Treasury Secretary authorized Customs officials to examine the records of Customs collectors, and 1879, when special agents were first employed to detect fraud and revenue crime.

²Federal Register Notice, June 16, 2014, Announcement of Trusted Trade Program Test. <https://www.Federalregister.gov/articles/2014/06/16/2014-13992/announcement-of-trusted-trader-program-test>

The Homeland Security Act of 2002 divided Customs authorities between Customs and Border Protection, which is responsible for enabling legitimate trade and enforcing trade laws at the border and beyond, and ICE, my agency, which investigates, disrupts, and dismantles criminal organizations that circumvent border security.

Over the last several years, we have dedicated more and more effective effort toward addressing trade and intellectual property crime by increasing our collaboration primarily with CBP, by enhancing our cooperation with other U.S. and international government partners, and with industry.

We are more effectively using the resources that Congress provided to address illegal trade and trade practices that harm our economy, the health and safety of the American people, and American businesses and jobs.

In fiscal year 2013 alone, HSI offices increased trade investigative hours to more than 637,000 hours. Trade investigations are now up over 4,400 investigations and arrests are up to 871 last year alone.

This record-setting number of investigations includes priority trade areas such as importation of counterfeit pharmaceuticals, counterfeit military parts, counterfeit automotive parts, anti-dumping and countervailing duty investigations, environmental crimes and wildlife trafficking, textile and tobacco smuggling, and illegal products made with forced child labor.

There are currently more than 80 antidumping investigations related to commodities such as honey, seafood, steel, mushrooms, and wooden bedroom furniture under way.

Our new trade strategy together is realizing significant results. To illustrate that, I would direct your attention to the pamphlet that was handed to you, and the slides that were handed to you, which talk about the investigation referenced earlier by our honey witness.

To illustrate the effectiveness of the strategy, I would like to explain Operation Honeygate. If you turn to the second page, it shows an investigation that was initiated on the basis of industry allegations about a U.S. importer, Alfred Wolff, which is a global company that conspired with an international group of 14 individuals that included importers and Chinese manufacturers.

The Wolff company—next slide, please, on the third page—used different criminal schemes to smuggle honey, as one of your witnesses testified to, at times transitioning from one scheme to another.

At first, the company falsified CBP entry documents to Chinese honey so that it was declared as Russian. Then the company physically transshipped Chinese honey through eight different countries and fraudulently took advantage of new shipper status by falsifying to CBP and the Department of Commerce the true origin of the Chinese honey.

The Wolff company and corporate conspirators were indicted in 2010, but the investigation revealed additional corporate conspiracies. Groeb Farms, one of the world's largest honey packers, and Honey Holding also knowingly purchased smuggled honey.

By placing an undercover HSI agent in as the company's director of procurement, we identified companies that consolidated illegal

honey, foreign and U.S. entities that facilitated its illegal entry, and multiple shell companies—again, as your witnesses have stated—created to be importers of record solely for the purpose of the smuggling scheme.

In total, the investigation identified approximately \$280 million in evaded antidumping duties, seized 250,000 gallons of illegal and sometimes antibiotic-laden honey, indicted 19 people and eight companies, and issued monetary penalties exceeding \$35 million.

More importantly, a handful of agents, officers, and a DOJ attorney stopped an average of \$26 million in annual antidumping fraud and, according to the domestic honey industry, saved businesses and jobs in the United States.

Our successes are not just limited there. We have had significant successes and intellectual property collaboration with industry and other Federal governments to include Operation Chain Reaction, which is focused on counterfeit parts making their way into the United States military.

As a matter of fact, just earlier this year, the CEO of a company named Powerline in Los Angeles was convicted by a jury for selling 80,000 counterfeit batteries to the United States Navy for aircraft carriers and submarines to use as their backup power supply. That company is no longer selling counterfeit parts to the United States Government.

ICE is the world's largest customs investigative entity and recognized as a worldwide expert in criminal Customs matters. Foreign engagement with international bodies like the World Customs Organization and our global attache network allow collaboration with international partners to investigate along the entire international supply chain, which is critically important in antidumping.

PREPARED STATEMENT

With CBP, we are leveraging all of our tools to unite domestic and international law enforcement efforts to combat trade crime. We are building upon enforcement successes through enhanced industry intelligence-sharing. We have created new antidumping training with CBP, DOJ, and ICE HSI agents. We have collocated CBP and HSI investigative trade teams together in major ports, including New Orleans, and are sharing investigative outcomes with other Government agencies and with the industry so they can close vulnerabilities identified through that investigative process.

I appreciate the opportunity to share these results with you. I appreciate your support of ICE's investigative efforts, and I look forward to your questions.

[The statement follows:]

PREPARED STATEMENT OF LEV KUBIAK

INTRODUCTION: A STRONG TRADITION OF CUSTOMS ENFORCEMENT

Chairman Landrieu, Ranking Member Coats, and distinguished Members of the Subcommittee. It is my privilege to testify before you today and discuss U.S. Immigration and Customs Enforcement's (ICE) approach to combating trade fraud. The growth of international trade is an integral part of our nation's economic prosperity, and we must ensure we are attuned to the new threats to public safety and national security it may pose.

ICE is the largest investigative component in the Department of Homeland Security (DHS), with an extensive portfolio of enforcement authorities. Notably, ICE's

Homeland Security Investigation's (HSI) Special Agents possess statutory authority to enforce more than 400 Federal laws. Specifically, ICE investigates a wide range of trade fraud, including intellectual property (IP) violations. IP violations and trade fraud pose significant threats to the U.S. economy and the health and safety of the American public.

ICE has a proud legacy of trade fraud enforcement dating to our past as investigators for the former U.S. Customs Service. In 1791, the Secretary of the Treasury authorized employment of special agents to examine the accounts and books of the Collectors of Customs, and in 1879, special agents were employed to detect and prevent fraud of customs revenue. Since those early years, customs employees have worked together to identify and investigate criminals who cheat the U.S. Government by taking its lawful revenue and to protect U.S. citizens and U.S. businesses from illegal imports and unfair competition. With the creation of the DHS by the Homeland Security Act of 2002, customs was split into two agencies, ICE and U.S. Customs and Border Protection (CBP). CBP is now responsible for enabling legitimate trade and enforcing trade laws at the U.S. border and ports of entry. ICE, as DHS's investigative arm, investigates U.S. importers, companies or other entities that attempt to circumvent lawful trade mechanisms, including payment of required duties. Both agencies continue to work closely together to address new and emerging threats to lawful trade and the effective enforcement of U.S. customs laws in order to protect the American public.

To focus government efforts and enhance government efficiency, ICE leads the National Intellectual Property Rights Coordination Center (the IPR Center), which combats violations of intellectual property rights, specifically trademark counterfeiting and copyright piracy, and other aspects of trade fraud. Now with 21 partners, including other Federal agencies, Europol, INTERPOL, and the governments of Mexico and Canada, the IPR Center brings together the full range of legal authorities and law enforcement tools to combat IP violations.

Through the IPR Center's Commercial Fraud Unit, ICE aggressively pursues commercial fraud violations, including dumping and countervailing duty evasion schemes, pharmaceutical smuggling, tobacco smuggling, and border related trade crimes. ICE enforces U.S. trade laws and international agreements, as well as investigates and aggressively seeks prosecution of noncompliant importers, exporters, manufacturers, brokers, and others who commit trade-related crimes. ICE works in full collaboration with CBP in these efforts, and engages the trade community through an active outreach program.

THE IPR CENTER

U.S. law enforcement agencies have overlapping areas of responsibility and limited resources for enforcing intellectual property laws. Recognizing that collective leverage of resources and expertise is essential to success, the IPR Center was designed to share information and promote a coordinated U.S. government response to IPR enforcement. Since fiscal year 2011, the IPR Center's budget has grown from \$4.3 million to \$10.4 million.

The IPR Center includes embedded representation from the following agencies: ICE, CBP; Federal Bureau of Investigation; Food and Drug Administration Office of Criminal Investigations (FDA-OCI); U.S. Department of Commerce's Office of Intellectual Property Rights; U.S. Patent and Trademark Office; Consumer Product Safety Commission (CPSC); U.S. Department of State's Office of International Intellectual Property Enforcement; U.S. Postal Inspection Service (USPIS); Defense Criminal Investigative Service; Air Force Office of Special Investigations; U.S. Naval Criminal Investigative Service; General Service Administration's Office of the Inspector General; U.S. Army Criminal Investigation Command; Defense Logistics Agency; National Aeronautics and Space Administration; the Nuclear Regulatory Commission, Mexican Revenue Service; Royal Canadian Mounted Police; INTERPOL and Europol.

The IPR Center utilizes a multi-layered approach consisting of investigation, interdiction, prosecution, outreach, training, and public education to fight IPR crime. To accomplish this, the IPR Center is organized into three units: the Intellectual Property Unit, the Commercial Fraud Unit and the Global Outreach and Training Unit.

The Intellectual Property (IP) Unit executes the oversight and coordination function for multi-jurisdictional, large-scale intellectual property investigations. This unit proactively targets the sale and distribution of counterfeit, substandard, and tainted products via the Internet and works closely with partner agencies at the IPR Center and both the Department of Justice's (DOJ) Computer Crimes and Intellectual Property Section and the U.S. Attorney's Offices nationwide to prosecute IPR

violators domestically and internationally. The IP unit is responsible for collaborating IPR Center's initiatives with our interagency and international partners.

One of the roles of the IP Unit is to analyze and disseminate new leads of alleged IPR criminal violations. In fiscal year 2013, the IPR Center received 8,539 such leads. Of these leads, 2,778 were sent to ICE HSI field offices and IPR Center partner agencies, 37 were sent to non-partner agencies (including state and local police or sheriffs), and 73 leads were referred to industry. The remaining leads were catalogued but either did not contain enough information or did not rise to the level where referral to law enforcement was necessary. If additional information is found that can be combined with the catalogued leads, they will be re-evaluated and referred to the appropriate entity.

The IP Unit also de-conflicts leads received by the IPR Center from its partner agencies, industry, and the public prior to forwarding actionable information to the field or to industry. Investigative case referrals, whether made nationally or locally to particular law enforcement agencies or to the IPR Center, are compared and checked with all partners to determine whether an agency is already investigating the alleged IP violation, which effectively avoids a duplication of effort. When a conflict is identified early in the investigative process, agencies are encouraged to collaborate or consolidate investigative activity. Often large, complex investigations and operations are conducted jointly by partner agencies. IPR Center partner agencies also share information from their investigations that will aid future investigations, such as emerging criminal trends and new infringing technologies. In fiscal year 2013, the IPR Center de-conflicted 111 cases between partner law enforcement agencies, non-partner law enforcement agencies, and private industry.

The Commercial Fraud Unit coordinates investigations focused on illegal imports and exports involving violations of civil and criminal customs laws, including: anti-dumping and countervailing duty evasion, the diversion of merchandise transiting the United States in-bond, illegal textiles, products violating environmental laws, imported items made with forced labor, and fraud associated with U.S. Free Trade Agreements and preferential trade legislation. HSI's Commercial Fraud Unit coordinates the targeting and investigation of criminals who make false statements on customs documents and have deceptive business practices. ICE and CBP target predatory and unfair trade practices that threaten our economic stability restrict the competitiveness of U.S. industry in world markets, and place at risk the health and safety of the American people. In fiscal year 2013, ICE opened 796 new investigations, made 178 criminal arrests, had 180 indictments coupled with 103 criminal convictions.

The Global Outreach and Training Unit use outreach and training to increase information sharing between the U.S. Government and the public and private sectors. The resulting partnerships are used to educate and to facilitate the exchange of information on current trends, patterns, and methodologies used by criminal organizations. This unit also plays a key role in the IPR Center's efforts to reduce the demand for counterfeit goods and pirated content by teaching the public about the dangers of counterfeit goods, how to identify fake and illegal content, and what to do when they discover it. The Global Outreach and Trade Unit is the initial point of contact for all potential sources of information, including the private sector, Federal, state, local, and foreign law enforcement, as well as the public. The IPR Center coordinates with its partner agencies and appropriate international organizations to conduct training and provide support for anti-counterfeiting efforts with international customs administrations and law enforcement agencies.

The central goal of the IPR Center is to provide a "one stop shop" for law enforcement and industry around the United States and the world related to trade crimes and particularly IP crime. Our outreach is designed to increase support, communication, coordination, and cooperation for our ongoing IPR enforcement initiatives and our critical public health and safety efforts.

Since July 2008, the IPR Center has coordinated and conducted 1,794 outreach and training events with approximately 38,000 industry representatives, and 12,400 foreign government officials. This outreach and training has received substantial positive feedback.

In May 2014, with Department of State funding, the IPR Center and HSI Buenos Aires sponsored IP training focused on the health and safety issues related to IP crime and the need for cooperation between agencies, such as customs and police, and between countries, as well. This training included segments on international trade fraud and counterfeit pharmaceutical investigations, with presentations from Pfizer Global Security and Astra Zeneca Global Sales. Case examples were also provided, including a presentation from the IPR Center's Mexican SAT (Servicio de Administracion Tributaria) representative highlighting the importance of international cooperation and case coordination between neighboring countries to effec-

tive IP enforcement. As a result of the training program, Chilean Customs and PDI (Policia de Investigaciones) launched enforcement operations that same week. Both operations resulted in seizures of counterfeit merchandise, including 26,000 pieces of counterfeit makeup kits containing cancer-causing ingredients.

PROTECTING THE U.S. ECONOMY

Illicit cargo and goods are often smuggled into the U.S. through methods similar to those utilized by drug traffickers and human smugglers. Individuals illegally import items by sea, air and land, penetrating U.S. borders with falsely described and/or mislabeled merchandise. Schemes include the exploitation of the in-bond system, transshipping to third countries and falsifying the country of origin, or stealing the identity of a legitimate importer. Criminals may also try to illegally import goods made with forced labor, forced child labor, or prison labor in violation of 19 U.S.C. 1307. Each of these crimes may economically benefit the criminals, but also has a significant impact on American industries that compete with these illegal imports, the U.S. Government which is denied lawful revenue, and the public which may be harmed by substandard goods. ICE works in close cooperation with CBP, other interagency partners, the private sector, and international counterparts to investigate these schemes and to seize for forfeiture those goods entering the United States illegally through our ports.

One example of our interagency cooperation is the National Targeting Center-Investigations (NTC-I). ICE established the NTC-I in December 2013, in collaboration with CBP, to further the shared border security mission. The NTC-I serves as ICE's central targeting and coordination center and plays a critical role in promoting border security, public safety, and national security through the identification and investigation of transnational criminal organizations and their attempts to undermine DHS's border security efforts, including trade fraud and intellectual property violations. The cornerstone of the NTC-I is to enhance and support ongoing ICE investigations, provide quality investigative referrals and intelligence to HSI field offices, and expand current collaboration with CBP.

Anti-Dumping and Countervailing Duties

ICE's Antidumping and Countervailing Duty (AD/CVD) program illustrates how ICE and CBP protect U.S. businesses from unfair trade practices and protect the revenue of the United States. Dumping occurs when importers sell merchandise at less than fair market value, which causes material injury to a domestic industry producing a comparable product. When the U.S. Department of Commerce (Commerce) determines that an imported product is being dumped or benefits from an actionable subsidy and the International Trade Commission finds injury or threat of injury to a U.S. industry, an anti-dumping duty order or countervailing duty order is imposed to offset the dumping or actionable subsidization.

With assistance from CBP and Commerce, HSI agents investigate importers or other entities attempting to circumvent payment of customs duties. Our special agents work closely with CBP officers, import specialists, and regulatory auditors to identify the criminal enterprise that is engaged in the illegal trade practice that is harming legitimate U.S. industry, to recover the legally required tariff revenue owed to the United States, and impose civil and criminal penalties commensurate with the crime and to deter other bad actors. AD/CVD cases are long-term, transnational investigations that require significant coordination between domestic and international offices and with our foreign law enforcement counterparts.

In one recent case called Operation Honeygate, ICE exposed a criminal network responsible for evading \$181 million in antidumping duties on imported Chinese honey. Several individuals were convicted for their criminal activities and two of the nation's largest honey suppliers paid millions of dollars in fines.

HSI San Juan, working jointly with CBP officers, arrested five individuals and indicted three companies who allegedly participated in a conspiracy to illegally import aluminum extrusions from China transshipped through Malaysia to avoid over \$25 million in AD/CVD duties. Four accounts containing approximately \$686,000 have been seized and 12 properties have been entered into civil forfeiture proceedings.

Currently, HSI is involved in more than 80 investigations relating to open Commerce AD/CVD orders covering commodities such as honey, saccharin, citric acid, tow-behind lawn groomers, shrimp, steel, and wooden bedroom furniture.

In-Bond Diversion and Trade Schemes

ICE and CBP have identified illegal diversion of in-bond merchandise as a vulnerability that can endanger public health and safety, damage the U.S. economy, and facilitate or finance the illegal activities of organized crime. The in-bond system al-

lows foreign merchandise to physically enter the United States at a port of entry to transit the United States for export to a third country. When conducted properly, in-bond transactions facilitate trade by allowing the use of U.S. infrastructure for the transportation of goods to foreign markets. In-bond movements are incredibly valuable to trade, but also have an inherent vulnerability because they can be diverted to smuggle restricted or high-duty items into the United States.

In July 2013, a San Diego Customs broker was sentenced to 37 months in prison for a multi-million dollar in-bond diversion criminal fraud scheme. The customs broker, along with three international trade companies and seven other individual co-conspirators, were charged in a 56-count criminal complaint for orchestrating a lucrative customs fraud scheme that involved more than 90 international commercial shipments valued at more than \$100 million and resulted in more than \$10 million in lost customs duties and taxes. Products illegally imported under the scheme included adulterated Mexican food products, as well as produce infected with the life-threatening salmonella bacteria.

Textile Investigations

Textile imports represent approximately 41 percent of all duties collected by CBP in fiscal year 2013, resulting in \$12.9 billion in revenue for the U.S. Government. Textile investigations focus on obtaining criminal and civil remedies for violations of customs importation laws and smuggling schemes such as the undervaluation of textiles entered into the United States for consumption, diversion through the in-bond transportation system, transshipment, and fraudulent free trade agreement claims. The textile program coordinates investigations of criminal and civil violations of customs laws carried out through a variety of fraudulent schemes and practices, including false invoicing, false claims of origin, false marking and labeling, misclassification, mis-description, and smuggling.

Textile cases often reveal significant revenue losses for the U.S. Government. On April 9, 2014, HSI New York special agents reported a \$10 million settlement was approved pursuant to a civil customs fraud investigation against two importers of women's apparel; the penalty was paid under the authority of 31 U.S.C. §3729, the False Claims Act. Both importers were charged with cheating the United States out of millions of dollars in customs duties over a decade through the use of false invoices. The defendants paid their overseas manufacturers the full value of the apparel, but deducted a flat fee per garment set before calculating the duty on the apparel. The defendants then recorded only the lower value on the entry forms presented to the government. Through this fraud scheme, the defendants avoided paying millions of dollars in customs duties.

Environmental Crimes

ICE's Environmental Crimes Program encompasses a myriad of investigative areas including, the illegal importation of protected, endangered and non-native detrimental species, unapproved or non-compliant automobiles, machinery and other equipment, and environmentally hazardous materials and chemicals.

One example of ICE's work to protect the environment involves an endangered large marine fish called Totoaba, the bladders of which have been traditionally used in a Chinese soup. Fishing for Totoaba has been banned since 1975 and there has been a prohibition on importing them into the United States, except for purposes of scientific research since 1976. In conjunction with the Fish and Wildlife Service and CBP, ICE began investigating a wildlife smuggling organization in February 2013, that smuggled Totoaba bladders from Mexico into the United States, with an intended final destination of Hong Kong. As part of the investigation CBP seized four kilograms of Totoaba swim bladders at a DHL facility in Phoenix. The Totoaba bladders were mis-manifested as dry meats originating from Mexico destined to Hong Kong. HSI Hong Kong then worked with Hong Kong Customs to facilitate a successful international controlled delivery, producing two arrests and intelligence on the source in Mexico. To date, the investigation has resulted in seven criminal arrests, five indictments, five convictions, seizure of 455 Totoaba swim bladders, forfeiture of \$181,518, and the payment of \$500,000 in restitution to the Government of Mexico.

PROTECTING NATIONAL SECURITY AND HEALTH AND SAFETY

Operation Chain Reaction

Operation Chain Reaction (OCR) is an IPR Center initiative that combines the effort of 16 Federal law enforcement agencies to target counterfeit items entering the supply chains of the Department of Defense and other U.S. Government agencies. By partnering together, the participants in OCR are coordinating their efforts to more productively protect the U.S. Government supply chain.

In a case investigated by ICE, DCIS, and NCIS, a Massachusetts man pleaded guilty in June 2014 to importing thousands of counterfeit integrated circuits (ICs) from China and Hong Kong and then reselling them to U.S. customers, including contractors supplying them to the U.S. Navy for use in nuclear submarines. The subject told his customers, many of whom specified in their orders that they would not accept anything but new ICs which were not from China, that the ICs were brand new and manufactured in Europe. Testing by the Navy and one of their contractors revealed the ICs had been resurfaced to change the date code and to affix counterfeit marks, all in order to hide their true pedigree. In order to purchase these ICs, the subject wired nearly \$2 million to his suppliers' bank accounts in China and Hong Kong, in violation of Federal money laundering laws. This was the second conviction ever under trafficking in counterfeit military goods, a provision in the U.S. criminal code which was enacted as part of the National Defense Authorization Act of 2011.

In another case, the former Chief Executive Officer (CEO) of Powerline, Inc., a battery distributor, was found guilty of five counts of wire fraud and one count of conspiracy to defraud the United States by selling more than \$2.6 million in cheap, counterfeit batteries to the U.S. Department of Defense. In joint case by ICE and DCIS, with assistance from DLA and the Defense Contract Audit Agency, investigators discovered that Powerline sold more than 80,000 batteries and battery assemblies that the U.S. Navy used for emergency back-up power on aircraft carriers, minesweepers and ballistic submarines. The company would affix counterfeit labels falsely identifying the batteries as originating from approved manufacturers and used chemicals to remove "Made in China" markings from the batteries. The CEO fled the United States, but was apprehended when undercover HSI special agents hired him to sail his yacht to the U.S. Virgin Islands after spending more than 2 years on the yacht near St. Martin. Once the CEO entered U.S. Territory, he was arrested and his yacht was seized.

OCR has resulted in 40 criminal arrests, 70 indictments, 42 convictions, and 1,078 seizures worth \$21.2 million (MSRP) in counterfeit parts, currency, and vehicles. Counterfeit items seized through OCR include commercial-grade devices re-marked as military-grade and counterfeit semiconductors intended for use on nuclear submarines.

Operation Engine Newity

Operation Engine Newity targets the importation and distribution of counterfeit and substandard automotive products that impact the health and safety. Investigations and interdictions by ICE, the FBI and CBP have uncovered counterfeit airbags, steering, braking and seat belt components.

In October 2012, as a result of investigations by ICE and seizures by CBP, the U.S. Department of Transportation issued a consumer safety advisory to vehicle owners and repair professionals about counterfeit airbags; after safety tests showed a 100 percent failure rate. ICE and CBP have seized \$11.3 million MSRP worth of counterfeit auto products since fiscal year 2010, and made 27 arrests, 17 indictments, and three convictions.

Operation Guardian and Operation Apothecary

Operation Guardian (Guardian) is the IPR Center's public health and safety initiative. Guardian was initiated in October 2007 in response to several incidents in which hazardous imports into the United States caused serious public safety concerns.

In developing Guardian, ICE solicited the assistance of numerous law enforcement and regulatory agencies, including CBP, FDA OCI, the FDA's Division of Import Operations, USPIA, DOJ CCIPS, CPSC, and the U.S. Department of Agriculture (USDA). These agencies formed a Headquarters Working Group (WG) to target high-risk commodities from foreign sources.

HSI alone has initiated 1,030 Guardian investigations resulting in 491 criminal arrests, obtained 496 indictments, secured 359 convictions, and worked with CBP to make more than 6,400 seizures valued at over \$218 million (MSRP).

Operation Apothecary (Apothecary), which falls under the auspices of Guardian, works to combat the growing use of the Internet in illegal drug distribution. Criminals, posing as legitimate pharmaceutical providers, use the Internet to advertise purportedly FDA-approved prescription drugs, and/or less expensive unapproved foreign alternatives, all without requiring a valid prescription. The consumer purchases the pharmaceutical with the belief that the product advertised is a legitimate product, but in fact, is a counterfeit or unapproved version of the drug manufactured under unknown conditions or not subjected to any safeguards or quality control regimes. Apothecary addresses, measures, and attacks potential vulnerabilities

in the entry process to attack the smuggling of commercial quantities of counterfeit, unapproved, and/or adulterated drugs through the Internet, international mail facilities, express courier hubs, and land borders.

In support of the Apothecary mission, IPR Center personnel coordinated and conducted periodic enforcement surges in conjunction with ICE, CBP, FDA and USPIS at international mail facilities and express courier hubs throughout the United States. As part of Apothecary, HSI has arrested 212 individuals and obtained 235 indictments resulting in 201 convictions. There also have been 3,068 seizures worth approximately \$22.5 million (MSRP).

INTERNATIONAL EFFORTS

ICE HSI International Operations is DHS's largest investigative law enforcement presence overseas and fulfills a critical role in the safety and security of the United States. ICE deploys more than 240 HSI special agents and 156 foreign service nationals to 67 attach offices in 48 countries, as well as 8 liaisons to the Department of Defense. Their mission is executed through the enforcement of more than 400 Federal statutes that protect the United States from illicit goods, people, and money by conducting multi-faceted, international law enforcement operations and removals, and by disrupting transnational criminal and terrorist organizations before their illicit activities reach our nation's borders.

Cooperation with our international law enforcement partners is critical in combating copyright and trademark infringement overseas and effectively protecting, and enforcing American intellectual property rights holders. U.S. Government Attaches in a number of agencies, including ICE, the Department of Justice, FDA, and the U.S. Patent and Trademark Office, work with international organizations and foreign law enforcement counterparts to build capacity, strengthen relationships, and conduct joint enforcement activities. ICE, as the world's largest customs investigative entity, is recognized as a worldwide subject matter expert on criminal customs matters. HSI has been and continues to be actively engaged in the WCO through the Enforcement Committee and other working groups to address global crime problems including violations such as: intellectual property rights crime, narcotics trafficking, financial and revenue crimes, cyber-enabled border crime, environmental crime and wildlife trafficking, proliferation of controlled commodities, and theft of cultural property.

Trade-Based Money Laundering

Some of the illicit schemes designed to circumvent lawful trade mechanisms also involve trade-based money laundering (TBML). HSI's Trade Transparency Unit (TTU) aggressively targets the complex commercial fraud schemes used by transnational criminal organizations to move, store, and launder their funds through international trade.

The core component of the TTU initiative is the exchange of trade data with foreign counterparts, which is facilitated by existing Customs Mutual Assistance Agreements or other similar information-sharing agreements. ICE has partnerships with Argentina, Australia, Brazil, Colombia, Dominican Republic Ecuador, Guatemala, Mexico, Panama, Paraguay, and the Philippines. These partner countries recognize the value of sharing trade data with the United States and gaining the tools to analyze their own data. By combining international efforts, the TTU can identify international trade anomalies indicative of trade-based money laundering. This information is then used to initiate and support international criminal investigations related to customs fraud, tax evasion, money laundering and other financial crimes. It bears mention that, ICE is the only Federal law enforcement agency capable of exchanging trade data with foreign governments to investigate these types of crimes.

Additionally, the TTU is contributing to the successes of ICE investigations. With the assistance of the Headquarters TTU, the HSI office of the Special Agent in Charge (SAC) Los Angeles, California in July 2010 closed a two-year investigation of a Los Angeles based toy company suspected of money laundering, cash transaction structuring, and bulk cash smuggling. Headquarters TTU personnel provided analytical support and assisted the SAC office with the execution of a search warrant issued on the company. The case culminated in the arrest of the company's Chief Executive Officer, company owner, and accountant. Additionally, a Colombian businessman involved in the aforementioned criminal activities with the company was also arrested.

CONCLUSION

IPR theft and unlawful importation of illicit goods pose a significant threat to national security, public safety and the economic security of the United States. ICE investigations have shown that these illegal traders and criminal organizations are profit-driven, and exploit loopholes and vulnerabilities in the in-bond system and financial sectors to advance their criminal enterprises. ICE has unique expertise, as well as the necessary infrastructure and established key law enforcement partnerships, to effectively support investigative and operational activities focused on dismantling criminal organizations—thus reducing public safety hazards and limiting negative economic impact to this country.

ICE will continue to leverage all its tools to coordinate and unite domestic and international law enforcement efforts to combat international trade crimes. We are also dedicated to building on agency outreach and training programs with the trade community to enhance cooperation with all private sector partners.

ANTIDUMPING AND COUNTERVAILING DUTY ENFORCEMENT ACTIONS:
REPORT

Senator LANDRIEU. Thank you very much for that excellent testimony.

What I am thinking about as I am listening to you is just as American cities can't function, or communities, for that matter, without well-resourced police departments to maintain safety and provide order and security for citizens, ICE has a huge job in trying to enforce international trade laws that are absolutely critical for American businesses to be able to compete globally.

And while I am and Senator Coats are generally free traders, we would call ourselves, but fair traders, and lean toward opening up markets and encouraging trade between countries, I mean, it is clear to me that if this is not done in the correct way, it can be extremely harmful to American producers and American business and American suppliers.

So my first question, I just want to get a handle, I do have the report that was referred to earlier, that our subcommittee requested. We received the 2012 report, Antidumping and Countervailing Duty Enforcement Actions, which this subcommittee required.

However, when we received this report, it wasn't as detailed as we wanted it to be, and the next report is due. So my first question is, where is the next report? When can we expect it? And do you have any information about that?

[The information follows:]

The ADCVD New Shipper Review is in the final stages of clearance and will be submitted to the Committee shortly. The ADCVD Outstanding Collections report and the ADCVD Enforcement Actions and Compliance Initiatives of fiscal year 2014 are currently in interagency review. These reports should be forthcoming.

Mr. DiNUCCI. Thank you, Chairman. The report right now is working its way. Obviously, it has to go through the review process within DHS. It is cleared from CBP, it is my understanding at this point, so it should be forth coming.

In terms of the data, I know that we have been working on those data to address the issues that had in fact been raised and the data should be included in the report. But I will get you an update and get back to you.

ANTIDUMPING AND COUNTERVAILING DUTY ENFORCEMENT ACTIONS:
MONEY OWED

Senator LANDRIEU. All right, because that data, I agree 100 percent with the panelists who said we can't really begin to solve a problem until we can identify exactly what it is. Based on the short testimony today, we know that China is the most egregious player, it seems like, from the data that I have looked at. That is one interesting fact that I think we can put down as clear.

But other things, and if you could help me here, how much money, do either of you know, is owed to the American taxpayer, to the Treasury, to be distributed to those parties injured? And how much is yet to be collected? Do you all at least have that data? Because I think it indicates about \$1.7 billion. The staff gave me that chart.

Mr. DiNUCCI. Chairman, I believe, actually, the number is probably a little higher than that. I believe it is a little over \$2 billion, \$2.3 billion.

There are a lot of various activities associated with that. I think about 48 or 49 percent of that had actually been protested at one point in time.

Senator LANDRIEU. So it is \$2.3 billion, approximately. That is a cumulative number that is suggested that is owed.

Mr. DiNUCCI. Over a period of about 23 years.

Senator LANDRIEU. Over a period of about 23 years.

What I am very interested in is breaking down that number into the appropriate categories. So I think there are categories, like some of these charges were brought for companies that just dissolved and went away. Some of these charges have been brought because of criminal activity.

Can you break down the categories for us about this \$2.3 billion, just roughly, so Senator Coats and I can get a better understanding of that?

[The information follows:]

Of this \$2.3 billion (40,130 bills), 27 percent of these bills are associated with importer records that have a current status of inactive or voided. Additionally, 86 percent of these bills are associated with importer records that have shown no activity over the past 2 years.

CBP has 16,574 open AD/CVD claims that have been protested, totaling nearly \$1.1 billion. This represents nearly 50 percent of the overall uncollected AD/CVD debt. The total number of open AD/CVD claims that were protested and subsequently denied in full, withdrawn, or the protest was determined to be untimely filed is 13,957. In summary, nearly 50 percent of the open AD/CVD claims were protested and of that protested population, 84 percent have been denied in full, withdrawn, or the protest was determined to be untimely filed.

Number of AD/CVD Claims and Protests	
Total Number of Open AD/CVD Claims	40,130
Total Amount Due of Open AD/CVD Claims	\$2,293,217,690.59
Total Number of Open AD/CVD Claims—Protested	16,574 (41%)
Total Amount Due of Open AD/CVD Claims—Protested	\$1,097,028,337.89 (48%)

The universe for this data is all open AD/CVD bills as of April, 2014. The data below is organized by fiscal year.

Fiscal Year	Number Bills Protested	Number Protests
'92	24	8
'93	2	1
'94	16	4
'95	31	6
'96	17	9
'97	1	1
'98	23	3
'98	17	4
'00	3	1
'01	33	6
'02	17	6
'03	179	45
'04	530	45
'05	858	54
'06	485	56
'07	1479	125
'08	1817	186
'09	2147	192
'10	5242	296
'11	3808	138
'12	734	107
'13	783	109
'14	328	142
Totals	18574	1544

Of the \$2.3 billion, only \$63.6 million involves bankrupt debtors. CBP is unable to quantify the amount of debt associated with criminal activity.

Below are the bankruptcy totals by fiscal year. The universe for this data is all open AD/CVD bills as of April, 2014.

Fiscal Year	Number of Bills	Total Owed	Number of Importers
'91	30	\$ 468,346.98	2
'94	3	\$213.57	1
'00	1	\$429.75	1
'01	99	\$106,685.11	2
'02	17	\$7,657,114.88	4
'03	90	\$6,017,620.11	3
'04	1	\$ 3,378.35	1
'05	5	\$ 22,481.79	1
'06	445	\$ 9,925,581.89	2
'08	42	\$28,102,602.03	5
'09	6	\$1,477,084.21	1
'10	151	\$1,441,629.20	
'11		\$1,282,693.72	2
'12	77	\$2,081,032.58	4
'13	175	\$1,309,076.45	3
'14	60	\$3,740,556.33	1
Totals	1245	\$63,636,526.95	37

CBP cannot quantify this as it does not have an official, formal designation for disappeared/dissolved companies. There is no way to segregate this from other uncollected AD/CVD debts.

There are three sureties in receivership or liquidation, under state supervision. There is one surety that is in runoff, which means it is insolvent but still operating independent of state supervision. From the fiscal year 14 AD/CVD Collections Report data, CBP shows that 5,670 open AD/CVD bills involve one of these four sureties, with a total bill amount of more than \$525 million. NOTE: this does not mean there is \$525 million in bonds securing those bills.

Below are open ADCVD bills sorted by the calendar year the bill was created:

Cal. Yr	Number of Bills	Total Debt
'91	2	\$12,494.24
'93	24	\$ 360,178.96
'94	61	\$39,186,055.87
'95	22	\$199,276.87
'97	1	\$82,904.65
'98	20	\$13,265,798.11
'99	24	\$1,622,161.49
'00	25	\$157,137.66
'01	40	\$1,798,754.28
'02	175	\$35,791,761.68
'03	585	\$109,467,390.80
'04	566	\$184,666,048.48
'05	763	\$64,537,944.07
'06	1249	\$101,007,398.22
'07	1951	\$191,055,129.99
'08	3148	\$122,280,309.02
'09	7424	\$279,509,758.73
'10	9879	\$478,894,345.33
'11	4452	\$266,924,511.10
'12	3970	\$144,838,878.79
'13	5747	\$257,456,015.61
'14	2	\$103,436.64
Totals	40130	\$2,293,217,690.59

Mr. DiNUCCI. I would have to go back in terms of specifically where it came from, when you describe whether it is illegal activity or whatnot. Most of the \$2.3 billion is actually just straight duty that is owed on the dumping.

Since 1991, that number, at this point, is actually \$2.29 billion. There are about 1,500 protests of that, which, when those protests are broken out, the protests of individual bills, that is about 19,000 of those bills that are protested. That worked out to a little over \$1 billion.

There are bankruptcies involved, as I think was noted as well, and there are about 37 of those, a total of about \$63 million.

Senator LANDRIEU. Okay, so let's just be clear on those numbers. \$2.3 billion is the total. Of that, how much is under protest?

Mr. DiNUCCI. About 48 percent, or a little over \$1 billion, was protested. We did deny 84 percent of those protests. And then, obviously, the action is to work in most cases with a surety or to see if there are assets that could be attached from the importer.

Senator LANDRIEU. So we can conclude for sure based on your 20 years of data that you are giving us that most of those protests will not be upheld.

Mr. DiNUCCI. Yes.

Senator LANDRIEU. You denied 84 percent. That is a pretty significant number.

Mr. DiNUCCI. Yes, ma'am.

Senator LANDRIEU. So we could argue that a good 84 percent of that \$1 billion is today still owed and just not collected. That is a lot of money.

Mr. DiNUCCI. Yes, ma'am.

ANTIDUMPING AND COUNTERVAILING DUTY ENFORCEMENT ACTIONS:
BOND SYSTEMS

Senator LANDRIEU. So what are we doing to collect that money? And when could we see any of it?

[The information follows:]

CBP has initiated a labor-intensive survey of unpaid AD/CVD bills targeting unexhausted surety bond coverage with an expiring statute of limitations. Separately, CBP has received helpful information from concerned members of U.S. industries and from colleagues at the Department of Commerce (Commerce). CBP is using this information to focus collection efforts and ensure that AD/CVD claims with bond coverage are paid or referred to the Department of Justice (Justice) for litigation before the statute of limitations expires.

For example, after a manual review of Commerce's Federal Register notices concerning antidumping duty order reviews, CBP recently identified a group of entries of freshwater crawfish tail meat from China that liquidated by operation of law nearly 6 years ago. The statute of limitations was due to expire soon on these entries. CBP took action to preserve the ability to collect more than \$14 million by immediately demanding payment from the importer and surety then referring the matter to Justice to file suit. Because of CBP and Justice's efforts to position the U.S. Government to file suit, the surety paid the full bond amounts securing these debts in early April 2014, on the day before the statute of limitations would have expired.

CBP faces significant legal challenges from the sureties whose bonds secure the AD/CVD bills. CBP has worked with Justice to file more than 30 lawsuits against sureties in the U.S. Court of International Trade (CIT). More than \$316 million of the claims have been referred to Justice for litigation. In addition, CBP is working with Justice to defend about 300 lawsuits, the majority of which have been brought by a single surety, seeking refunds of AD/CVD payments already made, an amount exceeding \$85 million. In the 30-plus collection cases initiated by CBP, CBP is seeking to collect more than \$76 million under surety bonds securing imports of crawfish tail meat, canned mushrooms, garlic, and honey. These cases are in various litigation phases, from pleading to appeal. For example, one lead case on unpaid AD/CVD bills is being briefed before the U.S. Court of Appeals for the Federal Circuit (see *United States v. Am. Home Assurance Co.*, Court No. 2014-1292, appeal docketed February 12, 2014).

CBP is also working with Justice to seek the fullest recovery possible in the state insolvency proceedings of three former customs sureties. These cases involve approximately \$91 million in bonds securing over \$230 million in unpaid duties, much of which is AD/CVD. These proceedings have continued for more than 10 years, requiring an extensive commitment of resources by both CBP and Justice.

While CBP is optimistic about the prospects of collecting in the legal actions described above, not all outstanding AD/CVD debts will be successfully collected. Of the \$2.3 billion in outstanding AD/CVD debts, \$1.2 billion is potentially disburseable under the Continued Dumping and Subsidy Offset Act program. Of this \$2.3 billion (40,130 bills), 27 percent of these bills are associated with importer records that have a current status of inactive or voided. Additionally, 86 percent of these bills are associated with importer records that have shown no activity over the past 2 years. When CBP has exhausted all of its collection efforts on these claims and they remain unpaid, CBP will write off the claims. Write-off ceases active collection efforts, however, CBP maintains records of the unpaid claims. If the company at any point becomes an active business again, CBP will attempt to collect. Write-offs are never pursued simply because of convenience.

Mr. DiNUCCI. Obviously, the first step is a surety. We have had some success recently with some court cases where a surety challenged us. In the crawfish area, for instance—

Senator LANDRIEU. How much of this \$1 billion is under surety? Do you know?

[The information follows:]

CBP cannot answer this definitively. A company may have many entries in CBP's system associated with the same continuous bond, within the same annual period. For all such entries secured by the same continuous bond and annual period, CBP may only recover once up to the limit of liability of the bond and may have already done so.

Mr. DiNUCCI. I will check that for you. Most of that will be under surety in terms of—

Senator LANDRIEU. So most of this is under surety of American bond companies. Are they all American or are they international bond companies?

Mr. DiNUCCI. They are U.S.-based companies. And again, in most of these instances, there are court actions. They did come back; a couple of those companies, in the crawfish arena specifically, took us to court. We won two recent cases. We have recovered about \$20 million. Of that \$20 million, I think about \$14.4 million is available for distribution.

What often will happen, obviously, is a surety. Because of the nature of the system, we will—it is important that the entry is actually made. The bond is set to cover a specific amount of that duty. If the rate changes, the bond will not cover the entire amount of that duty. And then we have a delta as we start that process.

Senator LANDRIEU. Okay, well, clearly, there is some more information that we are going to have to get about this surety system. Part of this jurisdiction, I am sure, is in Commerce, which they regulate trade, and we do enforcement here.

Just leaving \$1 billion or \$2 billion uncollected and delay after delay after delay, doesn't seem to be the most effective system. I may be missing something, but I am going to just ask if ICE just wants to put something in the record, and then I am going to turn Senator Coats and we will do a second round of questions really quickly.

Mr. KUBIAK. Thank you, Madam Chairman. Just a quick comment from the criminal aspect related to this as a result of investigations we have worked. What we often find is that there is a very, very small amount of that money that is owed, let's say, that is actually collectible by the United States Government because, as your witnesses earlier mentioned, this shell corporation or shell company creation, which are created in some cases solely to be a venue for which bills can be submitted for and the bond can be laid against, but that there is not actually anyone there at the end of the day, as our investigation—

Senator LANDRIEU. Let me ask you something on that. If the bond is covering it, and there is a shell corporation, isn't that the risk of the bond issuer?

Mr. KUBIAK. Ma'am, I am going to defer that question back to CBP, but the key piece, I think what we are finding with the investigations is our ability to collect that money at the end of the day; that money isn't anywhere.

Senator LANDRIEU. But if they have a bond, the bond itself should stand as a collection for that. It is the risk of the bond-giver, if I am thinking about this correctly, that you should have no problem collecting it. If the bond company goes away, it is the bond holder, the bond issuer's risk.

But go ahead.

Mr. DiNUCCI. Yes. Part of it goes back to the way the bond was executed. A lot of times if the surety is not convinced the bond was executed properly, they will challenge it in court. And we wind up in litigation.

Now, bonds get executed in a variety of fashions. One of the things that we would, certainly, thank you for specifically is assistance in helping us to automate that process, in terms of taking the bonds and creating a process whereby we are able to track them much more closely.

Senator LANDRIEU. Because if we can't get this bond thing straight, I am going to suggest that we go back to the cash payment, which will solve all sorts of problems.

So for whoever is interested in this, we have to have a better bond system or we can just go back to cash. People can put up cash, and that way, if they don't do what they need to do, then we can use their cash and take care of the injury.

But go ahead.

Mr. DiNUCCI. Well, I won't disagree that that would, certainly, be an assistance. I think in terms of the use—for instance, we are now deploying single transaction bonds much more aggressively to deal with the evasion schemes.

A lot of that goes back to assessing the risk and managing the risk and being a lot more transparent with the sureties in terms of why we are requesting a single transaction bond, so they will know the risk that we believe is present. Therefore, they may in fact ask for that bond to be collateralized, which makes that bond a lot more solid, if you will. It gives us the ability to at least potentially collect more than we would have otherwise.

But you are still going to have a delta if in fact the final rate is greater than the assessed rate at the time the entry was made.

We are also centralizing the bond process so that we are able to track bonds much better than we have in the past to ensure and hopefully reduce the risk of litigation, which would make collection against the bond easier if in fact we need to go that route.

Part of what we are also trying to do at this point in time is use tactical audits. We talked a lot about the trade folks talking about transparency, and we are committed to that. I think I have met with a number of people in this room specifically about that, about giving them feedback when they provide an allegation to us. We are giving them a direct report on what is taking place, to the extent that we can.

Now, if we turn it over to Mr. Kubiak at HSI for a criminal investigation, then we have to be circumspect about what we roll back.

But the audits are also very useful in terms of just getting the money up front, and they will go in. They will pay visits to these companies directly that the trade has told us are in fact evading.

There could be one or two outcomes. Some of these companies will simply go out of business, because they know what the next step will be. Some of them in fact will pony up the duty. We have had success in that regard.

Senator LANDRIEU. I have one more question, but I want to turn it over to Senator Coats.

TRADE CASES: EXPEDITING PROCESS

Senator COATS. Well, I can be brief. My question is, what did you take away from the previous panel? What can we undertake to sort of expedite the process? Obviously, if it goes into litigation, it goes

into litigation. But if there are shortcuts here or efficiencies that we can implement based on what was said here this morning, I think timing, the statement that Mr. Blume made, finally, when you win a trade case, the damage is already done. So it is sort of a hollow win.

But did you take anything away from that? Is there anything we can do in terms of better communication, better expediting processes, et cetera?

Mr. DiNUCCI. Well, Senator, thank you for that question. I think it is a great question.

We can control what we can control in terms of what Customs does, and that is what we are really focused on. The process is what it is.

Definitely, in terms of the communication piece, and transparency, I think you heard a little bit today about the fact that we are working with the trade as collaboratively as possible for training purposes.

When in fact we do get the allegations now, we have changed that process. There is a series of questions. If we get a point of contact from a trade, we will ask a series of questions, and I require staff to reach back to the trade and let them know exactly what happened with that.

One thing we have, certainly, learned in terms of schemes we have seen with the shell company issues is that internally, a process that we used to assign import record numbers needs to be changed. And we are pursuing that now.

We are automating it. We are making it much more robust, if you will, in the terms of the data we will request from an importer, if that prospective importer wants to get an importer of record number assigned to them by Customs. A large part of that is designed to find these companies that in fact have evaded in the past.

We have very sophisticated tools we use to track travelers. We are essentially going to apply the same process to cargo and those who want to bring that cargo in.

So, in fact, if we are getting tips from the trade, we have seen these folks in the past use evasive schemes, we will identify them before they start that a second time.

Some of the shell schemes, they set the company up, and as you heard, they will go out the business. Then they will reconstitute themselves and say to Customs, "Well, I need a new import of record number." That is what this process is designed to avoid. We are automating it. We will run this information through our targeting systems and some of our other systems, and hopefully identify these people before they wind up getting inside that system.

Another thing we are trying to do to is, obviously, work a lot with the domestic industry. But we are also taking a look at, if you will, the end-user, the consumer of the product, whether it is pipe, whether it is shrimp, whatever that product may be, to let them know that they are purchasing this product, as much as we do in the intellectual property arena, and this is essentially what you are contributing to, because these companies are evading.

They are damaging domestic industries. And it is a critical mission set for CVD, protecting these domestic industries. So we are

going to work with those folks as well and let them know this is the end result of what they are doing. Hopefully, that will work.

We have had some initial sort of positive response from some of the folks who are receiving these goods. Hopefully, that will work as well.

But I think the critical part is the single transaction bond use, centralizing and automating that process, and then creating a really robust process for importers to register to get a number from us. If you will, we call it a passport for your cargo.

COMMERCIAL OPERATIONS ADVISORY COMMITTEE

Senator COATS. Do you have advisory panels made up of private sector at annual meetings, quarterly meetings, where you exchange ideas and try to work in a collaborative way?

Mr. DiNUCCI. Yes, we do. The Commercial Operations Advisory Committee (COAC) is the constituted body that actually does that.

I know we have talked about getting domestic industries at the table. There is a subcommittee that deals on AD/CVD, and we are going to get domestic industry to the table and get them involved in that, so that we can get all the stakeholders to discuss these issues.

Again, in terms of transparency, as I said, there are a few folks in the room that we have met with, and I continuously let the trade know that, certainly, my door is always open. And it doesn't only have to be their coming to me with good news. They can come to me with criticism, things we can act on and improve.

I think you heard, to an extent, that we have begun to make some improvements. We are not satisfied with that. We need to do a lot better, and we will do that. But that door is always open.

COAC is the constituted body, but, certainly, in terms of the allegation feedback and things like that, that requires an open door on our part, and that door is wide open. Anytime they need to talk with us, whatever the issue, we are willing to listen.

Senator COATS. Very good. Thank you.

Mr. DiNUCCI. Thank you, sir.

BONDS: EXPEDITING PROCESS

Senator LANDRIEU. Thank you. I have just a few more questions. And then we will submit several in writing for the record.

Several of our previous panel expressed their concern about the delay in CBP bringing lawsuits. What is causing these delays? And can you explain or describe the delay? Is it a year, is it 2 years, is it 3 years? How many lawsuits are stacked up? How many are in court? How many are pending? How many are waiting trial? And what is slowing it down? Or what could make it go faster?

Mr. DiNUCCI. Well, to answer the last part of your question, certainly, what would make it go faster is automating the bond process, ensuring they are executed properly.

Senator LANDRIEU. Okay, what do you need to automate the bond process? Do you need resources? Do you need people? Do you need technology?

[The information follows:]

CBP is currently in the process of automating the entire bond process. The automation effort is already funded. CBP plans to deploy this automation on January

3, 2015 for entries that are filed in the Automated Commercial Environment (ACE). Overall, the centralization and automation will not increase personnel needs agency-wide, however, some reallocation of staffing will be necessary.

Mr. DiNUCCI. Senator, you were very gracious in funding what we have done in terms of automating that process. We have already started to do that. We will have a pilot ready in a few months. And then that process will be automated early next year.

So that is underway. Again, thanks to the subcommittee, and you, specifically, Senator, for assistance with that.

There may be resource implications in terms of personnel to staff that properly, but that process is well underway. So I think that begins to deal with that issue in terms of potential litigation.

There are due process issues, and I will preface this, I am not an attorney. But in terms of sureties' rights, they have protest rights. That takes time. That gets into that legal process that can take a while.

Once that process is finished, whether it is a year or 2 years, I will have to get back to you with the specifics on that. Then we go to the surety with a formal demand. And then there is a process that is associated with that as well.

Senator LANDRIEU. Okay, if there is any way that you all would recommend, without trampling on people's constitutional rights, to shorten that process, this subcommittee would be very interested in hearing it.

And my second question is, are there special courts that hear this? This goes through special trade courts, not regular courts?

HONEYGATE

Mr. DiNUCCI. Court of International Trade, but I will have to sort of defer to the experts on that. I would assume at some point, the Federal circuit courts would get involved as well, depending upon the issue involved.

Senator LANDRIEU. Because I am going to ask staff to do a case-load review of where these cases are pending, what is the number of cases before each judge, sort of an analysis of that to make sure we can identify where the chokepoints are here.

Let me ask you, Mr. Kubiak, this Honeygate, which is very interesting, and I understand it was operated out of the Chicago office, and the names of the agents who were really successful, I want to put into the record, and I will submit them. They are Special Agent Mary Buduris, Special Agent Michael Morre, Special Agent Matthew Gauder were the lead folks who cracked this case. We want to thank them.

But there is a list of people here who were arrested. I wanted to ask you, are any of them in jail? Were any convicted and in jail? And are these people, these nine circled here, still on the lam? Are they still running?

Mr. KUBIAK. Yes, ma'am. We have had a number of convictions related to that and significant sentences for the case.

Senator LANDRIEU. Do you know how many convictions on Honeygate?

Mr. KUBIAK. Yes, ma'am, I do. I can give you the actual number separately. I don't have it here. Nineteen people indicted and eight companies also indicted, but I don't have the number directly.

Senator LANDRIEU. If you can give us the convictions and the average term of time that was awarded?

And then these nine that are still fugitives. Can you talk about what we are doing to try to find them?

[The information follows:]

There were 9 convictions from Operation Honeygate. Here were the sentences:

1. Stefanie Giesselbach—1 year and a day of imprisonment and ordered to pay restitution in the amount of \$17,116,073. Deported by ICE.

2. Magnus von Buddenbrock—6 months' home confinement and ordered to pay restitution in the amount of \$500,000. Deported by ICE.

3. Yong Xiang Yan—18 months' imprisonment and ordered to pay restitution in the amount of \$2,953,515.

4. Hung Ta Fan—30 months' imprisonment and ordered to pay restitution in the amount of \$5,378,370. Deported by ICE.

5. Shu Bei Yuan—2 years' imprisonment and ordered to pay restitution in the amount of \$1,485,631. Now in immigration removal proceedings in CA.

6. Hung Yi Lin—3 years' imprisonment and ordered to pay restitution in the amount of \$512,852.

7. Doug Murphy—6 months' imprisonment and ordered to pay restitution in the amount of \$26,642.

8. Urbain Tran—1 month imprisonment and ordered to pay restitution in the amount of \$704,403.

9. Jun Yang—3 years' imprisonment and ordered to pay restitution in the amount of \$2,890,284.

Mr. KUBIAK. Yes, ma'am.

Just for clarification on the last point, the criminal process of this actually does go through the regular Federal court process separate from the bonding or civil process that we talked about earlier and separately.

Those individuals that you indicated, as I mentioned in my testimony, it was a global conspiracy. So we have individuals in China and we have individuals in foreign countries as well. Those individuals are indicted. There are red notices through Interpol for those individuals, should they come into the clutches of the United States, or if we are able to get their extradition from a foreign country.

Senator LANDRIEU. How do we know that these folks that have been identified as bad actors in Honeygate, and they are on the loose, are not setting up sham corporations as we try to find them?

[The information follows:]

HSI Chicago has filed for Red Notices with Interpol seeking the location and arrest of wanted foreign individuals, German, Chinese and Canadian nationals with a view to extradition to the United States (when an extradition treaty exists) based on the arrest warrants issued in the Northern District of Illinois. The Red notice is an international alert used by police to communicate information about crimes, criminals and threats to their law enforcement partners around the world. The information disseminated via notices concerns individuals wanted for serious crimes, missing persons, unidentified bodies, possible threats, prison escapes and criminals.

Mr. KUBIAK. Ma'am, I think that is a fantastic question, a great point. And I would like to, rest assured, to the witness earlier, Mr. Sanroma, that we are going to stay engaged and continue to stay engaged actually on this case and this issue. It is not fully concluded, obviously.

And we are feeding back information that we received to the other Government agencies like Commerce and USTR, because what we have done through that investigation, I think, has given us a very unique look inside what is a global conspiracy by a sophisticated criminal organization to circumvent the duties of the

United States and to dump commodities into the United States. And what we are able to then do is share those identified loopholes with the appropriate partners.

That has already been done with CBP, but allows other parts of the Federal Government to then shore up those activities and then make recommended changes.

You or Senator Coats had asked about recommendations. The witnesses talked about transparency. I think we have already begun some of that. We are working very closely with industry on these cases and these issues. Obviously, once it gets into the investigative mode, it is more difficult to talk about an ongoing criminal investigation.

We had an undercover agent in a company for a year. Obviously, that is not something we can disclose or talk about during that process.

But that position allowed us, both CBP and HSI, to chase containers of illicit honey around the United States and seize the product much more effectively than we would otherwise have been able to.

So we are taking that model now, and in your State as well, we have built a more enhanced CBP and HSI seafood working group that is very focused on this issue. We built a trade enforcement coordination center, which is CBP and HSI colocated resources at your port in New Orleans, working specifically on the seafood issue.

And we are adopting the lessons learned from the larger Honeygate investigation to apply that to these other commodities.

Senator LANDRIEU. Let me ask you this, you know how some law enforcement have the authority when they interrupt a drug ring to confiscate all things related—farms, houses, boats, et cetera? Do you all have that authority?

Mr. KUBIAK. Yes, ma'am.

Senator LANDRIEU. So you can seize assets?

Mr. KUBIAK. Yes.

Senator LANDRIEU. Of the criminal activity?

Mr. KUBIAK. Yes, ma'am. ICE has the broadest Federal investigative authority of any agency, actually. And our combined abilities within the Immigration and Customs environment as well as the normal title 18 charges that we can cover allow us money laundering charges and asset forfeiture. We apply those in major investigations.

Senator LANDRIEU. You can keep some of what you earn in that way? Or does it all go back to the Federal Treasury?

Mr. KUBIAK. It goes back into the Treasury asset forfeiture fund. But then we are able, for specific purposes, to reimburse investigative costs and reimburse other expenses associated with investigations. So the investigative tools that we need, the CBP can tap into that fund as well.

I want to be very clear, those three agents did a fantastic job, but that was the letter that the honey industry wrote to our agency. There was a large group of CBP officers, a DOJ attorney, and a myriad of other people in other agencies that contributed.

We invested in total, thus far, in that investigation, about 43,000 investigative hours in the Honeygate activity. That is about 20 agent years total in investigative time just from our standpoint.

So when you look at a major investigation like that, it is very resource intensive. You asked earlier, we have been provided a lot of resources over the years. But, as you know, we have a very broad authority, and our ability to implement things like the training that we are doing with the trade and our trade enforcement centers around the United States are being expanded now.

Senator LANDRIEU. Okay, Mr. Wagner, do you have anything to say, since you came so prepared. I don't want to not give you an opportunity to just add something.

Mr. WAGNER. I am perfectly fine. Thank you for the opportunity.

And I think the work of the two gentlemen on either side of me, we work very closely together. And like Mr. Kubiak just pointed out, we play a key role at the ports of entry, using our targeting assets to glean all the information from a case like this, take the known pieces of intelligence that you had referenced, take the sort of loopholes and how this enterprise was able to operate, and feed that into our targeting and our analytical systems that we work with ICE and we work with the Office of Trade. And then our CBP officers on the ground at the ports of entry check that cargo and feed that information back into it. So it is great cooperation among these agencies.

CENTERS OF EXCELLENCE AND EXPERTISE

Senator LANDRIEU. Well, I am very interested in you all setting up a shrimpgate or a crawfishgate as soon as you all can.

And my final question, the Centers of Excellence, could you comment about their effectiveness and how do you think these may work in truly helping specific areas to focus? There are so many different products and industries, having these Centers of Excellence developing this expertise, do you feel like it will help us be more effective?

Mr. DiNUCCI. Great question, Chairman. I do believe that is the case. I think we have seen certain benefits already from a facilitation perspective. We have seen the enforcement value as well, more in the intellectual property arena, to be quite honest.

But I think in the long run the center in Miami will be dedicated to agriculture and consumable products. The idea really, to be quite honest, 99 percent of importers we deal with are above board and honest. But that 1 percent, when you are talking about \$2.4 trillion worth of trade, is a lot.

And I think where we go with the Centers of Excellence and Expertise (CEEs) eventually is to have that kind of relationship with the trade, a transparent relationship. So those good guys—and they come all the time to the conferences we go to. They come in the door here to testify. We will know them.

The information they give us needs to be applied to those guys that are not quite being so honest.

I think the CEEs are going to be driving us from that point, to create that intelligence level, so we understand the businesses, how they operate, where they operate, where they source, why they source.

It will also give us insight into the schemes that are used to evade. That will be, I think, the cornerstone of how those CEEs operate. Reduce costs for legitimate partners and make life a lot more difficult for the entities out there that are attempting to evade or use other illicit activities to avoid requirements.

Again, we have three that are really up and running right now. I think from an enforcement perspective, we see value added there. That is our pharmaceutical, electronics, and petroleum.

But I think in the future, we are really looking to drive that in that direction. But that will be a much closer relationship with the trade. And I think that will be the cornerstone in terms of really doing effective enforcement.

That trade, by the way, does include, ma'am, the domestic industry.

Senator LANDRIEU. Well, thank you all very much. I am going to close our subcommittee meeting at this point by thanking you all for your testimony.

PREPARED STATEMENT

Stopping illegal dumping and robustly enforcing our trade laws is important to protect and grow jobs here at home. It is vital to American business and the American economy. I am committed to do all I can, and I know this subcommittee is committed as well, to do what we can do under the authorities and roles and responsibilities that we have, to make sure that these laws are in place, they are enforced, and people are compensated fairly for injustice or for injury.

We invited Mr. Ronald Lorentzen, Deputy Assistant Secretary for Enforcement and Compliance. He could not testify because of a conflict. But we have received his testimony and will put that into the record of this subcommittee.

[The statement follows:]

PREPARED STATEMENT OF RONALD LORENTZEN

The Department of Commerce (Commerce) appreciates the opportunity to submit a statement for the record on the critical issue of trade enforcement and to provide the Subcommittee with an update on Commerce's commitment and efforts to enforce the trade remedy laws.

Enforcement and Compliance (E&C), within Commerce's International Trade Administration (ITA), has responsibility for administering the antidumping duty and countervailing duty (AD/CVD) laws. These laws provide business and workers with a transparent mechanism to seek relief from the market-distorting effects of injurious dumping and unfair subsidization, and provide them with the opportunity to compete on a level playing field.

While this statement focuses on the important matter of trade remedy law enforcement, it is important to note the other activities that E&C and ITA undertake to provide America's businesses and workers a fair opportunity to compete in commercial markets worldwide and to grow American jobs. In addition to AD/CVD law administration, E&C also has the statutory authority for leading a program to monitor trade agreement operation and to seek foreign government compliance with their trade agreement obligations. Through the Trade Agreements Compliance Program, E&C's staff works to break down trade and investment barriers abroad and proactively monitors foreign government compliance with trade agreement obligations. We now have a comprehensive range of tools and expertise to help U.S. firms and workers confront foreign trade barriers and unfair trade practices in their quest for global growth and increased employment and profitability at home. These include our coordination of the Trade Agreements Compliance Program, administration of the U.S. AD and CVD laws, and leadership of other efforts to monitor and

address how foreign governments' use of trade-distorting subsidies and trade remedy measures may harm U.S. export interests.

As part of the Trade Agreements Act of 1979, the Congress transferred from the Department of the Treasury to Commerce the responsibility for administering the AD/CVD laws. And, then, in the late 1980s, the Congress gave Commerce additional authority, under section 781 of the Tariff Act of 1930 (Tariff Act), to deal with the potential circumvention of AD and CVD orders. In exercising this authority, and as a matter of daily business, we cooperate with U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and other Department of Homeland Security (DHS) agencies, as appropriate, in a variety of ways to try to counter and stop various duty evasion schemes that can thwart the purpose and effectiveness of these important laws. We also work in close cooperation with CBP, ICE, and the Department of Justice (Justice) to assist them in enforcing the customs laws and ensuring that our border measures are effective.

Commerce conducts AD and 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 finds that a domestic industry has been injured as a result of the unfairly traded imports, we issue an AD duty or countervailing duty 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 normally conduct an administrative review of the entries of subject merchandise from the past year to determine the actual level of dumping or subsidization during the prior 1 year period.

Commerce's role in detecting and deterring the circumvention of AD and countervailing duties is addressed in Section 781 of the Tariff Act. Pursuant to those provisions, Commerce may conduct circumvention inquiries when: (1) it is alleged that minor alterations have been made to subject merchandise in order to evade AD/CVD orders; or (2) 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. Commerce 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, Commerce may, after taking into account any advice provided by the International Trade Commission, 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.

In 2006, E&C's predecessor, Import Administration, formally established a Customs Liaison Unit, which falls under the direction of our Deputy Assistant Secretary for AD/CVD Operations. The Customs Liaison 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 and countervailing duties in a timely manner.

In February 2010, the AD/CVD Case Reference File within CBP's commercial trade tracking system—the Automated Commercial Environment, or ACE—went “live.” The ACE AD/CVD Case Reference File has allowed Commerce to maintain much more efficient and effective communication with CBP in the implementation and application of the AD and countervailing duty 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 ad valorem, i.e., 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, where Commerce has imposed a cash deposit rate of a specific dollar amount per kilogram for an exporter's entries of a particular product, even if the value of the merchandise is undervalued upon entry, the full amount of the duties owed is being applied because it is being applied against the kilogram quantity of imports, not the underdeclared value.

Commerce recently amended its regulation governing the certification of factual information submitted to Commerce 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: 1) identify to

which document the certification applies, 2) identify to which segment of an AD/CVD proceeding the certification applies, 3) identify who is making the certification, and 4) provide 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.

In the course of our proceedings, particularly our annual administrative reviews, our staff occasionally discovers or is made aware of information indicating the possible evasion of AD/countervailing duties. When Commerce uncovers information that indicates possible evasion of the AD/CVD laws, we have the statutory authority to provide that information to the DHS. Between January 2012 and the present, Commerce has referred 30 evasion allegations to CBP. Upon examination of the information provided, authorities at the appropriate DHS agency may initiate an investigation which can 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 (whether based on a referral from Commerce or CBP/ICE's own findings), Commerce is frequently asked by CBP/ICE agents or the Assistant U.S. Attorney prosecuting the investigation to provide assistance. Since early 2012, Commerce has taken action to assist CBP, ICE, and/or Justice in approximately 20 investigations of possible fraud or evasion with respect to proceedings covering more than 12 AD/CVD orders.

Commerce also uses its own authority to enforce the AD/CVD laws and ensure their effectiveness. Some of AD/CVD orders under which Commerce has recently taken action to address enforcement concerns include, among others, the AD/CVD orders involving honey, garlic, shrimp, solar cells, and certain steel products.

For example, Commerce has made use of its authority to address circumvention of AD/countervailing duties to enforce the order on honey from China. In August 2011, Commerce received a complaint from domestic honey producers that Chinese exporters were evading the AD duty order on honey by mixing honey with rice syrup and then claiming the resulting product was not subject to the duties due on imports of honey from China. After reviewing all of the facts, Commerce issued a final determination finding that blends of honey and rice syrup were, in fact, circumventing the order and began collecting duties on entries of honey and rice syrup blends from China, regardless of the percentage of honey in the blend.

Commerce has also taken several steps to ensure that Chinese exporters and U.S. importers of garlic do not engage in activities designed to avoid the payment of duties. As noted above, Commerce now applies a specific duty rate to ensure that duties are not evaded through the undervaluation of imports. Most recently, Commerce discovered during an administrative review that a Chinese garlic producer was using its individual, relatively low AD rate to export other producers' garlic, thereby evading a significant portion of the actual AD duties owed. After uncovering this scheme, Commerce revoked this producer's individual duty rate and instructed CBP this past June to collect duties on all imports from this producer at the higher, country-wide duty rate.

In 2012, while conducting an administrative review of the AD order on frozen warmwater shrimp from China, Commerce received information that one of the Chinese exporters, Hilltop International, had been supplying false information to Commerce over a multiyear period. Commerce rapidly assimilated vast amounts of information in order to directly investigate the matter. Ultimately, Commerce concluded that Hilltop made false statements in response to Commerce's first probe and, given the seriousness of the matter, Commerce reopened prior administrative review results regarding Hilltop. Upon re-examination of the information, Commerce found that Hilltop engaged in the same pattern of behavior in the prior reviews. As a result, the AD duties due from Hilltop grew from zero, a finding which had been supported by false information, to likely over \$100 million.

With regard to the AD/CVD orders on solar cells from China, due to concerns over potential evasion, Commerce, working with CBP, established a certification requirement for U.S. importers who claim that the solar modules they import are not subject to the orders. This procedure requires U.S. importers and Chinese exporters who claim that their modules do not contain solar cells produced in the PRC to certify as to the accuracy of that representation, and to acknowledge that failure to maintain the certification or substantiate their claim will result in application of the country-wide AD and CVD cash deposit rates. A subsequent benefit from this program has been Commerce's ability to monitor imports of solar cells and modules from China. In April 2013, Commerce analyzed CBP import data covering solar modules, which suggested that some importers may either be improperly declaring merchandise as not subject to the orders, or understating the entered value of the subject imports to reduce their duty liability. We are working with CBP to collect

additional documentation and have requested additional information from certain companies to monitor and ascertain compliance with Commerce's certification requirements.

Commerce also works with CBP in other ways to mitigate the undercollection of duties. In January of this year, in response to concerns raised by domestic producers in the garlic, crawfish tailmeat, honey, and canned mushroom industries, Commerce undertook a survey of completed administrative reviews to determine if all appropriate liquidation instructions had been issued for companies' whose merchandise came into the United States under bond during specific periods. Commerce identified the relevant liquidation instructions and provided a chart to CBP identifying the exporter, relevant period, and the applicable liquidation instructions. CBP was able to use this information to look for uncollected AD duties and countervailing duties with unexhausted surety bond coverage and to collect the duties or refer the issue to Justice for litigation before the statute of limitations for collecting on those bonds expires.

It is important to note that the flow of enforcement-relevant information between Commerce and CBP goes both ways. Late in 2011, CBP contacted Commerce with information suggesting that a party was attempting to circumvent the AD order on steel threaded rod from China by slightly altering the chemical make-up of the steel. This slight alteration could have resulted in these products being treated as a new product for which no AD duties would have been due. Commerce subsequently initiated an anticircumvention inquiry into this matter and found that these minor alternations to the merchandise did not make the altered product a new class or kind of merchandise distinct from that covered by the order. As a result, these products are subject to AD duties.

Cooperation among Commerce, CBP, ICE, and Justice has resulted in indictments, convictions, and prison sentences for evaders of AD/CVD orders. For example, our work with CBP, ICE, and Justice resulted in the arrest and 2010 indictment of German nationals involved in a massive transnational series of arrangements to import Chinese honey into the United States without paying the proper AD duties. The information recovered following those arrests led to further arrests, sentences, and deportations as late as 2012, all for having fraudulently skirted the payment of AD duties.

The examples provided above illustrate the close and expanding relationship between Commerce, Justice, ICE, and CBP with regard to addressing circumvention and countering duty evasion. Commerce is committed to strict enforcement of the unfair trade laws, and will continue to work intensively and actively with our fellow enforcement agencies to minimize circumvention and evasion of AD and countervailing duties.

We thank the Subcommittee for its interest in these critical issues, and we are grateful for the opportunity to comment for the record.

ADDITIONAL COMMITTEE QUESTIONS

Senator LANDRIEU. We will leave the record open for 2 weeks. We will submit some additional questions.

Any additional information that you or anyone who is interested in submitting to this subcommittee, as we consider further legislation or further appropriations or further actions, we will take under consideration.

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

QUESTIONS SUBMITTED TO EDWARD T. HAYES

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

IMPACT OF DUMPING AND COUNTERVAILING DUTIES

Question. I remain very concerned that the illegal dumping of foreign goods continues to impact hard-working Americans in a wide range of industries. I was very happy that I was able to convince the International Trade Commission to launch a full investigation into the Mexican sugar industry for dumping low-cost sugar on the American markets. Over 150 commodities—including crawfish, honey and a host of other goods that are produced in Louisiana—are currently protected by an anti-dumping order.

Despite this legal protection, it has been difficult to compel foreign importers to pay their fair share. As of 2012, the last full year for which we have complete data, CBP was pursuing almost \$1.8 billion in unpaid duties.

What effect do these illegally dumped goods have on your industry?

Answer. The antidumping duty orders for shrimp were imposed in February 2005 after the ITC found that both the volume and market share of illegally dumped shrimp had increased, largely stealing market share and sales away from domestic shrimp. While these orders have helped stabilize the domestic shrimp industry, our industry still only accounts for about 10 percent of the U.S. market.

The ITC found that illegally dumped shrimp predominantly and significantly undersold domestic shrimp both in the original antidumping investigation and in the most recent (2011) sunset review of the antidumping duty orders. This is important because price is one of the most important factors in purchasing decisions. Changes in the prices of illegally dumped imports affect the prices of domestically processed shrimp to a significant degree. Price disruptions by illegally dumped imports have caused significant price declines in domestic shrimp. The American Shrimp Processors Association (ASPA) was proud to actively support the original cases, the imposition of these orders, and the continuation of the orders in the 2011 sunset review as beneficial to processors, boats and Gulf coast communities.

Most U.S. processors' day-to-day business is done on a spot basis. Processors send out weekly price lists to prospective customers. Customers will often cite the lower price of illegally dumped imports in negotiations with processors. Typically, the U.S. processor has to match the import price, or risk losing the sale. The U.S. industry—which largely consists of small businesses—has to compete with illegally dumped imports on a daily basis.

As I testified at the hearing, as a result of illegally dumped imports of shrimp from several countries, the American shrimp industry has lost jobs and profits. If prices are too low, fishermen will not go out and fish because they will not be able to recoup their expenses or make a profit. Employment and financial performance of both shrimp fishermen and processors have declined due to illegally dumped imports.

The Louisiana shrimp industry has faced these effects as much or more than the industry in any other state. Louisiana's shrimp industry now supports over 14,000 jobs and contributes 1.3 billion dollars to Louisiana's economy. Illegally dumped imports threaten to erode the Louisiana's shrimp industry's jobs and profits, as they have already harmed the American shrimp industry as a whole.

Question. Can you provide a specific example of how dumped goods from China have harmed your industry?

Answer. The China-wide entity dumping margin on shrimp is almost 113 percent. This means that imports from China have been sold at 113 percent less than their fair market value, which has led to significant price undercutting, lost profitability, and lost jobs.

Question. What additional steps would you like to see the Federal government take in order to make sure you are competing on a level playing field with foreign producers?

Answer. The Federal Government can help ensure that the trade relief that the U.S. industry has fought for and obtained is strongly enforced so that it is meaningful. This Committee has already taken several welcome steps, including:

- Directing Customs to consider adding affected domestic industries—which have the most vested interest in enforcing our trade laws—to the Trade Enforcement Subcommittee of its Advisory Committee on Commercial Operations (COAC),
- Directives to Customs to provide public reports on its collection and enforcement efforts and the challenges that prevent duty collection,
- Encouragement of a joint legislative proposal from the Department of Commerce and Customs to remove legal barriers to information-sharing between them, and
- Urging the United States Trade Representative to include in the principal negotiating objectives of the United States for trade agreements the objectives of preventing evasion of U.S. trade remedy laws.

Given the recognized problems with duty collection and evasion, we also recommend that Congress emphasize trade enforcement in any and all trade agreements, including the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (TTIP) currently under negotiation, and in any Trade Promotion Authority (TPA) framework. The United States' trade agreements should reinforce that our trading partners share our commitment to strong enforcement. Above all, they must respect our laws.

The Federal Government should also promote the exchange of data with domestic producers to facilitate enforcement efforts.

Additionally, as discussed further below in my answer to Question 2, the Federal Government should strengthen bonding requirements.

CHINESE DUMPING

Question. Unscrupulous importers of Chinese goods use a wide variety of tactics to avoid paying their fair share of tariffs for goods sold in the American marketplace. They use evasive tactics like trans-shipping through a third country, or establishing temporary shell companies that will be long gone when it's time to pay the final assessed duty on their imports.

Unfairly traded Chinese commodities affect a wide range of American industries. The top five antidumping and countervailing duty (AD/CVD) cases for uncollected duties, collectively valued at more than \$1.6 billion, all involve goods from China. I know that crawfish producers are particularly concerned about low-cost imports from China being dumped on the American marketplace.

Can you give me some examples of how Chinese predatory pricing affects your industry?

Answer. The China-wide entity dumping margin on shrimp is almost 113 percent. This means that imports from China have been sold at 113 percent less than their fair market value, which has led to significant price undercutting, lost profitability, and lost jobs. U.S. shrimp processors have to check the prices of Chinese imports every day, as purchasers will quote those prices in negotiations, and U.S. shrimp processors often have to match the price or lose the sale.

Question. What more could CBP do to combat these under-valued imports from China?

Answer. We respectfully recommend that the Subcommittee take the following actions to combat these under-valued imports from China:

- (1) Revert to cash deposits instead of bonds for new shipper reviews;
- (2) Direct Customs to increase bonding requirements for high-risk industries in administrative reviews;
- (3) Require Customs to report on whether it is requiring Single Transaction Bonds (STBs) for imports subject to AD/CVD duties greater than 5 percent; and
- (4) Require Customs to report, for all AD/CVD cases in which there are uncollected duties, the percentage where the foreign producer is the importer of record and does not have a presence in the United States.

Question. Increasing Bonding Requirements for High-Risk Industries in Administrative Reviews

Answer. Indeed, Customs could address an even bigger problem—insufficient bonding requirements for administrative reviews—through its own administrative processes, without any need for additional legislation or authority. We respectfully request that this Subcommittee encourage Customs to do so. Bonding requirements could be enhanced by CBP by new regulations without the need for legislation, and ASPA urges CBP to start to take action this year to correct this shortfall.

Currently, after an AD/CVD order is imposed, an importer must pay cash deposits at the rate determined under the order and continue to pay cash deposits at that rate unless the rate is changed via a subsequent administrative review. Most of the trouble with AD/CVD duty undercollection comes when the actual AD/CVD margin is determined to be higher in such a subsequent administrative review. This means that the importer owes a higher amount than what the importer had paid on the cash deposits. The importer also owes interest on the underpaid duties. When the importer has disappeared or does not have the resources to pay the additional duties and interest, the only recourse is to recover from the bond issuer.

As discussed above, most customs bonds are Continuous Entry Bonds, which means that bond issuers generally have a low liability. Such bonds can be used to cover imports that are subject to AD/CVD duties, as long as the duties are not greater than 5 percent. If the duties are greater than 5 percent, then Customs is supposed to require an STB, which is generally in an amount not less than the total entered value, plus any duties, taxes, and fees.

The problem is concentrated in just a handful of cases, primarily in the aquaculture and agriculture industries, such as shrimp, crawfish, and honey, where the imports subject to AD/CVD duties are produced by hundreds of producers. Fragmentation in the foreign industries allows players to appear and disappear without a trace. As I noted at the hearing, seafood alone accounts for about 40 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. As noted above, more than 90 percent of the uncollected duties are from China.

While Congress and Customs tried to address the problem in these industries with enhanced bonding requirements in the past, those requirements were unfortu-

nately struck down because they singled out agriculture and aquaculture. An assessment of risk was not part of the bill, placed on the record, or made by the agency.

But there is a way to make such requirements consistent with both U.S. law and our WTO obligations by ensuring they are based on an objective risk assessment rather than industry categories alone. Under existing U.S. law, Customs could administratively require STBs rather than Continuous Entry Bonds in high-risk industries subject to AD/CVD orders where there is a history of non-payment. Customs has the inherent authority to determine that STBs are required where that determination is based on risk and on actual facts. We appreciate Chairman Landrieu's and the Subcommittee's efforts to urge Customs to use its inherent authority to strengthen trade enforcement.

A Customs representative acknowledged at the hearing that using STBs and assessing risk might help address these problems.

During the hearing, Customs heavily stressed automation of STBs as a solution to duty undercollection. Automation for bonds is helpful, and we thank Chairman Landrieu and the Subcommittee for securing the funding needed to accomplish such automation. But automation will only make a difference if it accompanies an increase in bonding requirements by CBP. Automation will not resolve the problem by itself.

COUNTERFEIT GOODS

Question. I'm deeply concerned about the tangled supply chain that brings Chinese goods to the homes and dinner plates of American consumers. In order to evade paying their fair share of customs duties, Chinese manufacturers often employ unscrupulous shipping companies to trans-ship their goods through a third country before delivery to the United States. There are a number of foreign companies that brazenly advertise these trans-shipping services on the Internet. Although it angers me to think about foreign companies using these tactics to gain an unfair market advantage over American producers, I am even more concerned that these schemes, which conceal the origin of commodities, may also compromise consumer safety.

For example, the vast majority of shrimp imported from China are farm-raised, whereas almost all American shrimp are caught at sea. Chinese producers have intensified the industrialization of shrimp production in order to increase profits, often with environmental impacts and workplace conditions that would be unthinkable in America. There have been many cases of these cheap Chinese shrimp being mislabeled for sale in the United States.

Can you describe how your industry has been impacted by the presence of low-cost Chinese imports in the market place?

Answer. This is an excellent question that goes way beyond international trade concerns, into the food safety arena.

On the food safety front, ASPA commends your efforts to get greater inspection of foreign seafood imports. We do need to get our trading partners like China to upwardly harmonize their health and safety standards as quickly as possible. And ASPA believes that the U.S. could really enhance that effort by raising our standards to the level of Canada, the EU and Japan.

The US lags far behind the rest of the developed world with respect to health and safety standards on imported shrimp. There are significant health and safety concerns with imported shrimp, including shrimp imported from countries currently engaged in the Trans-Pacific Partnership Agreement (TPP) negotiations. FDA records indicate a variety of health problems with imported shrimp from TPP countries, including the presence of salmonella, banned veterinary chemicals, and antibiotics. The current EMS problems in the Asia-Pacific region elevate the health and safety problems, leading several countries to actually block shrimp imports from EMS infected countries.

Clearly there is a problem on the health and safety front with shrimp. For example, a graduate thesis submitted in May 2014 by an LSU graduate student found that 92 percent of imported, farm-raised shrimp samples tested positive for at least one drug that is banned for use in food-producing animals in the United States.

Despite the serious health and safety risks associated with imported shrimp, the current US inspection regime results in FDA inspection of only approximately two-percent of imported shrimp. More disturbing is the fact that US health and safety standards for shrimp imports are lower than those imposed by other major export markets, including the EU, Japan and Canada. This lax health and safety regime places US producers and consumers in an unnecessary and vulnerable world market position. Some of our trading partners require bilateral health and safety agreements on shrimp with robust inspection and certification programs. Canada and

Japan have agreements with Vietnam requiring Vietnam to inspect and certify that all shrimp exports are free of banned chemical additives prior to export. Japan also subjects Vietnam to a 100 percent inspection requirement at the border. The EU is famously known for its robust shrimp safety requirements. ASPA is promoting a program to upwardly harmonize US health and safety measures on shrimp to standards equivalent to the EU and Japan. Several vehicles exist for achieving this goal of adequate health and safety standards for our public. The ongoing TPP negotiations provide an opportunity to address these issues with TPP shrimp exporting countries (Malaysia and Vietnam) either as part of the actual agreement or through separate bilateral agreements. The Trans-Atlantic Trade and Investment Partnership (TTIP) negotiations with the EU provide another platform for the US to adapt and harmonize its standards with the EU. The US can also develop regional health and safety standards through NAFTA, CAFTA or other regional agreements. We believe that the health and safety area is perhaps where we could obtain the greatest progress in restoring balance with our foreign competitors (particularly Malaysia and Vietnam). It might be appropriate to add measures to address these health and safety concerns to the TPP agreement itself, the TPP implementing legislation or the accompanying TPA legislation.

Question. How could CBP and ICE better protect your industry from these types of counterfeit goods?

Answer. We don't really have a problem with counterfeit goods as foreign farmed shrimp is considered "like product" to domestic wild caught shrimp. Continuation of retail labeling requirements is really important to consumer choice and differentiation of product. Continued action on trade remedies with both appropriate anti-dumping and countervailing duty actions is important to level the playing field. And, finally better health and safety standards like those described above would really help the domestic industry.

Transshipment needs to be stopped to combat duty evasion, but health and safety issues are better addressed in other ways.

QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

Question. Mr. Hayes, the U.S. Department of Commerce has determined that 7 countries (China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam) are providing illegal subsidies to their producers in order to help boost shrimp exports to the U.S. In 2012 alone, these foreign illegal subsidies amounted to over \$250 million. It doesn't appear that the Department of Commerce has done much thus far to help counterbalance the harmful impacts of those foreign subsidies to our domestic industry. Can you discuss some ways Congress could be more helpful to the domestic shrimp industry via legislation?

Answer. The American Shrimp Processors Association (ASPA) very much appreciates the understanding of the magnitude of the illegal foreign government subsidy challenge that the U.S. shrimp industry faces, as well as your willingness to look at alternative ways to combat the hundreds of millions of dollars in subsidies from seven key nations. Addressing the illegal foreign subsidy problem is critical to the future survival of the Gulf shrimp industry as the subsidy programs soon begin to come online.

The Coalition of Gulf Shrimp Industries initiated an international trade case in 2012 challenging billions of dollars in illegal subsidies provided by foreign governments to their shrimp producers. The US Department of Commerce determined that China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam are providing illegal subsidies worth over \$250 million in 2012 alone. The chart below summarizes the Department of Commerce's subsidy findings for 2012.

Country	2012 U.S. Imports	Subsidy Margin	Value of Subsidies
China	\$101,948,000	18.16%	\$18,513,757
Ecuador	\$499,690,000	11.68%	\$58,363,792
India	\$551,245,000	10.84%	\$59,754,958
Indonesia	\$634,008,000	0.25%	\$1,585,020
		(de minimis)	
Malaysia	\$142,001,000	54.50%	\$77,390,545
Thailand	\$1,087,958,000	1.46%	\$15,884,187
		(de minimis)	
Vietnam	\$426,153,000	4.52%	\$19,262,116
Total			\$250,754,374

The damage from subsidized export production is ongoing and increasing each year, but could be offset by tax credits to the U.S. shrimp industry. Tax credits would give immediate relief for domestic shrimp harvesters and producers and is a top ASPA legislative priority. This moderate approach would help families, businesses and communities harvesting and processing shrimp from the Gulf of Mexico and South Atlantic combat unfair foreign competition.

ASPA proposes a Federal tax credit for shrimp harvesters based upon the quantity of pounds harvested and reported on income tax forms by any vessel with a license to harvest shrimp in the Gulf of Mexico and South Atlantic. ASPA similarly proposes a Federal tax credit for shrimp processors based upon the quantity of wild-caught pounds processed and reported on income tax returns by any plant with a processing license.

For example, a tax credit of 50 cents per pound harvested would give shrimp harvesters approximately \$120 million of relief. Likewise, a credit of 50 cents per pound processed would give shrimp processors approximately \$120 million of relief.

We are open to other tax credit approaches that would provide the overall industry a total of about \$250 million in relief to level the subsidy playing field with our major foreign competitors. For example, some portion of the relief could be provided by a tax credit tied to energy efficiency and other similar infrastructure improvements made by the domestic industry.

Other industries have received similar support and the domestic shrimp industry is in desperate need of immediate relief to combat the incoming surge of subsidized imports.

Additional measures that could be considered include:

- i. Placement of shrimp subsidies into the Joint USTR/Department of Commerce Annual Subsidies Enforcement Report;
- ii. Negotiate elimination of subsidies in the ongoing TPP negotiations (Vietnam & Malaysia);
- iii. Request shrimp import price monitoring by the USTR/Department of Commerce;
- iv. Request monitoring of shrimp subsidies at the World Trade Organization and seek dispute settlement consultations through USTR; and
- v. Engage in bilateral and regional consultations with foreign governments and their producers to address illegal subsidies.

It might be possible to achieve some of these objectives in either the implementing bill for the TPP Agreement or in the TPA legislation that delegates authority from the Congress to the Executive Branch to engage in trade negotiations. TPA legislation will also be necessary for the Congress to pass prior to any consideration of TPP.

We appreciate this question and look forward to working with Ranking Member Cochran of the full Appropriations Committee and Chairman Landrieu of the Appropriations Homeland Security Committee to prioritize and promote these relief measures important to the U.S. shrimp industry.

Finally, we at ASPA very much appreciate the careful exploration of the duty collection problem and the continued oversight by this committee of CBP on this matter. And, we are confident that renewed focus on the issues at CBP will yield results that will improve the fortunes of our industry and many others.

QUESTIONS SUBMITTED TO RICK BLUME

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

TRADE ENFORCEMENT AND JOBS

Question. Strong and aggressive enforcement of our trade laws protects America's workers and employers against unfair trade practices. Trade relief can and has prevented thousands of good paying jobs in many industries from being moved overseas. Please explain what is at stake for Nucor and the domestic steel industry if antidumping and countervailing duty orders are not enforced and duties are not collected?

Answer. The health of Nucor and other U.S. producers, and their ability to preserve high-paying steelmaking jobs, depends on the vigorous enforcement of U.S. trade laws and the aggressive collection of duties. When massive volumes of unfairly priced steel enter the U.S. market, U.S. steel producers and their workers suffer—production and sales decline, mills are idled, plants are shut down, and worker hours and take-home pay are reduced.

As only one of many examples, Mexico and Turkey have flooded the U.S. market with unfairly traded steel reinforcing bar (“rebar”) in recent years. Imports of rebar from these two countries increased over 124 percent from 2010 to 2013 and now represent approximately 20 percent of the U.S. market, an increase of 13 percentage points from only 3 years before. This unfair trade has been devastating to the domestic industry. Nucor has had to reduce employee hours and pay at several rebar mills, including Nucor Steel Seattle. Other U.S. rebar producers have been forced to lay off workers and close facilities. To address this harm, Nucor and other U.S. rebar producers filed a trade case against rebar from Mexico and Turkey in September 2013. Unless relief is granted, conditions will only worsen for the U.S. industry and its workers.

Unfortunately, the rebar case is not unique. The domestic steel industry has endured similar harm time and time again with respect to a variety of steel products, compelling Nucor and other domestic steel producers to actively seek trade relief under U.S. trade remedy laws. Obtaining relief from surging, unfairly priced imports, like the rebar imports that we are seeing now, is crucial if we are to prevent further job loss, keep mills afloat, and allow domestic steel producers to get back on their feet. However, Nucor and others can only benefit from trade relief when orders are aggressively enforced, and duties are collected. The domestic steel industry depends on the U.S. government to ensure that this happens.

TRADE CASE PROCESS

Question. I am concerned that trade cases may not be providing U.S. companies the relief intended to protect and keep jobs in this country. In addition to trade cases being complex, burdensome, and slow, the process currently in place to address fraud and circumvention may also be ineffective. You mentioned in your testimony examples of schemes used by foreign producers to fraudulently circumvent U.S. antidumping and countervailing duties. Can you elaborate on some of your specific experience and highlight the problems your industry has encountered with the way the current system works? And from your perspective, what are the key components of an effective process and what suggestions does Nucor have for improving the current process?

Answer. In recent years, Nucor has encountered numerous instances of fraud and circumvention, as foreign producers increasingly turn to shell companies, fabricated and falsified documentation, transshipment, and other schemes to avoid paying duties. These blatant trade violations have resulted in significant harm to Nucor and other domestic steel producers, and have directly undermined the trade relief that they have fought so hard to obtain. I will provide a few examples for the Committee.

In the 2010 investigations of Certain Steel Grating from China, Chinese manufacturers received substantial antidumping (“AD”) and countervailing duty (“CVD”) margins—a combined rate of nearly 300 percent—after the Department of Commerce (“Department”) discovered that they had provided fabricated mill test certificates for the steel used in their production of grating and “deliberate[ly] conceal[ed]” information from the agency.¹ However, even before the investigation concluded, Chinese producers were actively scheming to evade duties. Almost immediately after the Department preliminarily determined that Chinese producers were shipping dumped and subsidized product to the U.S. market at significant margins, imports of steel grating from “Malaysia” began to arrive at U.S. and Canadian ports. These imports were represented as coming from a company that had no Malaysian operations and were clearly Chinese imports in disguise. In fact, there had been no imports of steel grating from Malaysia at any time between 2001 and 2010.

In another case, Cut-to-Length Carbon Steel Plate from China, Chinese steel producers made commercially insignificant changes to their steel in order to circumvent duties on cut-to-length plate. A number of Chinese producers began adding small amounts (.0008 percent) of boron to their steel in order to classify the steel as an alloy product not subject to duties.² Nucor and other domestic steel producers brought a circumvention case, alleging that adding a small amount of boron to plate is a minor alteration that does not exclude the product from duties. The Department

¹ See Issues and Decision Memorandum accompanying Certain Steel Grating from the People's Republic of China, 75 Fed. Reg. 32, 366 (Dep't Commerce June 8, 2010) (final det. of sales at less than fair value) at 11–19; see also Certain Steel Grating from the People's Republic of China, 75 Fed. Reg. 32, 366 (Dep't Commerce June 8, 2010) (final det. of sales at less than fair value); Certain Steel Grating from the People's Republic of China, 75 Fed. Reg. 32, 362 (Dep't Commerce June 8, 2010) (final aff. countervailing duty det.).

² Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 76 Fed. Reg. 50,996, 50,997 (Dep't Commerce Aug. 17, 2011) (affirmative final deter. of circumvention of the antidumping duty order).

resoundingly agreed, concluding that the steel was subject to duties.³ Even after this clear ruling, other Chinese producers were continuing this practice. As a result, the domestic industry was forced to file yet another request with the Department, which found that all merchandise, regardless of the producer, containing minimal boron was covered by the trade remedy.⁴

Chinese producers have engaged in similar efforts with respect to hot-rolled steel. In the most recently completed sunset review of the trade remedy on Hot-Rolled Steel Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine, the International Trade Commission specifically found that:

Published descriptions of exports of Chinese hot-rolled coil ('HRC') include terms such as 'commercial-grade, boron containing HRC,' suggesting that some volume of hot-rolled steel exports with elevated boron levels (possibly within micro-alloy levels specified in the scope of the current reviews) might be classified for export purposes as alloy steel product rather than carbon steel product.⁵

Notably, other countries such as Thailand have pursued trade cases against China to address this scheme.⁶

Nucor's customers have also faced circumvention of orders on their products. For example, almost immediately after the Department issued its final results in Certain Oil Country Tubular Goods ("OCTG") from China, Chinese producers started shipping their OCTG to Indonesia for minor processing before exporting the final product to the United States duty-free.⁷ In response, the Department conducted an investigation in which it ultimately concluded that these minor "processes do not substantially transform the OCTG at issue," and that the processed steel is still subject to duties.⁸

In sum, lengths to which foreign producers will go to avoid paying duties are endless. When one door closes, they simply look for the next one to open, making the need to vigorously address these trade violations all the more urgent.

Regarding what improvements are needed in the current process, Nucor suggests the following:

- First, processes to address fraud and circumvention should be transparent. Customs should not be a "black box"—the agency should keep companies informed of the actions and steps that it is taking to address any allegations submitted.
- Second, evasion should be addressed promptly. Customs should operate within reasonable timelines for conducting its investigations of fraud and circumvention to ensure that evasion is promptly addressed. Every day that circumvention continues is another day that U.S. companies and their workers are being denied the trade relief to which they are entitled.
- Third, Customs, Commerce, and other government agencies should be allowed to share proprietary information regarding potential schemes to violate U.S. trade remedy laws.
- In addition, timely public reports on fraud and circumvention investigations should be published on a regular basis. This would serve a dual purpose. These reports would deter companies who are tempted to evade duties and would increase agency accountability.
- Finally, greater resources should be devoted to preventing and investigating fraud and circumvention.

We believe these steps will help promote the effective enforcement of trade remedy orders. Thank you again for the opportunity to testify on this important issue. We look forward to continuing to work with the Committee, Customs and Commerce to improve trade enforcement.

³Notice of Scope Rulings, 77 Fed. Reg. 32,568, 32,569 (Dep't Commerce June 1, 2012).

⁴See *id.*

⁵Hot-Rolled Steel Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine, Inv. Nos. 701-TA-405, 406 and 408 & 731-TA-899-901 and 906-908 (second Review) (USITC Pub. 445) (Jan. 2014).

⁶Global Trade Alert, Thailand: Imposition of antidumping duties on flat hot rolled steel from China (May 29, 2012).

⁷See, e.g., Memorandum To Chris Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations Through Richard O. Weible, Director, AD/CVD Operations and Angelica Mendoza, Program Manager, Ad/CVD Operations re: Final Scope Ruling on Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China (Feb. 7, 2014).

⁸Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 76 Fed. Reg. 50,996, 50,997 (Dep't Commerce Aug. 17, 2011) (affirmative final deter. of circumvention of the antidumping duty order).

QUESTIONS SUBMITTED TO JOHN WAGNER AND RICHARD DiNUCCI

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

ANTIDUMPING/COUNTERVAILING DUTY EVASION

Question. Your fiscal year 2012 Antidumping and Countervailing Duty Enforcement Report indicates that five commodities imported from China (fresh garlic, crawfish, wooden bedroom furniture, honey and mushrooms) make up approximately 90 percent of the uncollected antidumping/countervailing duties (AD/CVD). Some of these bills date back to the early part of last decade. I know that CBP has a process in place for debt collection, which can take a considerable amount of time. But, a decade-long delay to collect a tariff is clearly outside the scope of what's reasonable.

What are the primary issues preventing the collection of these duties? Please give me some insight into what your strategy is to resolve this situation.

Answer. The actual amount of dumping or subsidization is not known at the time of entry, which is the time when U.S. Customs and Border Protection (CBP) has the best opportunity to enforce collection of the duties properly owed to the U.S. Government. Inherent in the retrospective nature of the U.S. antidumping and countervailing duty (AD/CVD) process is the fact that AD/CVD-related reviews conducted by the U.S. Department of Commerce (Commerce) can take up to 18 months and at that point, Commerce will issue a notice of final results in the Federal Register. A legal challenge to this notice can extend this 18-month period for several more years. Following the Federal Register notice and possible legal challenge, a 6-month period then begins in which the Department of Commerce must issue liquidation instructions and CBP must liquidate the associated entries. On average, more than 2 years pass between the entry date and the date when CBP can begin collection efforts. Principals (importers) or sureties are also afforded an additional 90- or 180-day period to file a protest after the liquidation of the entry. At any time during these stages, companies may go out of business, file for bankruptcy, or otherwise evade AD/CVD collection efforts. Indeed, hundreds of millions of dollars' worth of AD/CVD bills have no remaining bond coverage and the connected importers cannot be located and/or have no assets within U.S. jurisdiction. These issues are also compounded by insolvent sureties and legal challenges from the sureties whose bonds secure the AD/CVD bills.

A key component of CBP's current strategy to improve collections on AD/CVD debts involved the creation of a permanent team within CBP dedicated solely to the collection of AD/CVD debts. In March 2014, CBP stood up an AD/CVD Collections Team consisting of four full-time members.

CBP continues to utilize the Agency's legal authority to require additional security in the form of a Single Transaction Bond (STB) to protect the revenue when CBP has reasonable evidence that a risk of revenue loss exists. These efforts to require additional security have been particularly effective at simultaneously protecting the revenue while facilitating compliance when utilized with regard to AD/CVD importations. On May 1, 2012, a memorandum providing detailed guidance to CBP Field Offices was issued to expand the frequency and efficiency with which CBP utilizes this tool. CBP has partnered with Commerce in this effort to better utilize bonding as a means to improve collectability. CBP's Centers of Excellence and Expertise are also engaged in setting STB amounts and making additional security determinations for participating importer accounts. This practice was challenged and upheld recently at the U.S. Court of International Trade.

CBP has established key partnerships with Commerce, U.S. Department of the Treasury, Office of the U.S. Trade Representative, U.S. Immigration and Customs Enforcement's Homeland Security Investigations, and other partner agencies to improve AD/CVD collections. The future of AD/CVD collections will continue to rely on these key partnerships to identify and address patterns of non-payment. Partnerships with the trade community are also critical. U.S. industry, trade associations, importers, brokers, and sureties provide critical insight to CBP on AD/CVD collections issues. CBP meets regularly with representatives of the surety and custom-house brokerage communities to discuss AD/CVD issues.

Question. Is there anything that can be done at this point to compel these importers to pay their fair share for selling their goods in the American marketplace?

Answer. Entities are sometimes able to easily enter (and leave) highly profitable markets for imported goods subject to AD/CVD, thereby enabling AD/CVD avoidance and circumvention. Many legitimate importers have few assets, are lightly capitalized or undercapitalized, are not able to pay final antidumping and countervailing duty (AD/CVD), and may already have gone out of business before the AD/CVD bills

are issued. Other importers are “shell companies,” which are also characterized by having few assets and being lightly capitalized or undercapitalized, and have no intention of paying any final AD/CVD bills.

Too frequently, by the time U.S. Customs and Border Protection (CBP) is able to take action to collect AD/CVD bills, the importers have gone out of business, entered bankruptcy, or simply disappeared; leaving few or no assets that could satisfy a judgment. Moreover, available bond coverage is often limited, leaving the majority of the AD/CVD bills unsecured. CBP is responding to the challenge of “shell” entities through advanced data analysis and trend identification to target those companies that pose the highest risk to future revenue collection. Concentrating CBP attention in these high-risk areas may help to deter and prevent the circumvention of the AD/CVD laws and reduce the amount of uncollected AD/CVD.

Question. What additional authorities or resource do you need in order to make sure American companies are competing on a level playing field with foreign producers?

Answer. Parties are using increasingly complex strategies to attempt to evade AD/CVD, and CBP looks forward to working with its interagency partners and Congress to ensure that CBP has the necessary authority.

Question. In the harsh light of reality, approximately how much of these AD/CVD duties—including those distributions due under the Continued Dumping and Subsidy Offset Act (CDSOA)—are uncollectable?

Answer. Of the \$2.3 billion in outstanding antidumping and countervailing duty (AD/CVD) debts, \$1.2 billion is potentially disburseable under the Continued Dumping and Subsidy Offset Act program.

Of this \$2.3 billion (40,130 bills), 27 percent of these bills are associated with importer records that have a current status of inactive or voided. Additionally, 86 percent of these bills are associated with importer records that have shown no activity over the past 2 years.

When U.S. Customs and Border Protection (CBP) has exhausted all of its collection efforts on these claims and they remain unpaid, CBP will write off the claims. Write-off ceases active collection efforts, however, CBP maintains records of the unpaid claims. If the company at any point becomes an active business again, CBP will attempt to collect. Write-offs are never pursued simply because of convenience.

TRANS-SHIPMENT

Question. There are many importers that willfully circumvent AD/CVD regulations by shipping their goods through an intermediary country in order to avoid tariffs. Some of these trans-shipment companies blatantly advertise these illegal services on the Internet. There have been other cases in which an importer intentionally undervalued, misclassified or misrepresented merchandise in order to avoid paying their fair share for access to the U.S. market.

How are investigations into this illegal activity initiated?

Answer. U.S. Customs and Border Protection (CBP) targets and identifies antidumping and countervailing duty (AD/CVD) evasion through import trade trend and valuation analysis, the use of targeted reviews, lab testing, special operations, and audits to address high-risk cases. The trade community also provides valuable trade intelligence on market trends and specific allegations of AD/CVD evasion to help CBP in its targeting efforts. CBP refers potential violations of criminal laws to U.S. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI) for criminal investigation, and supports ICE HSI criminal investigations.

Question. What remedies are in place to punish those who willfully disobey the law?

Answer. U.S. Customs and Border Protection (CBP) levies civil penalties on importers for fraud, gross negligence, and negligence for antidumping and countervailing duty (AD/CVD) violations under 19 USC § 1592. In fiscal year (FY) 2013, CBP levied 28 monetary penalties for AD/CVD violations under 19 USC § 1592 totaling over \$15 million. These penalties covered importers of AD/CVD commodities such as citric acid, diamond saw blades, steel pipe, tires, and wire rod for AD/CVD evasion, misclassification, and failing to properly file AD/CVD entries. In some instances, CBP may seize shipments for certain types of AD/CVD violations, such as smuggling. In fiscal year 2013, CBP and U.S. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI) seized shipments of AD/CVD commodities, including honey and plastic bags, with a domestic value of over \$6 million for violations of AD/CVD and related laws.

Criminal AD/CVD violations are investigated by ICE HSI, with CBP support, and may result in criminal prosecutions.

Question. Can the U.S. government deny access to importers with a history of AD/CVD avoidance?

Answer. CBP does not have the legal authority to refuse entry to an importer on the grounds that the importer has a history of AD/CVD avoidance. CBP takes all necessary measures to protect the revenue on imports from such importers. These include requiring payment of duties (including AD/CVD) before shipments are released to the importer ("live entry") and the posting of Single Transaction Bonds in the amount necessary to protect the revenue. Importers with outstanding bills for AD/CVD and other duties are put on national sanction, and are subject to filing entry documents and duty payment at entry of goods into the commerce. In some instances, CBP may seize shipments for certain types of AD/CVD violations, such as smuggling. CBP works closely with ICE HSI to penalize and disrupt distribution channels of imported goods that seek to evade AD/CVD.

Question. What actions can you take against overseas companies that advertise illegal trans-shipment services?

Answer. CBP takes all indications of evasion, including advertisement of illegal transshipment services, very seriously and employs all available methods in accordance with law to address these matters. CBP targets shipment information for all known indications of evasion and seeks to identify parties, such as importers and custom brokers, with connections to illegal transshipment. CBP collaborates closely with ICE HSI on illegal transshipment issues, and CBP works with foreign customs authorities to identify and deter illegal transshipment. While it is true that any party that is involved in the importation of merchandise that violates Federal law may be held liable for penalties, it may be difficult to enforce or collect such penalties from overseas companies that are not subject to the jurisdiction of the United States.

COUNTERFEIT GOODS

Question. As I noted during the first panel, I believe that these complicated transshipment schemes obscure the true origin of a products and undermine consumer safety. Or, at the very least, make it easier for disreputable importers to traffic counterfeit goods. We have seen many cases of mislabeled goods being brought to market in the seafood industry.

What are some of the obstacles in place that keep you from eliminating the importation of counterfeit goods?

Answer. Shipping methods used by counterfeiters have shifted in response to improved U.S. Customs and Border Protection (CBP) targeting efforts in traditional cargo environments. This shift, in addition to improved Internet accessibility and the concomitant rise in Internet sales, has fueled an explosive growth in the numbers of small packages of counterfeit and pirated goods shipped primarily through express carriers and international mail arriving in the United States. Targeting small packages of goods shipped through these means is extremely challenging due to the tremendous volume and the expedited nature of the processing of such shipments. In addition, improvements in the quality of counterfeit goods and the marks appearing on counterfeit goods have made CBP's process of making infringement determinations much more challenging.

Question. As Federal agencies with the authority to seize counterfeit goods at the border, what additional resources do you need to ensure American consumers are getting what they pay for?

Answer. The most effective resource Congress can provide to help combat intellectual property crime is a continued examination of intellectual property rights and attention on the issues that surround this important issue that impacts the economy, trade, and job creation. Apart from continuing to bring attention to intellectual property issues, Congress should be aware that as the number of small shipments of counterfeit goods increases, there is a direct increase in the CBP resources required to identify, seize and forfeit these shipments. The sophistication of the methods used by violators to avoid the detection and interdiction of counterfeit goods also presents an obstacle to CBP's enforcement efforts. Providing CBP with additional tools to authenticate shipments of suspect goods would enhance CBP's enforcement efforts.

Question. What additional resources do you need to investigate these types of cases?

Answer. At this time, no additional resources are immediately needed for CBP to support those U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) intellectual property rights investigations and enhance our robust, collaborative intellectual property rights enforcement efforts with HSI. CBP's role is to target, examine and interdict shipments at the border. Through these ac-

tivities CBP gathers intelligence that can be used to further investigations carried out by HSI. CBP also follows-up on leads developed by HSI Special Agents in the field to determine when shipments related to specific entities are entering the country and can seize the goods to help build a case or coordinate those CBP examinations with HSI in support of HSI criminal investigations. To this end, CBP does not investigate criminal activity directly but rather targets, examines and seizes violative goods and gathers intelligence for HSI criminal investigation.

BENEFITS OF SINGLE TRANSACTION BONDS

Question. Over the past few years, I have added and directed CBP to use \$3 million a year for development and increased use of single transaction bonds. I understand that CBP has taken many steps to improve this process and to bring greater transparency to this with the imports with whom you do business.

Please discuss the benefits both to CBP and to the trade of the use of these bonds.
Answer. U.S. Customs and Border Protection (CBP) has been working on the development of eBond, an electronic system built on the Automated Commercial Environment (ACE) platform that will automate many of the basic and administrative functions associated with receiving, processing, reviewing, approving/rejecting, and maintaining bond data. A key part of this concept includes limiting only surety and surety agents to send bond data to CBP. This will help protect CBP from failure to collect due to potential litigation as a result of execution errors “accepted” by CBP.

For the trade community, this eliminates the mandatory paper requirement when an Single Transaction Bond (STB) is used to secure cargo release. This will expedite the release of cargo process for the trade community because they will not be restricted to normal business hours just because they are using an STB so their entry can be processed faster. Automating STBs will also allow for the expansion of the remote location filing program which is currently restricted to the members of the trade who have a continuous bond only.

For CBP, this provides a single, centralized repository for all customs bonds within CBP. As a result, CBP will have better capability to report to Congress on key inquiries regarding bonds. CBP anticipates centralizing the STB process within the CBP Revenue Division to yield significant strategic and financial benefits for CBP and other key stakeholders by:

1. Increasing revenue collection by reducing write-offs and delinquencies,
2. Enabling increased oversight and consistent application of policies and procedures,
3. Supporting CBP and Department of Homeland Security Strategic Goals,
4. Reducing time and effort required to locate and identify STBs,
5. Prioritizing resources based on specialization to align to mission needs,
6. Promoting specialized knowledge and expertise leading to faster bond processing, and
7. Reducing turnover and training needs.

Question. If you had additional resources to hire additional people or make further technology improvements regarding these bonds, please quantify what more could be done in regards to enhanced duty collections and other capabilities.

Answer. CBP is currently in the process of automating the entire bond process, which should further our capability. The automation effort is already funded. This will be deployed on January 3, 2015, for entries that are filed in ACE.

DELAYS IN BRINGING LAWSUITS TO RECOVER BONDS

Question. In their testimony, both Mr. Steinberger and Mr. Sanroma expressed their concerns about CBP's delays in bringing lawsuits to recover bond collections for illegally dumped products such as honey and crawfish.

Given the importance of these products to the many small businesses working so hard to keep afloat, why has CBP delayed bringing lawsuits to collect on overdue bonds?

Answer. U.S. Customs and Border Protection (CBP) shares your concern, and those expressed by other members of Congress and U.S. businesses, about the timeliness of CBP's collection efforts on outstanding antidumping and countervailing duty (AD/CVD) claims against sureties. CBP promptly pursues collection from both importers and sureties of all billed and unpaid AD/CVD. Once an entry liquidates and a bill is generated, CBP notifies the importer at the time of initial billing and every 30 days after the due date until the bill is paid or otherwise closed. Approximately 60 days after the initial bill date, CBP will report outstanding bills on a Formal Demand on Surety for Payment of Delinquent Amounts Due (informally known as the “612 Report”) and every month thereafter until the bill is paid or otherwise

closed. In accordance with 31 C.F.R. § 901.2, CBP also provides an additional written demand informing the surety of the consequences of failing to cooperate with the agency to resolve the debt.

If CBP is unable to collect the applicable duties from either the importer or surety via administrative collection processes, the debt will be referred to the CBP Office of Chief Counsel (OCC) for legal action if the principal amount is more than \$1,500. OCC reviews each claim for legal sufficiency and makes demands on delinquent sureties or refers claims to the U.S. Department of Justice (DOJ) for litigation, when appropriate. DOJ generally will only accept referrals for legal action if the principal amount owed exceeds \$2,500. If OCC's actions exhaust the surety bond coverage but leave some amount of unpaid debt by the importer, OCC refers the bills back to the CBP Revenue Division for further research and/or to initiate termination of collection procedures. The standard procedure, outlined above, results in the successful collection of most outstanding duty bills and, when necessary, the associated surety bond coverage.

This collection process, up to and including the filing of a lawsuit against an importer, surety, or both, can take many years due to: the pendency of a protest against one or more CBP determinations with regard to the underlying claims; the need for a thorough legal review by OCC; the impact of new court decisions on common issues; negotiations and/or communications between CBP and the debtor parties; the need for a thorough legal review by DOJ; and resource constraints in CBP Office of Administration, OCC, and DOJ.

CBP faces significant legal challenges from the sureties whose bonds secure the AD/CVD bills. CBP has worked with DOJ to file more than 30 lawsuits against sureties in the U.S. Court of International Trade. More than \$316 million of the claims have been referred to DOJ for litigation. In addition, CBP is working with DOJ to defend about 300 lawsuits, the majority of which have been brought by a single surety, seeking refunds of AD/CVD payments already made, an amount exceeding \$85 million. Multiple lead cases are centered on issues of liability and bond validity, in addition to other legal defenses. In the 30-plus collection cases initiated by CBP, CBP is seeking to collect more than \$76 million under surety bonds securing imports of crawfish tail meat, canned mushrooms, garlic, and honey. These cases are in various litigation phases, from pleading to appeal. For example, one lead case on unpaid AD/CVD bills is being briefed before the U.S. Court of Appeals for the Federal Circuit (see *United States v. Am. Home Assurance Co.*, Court No. 2014-1292, appeal docketed February 12, 2014).

CBP is also working with DOJ to seek the fullest recovery possible in the state insolvency proceedings of three former customs sureties. These cases involve approximately \$91 million in bonds securing over \$230 million in unpaid duties, much of which is AD/CVD. In addition to litigating questions regarding the validity of the bonds, CBP has to persuade state courts that its claims should be given commensurate priority under state law. Even under the best circumstances, CBP will not receive a full recovery of the bonded amount. These proceedings have continued for more than 10 years, requiring an extensive commitment of resources by both CBP and DOJ.

CBP recognizes its responsibility for requiring sureties to pay completely on all their bonds that secure unpaid AD/CVD. The agency will continue to pursue all appropriate avenues and options to secure timely payment on these obligations.

TARGETING SYSTEMS

Question. As the principal Federal agencies tasked with expediting the flow of legitimate trade through our ports of entry, while rooting out illicit goods and collecting appropriate duties, I applaud your use of risk management strategies at the border. I encourage you to continue to use risk management, rather than a "one size fits all" approach as you make decisions about whether to expedite or hold incoming commerce.

Please provide some examples of how risk management has enabled you to expedite the flow of commerce from trusted importers.

Answer. U.S. Customs and Border Protection (CBP) has the dual mission of enforcing trade laws and facilitating legitimate trade. To accomplish these dual goals, CBP uses a variety of methods to segment risk. CBP uses risk assessments to target and focus resources on high-risk security, admissibility, and health and safety issues for further review, while moving compliant trade across the border. In a post-release setting, account-based verifications and audits are performed to ensure the process functioned properly and to refine risk assessments based on outcomes.

CBP's increased confidence in known and trusted importers allows the agency to focus its limited inspectional resources on high-risk shipments. This risk-based proc-

ess facilitates overall cargo processing and helps cut transaction costs borne by the trade community and consumers. The Importer-Self Assessment Program (ISA) is an example of one mechanism that allows CBP to identify low-risk traders and justify their facilitated treatment.

To participate in the ISA program, importers must demonstrate a system of internal control designed to ensure compliant transactions. To validate the importer's processes, CBP conducts a thorough review of the importer's policies and procedures particularly for the risk areas identified. The importer's responsibility is to demonstrate to CBP that their controls activities over its customs related transactions are adequately designed to ensure compliant transactions. Once the importer's process is validated, they are assigned a national account manager (NAM). The NAM's responsibility is to provide ongoing monitoring and oversight activities and to prepare an annual risk assessment for each ISA member. Some of the incentives offered to these trusted partners include expedited cargo processing and release and exemption from a Focused Assessment Audit. As of August 2014, there are 305 ISA members, which represents 24 percent of the total import value into the United States.

Question. By employing this type of decisionmaking, are you able to prevent or delay shipments from importers with a history of AD/CVD evasion?

Answer. CBP targets shipments of importers with a history of AD/CVD evasion, and takes all necessary measures to protect the revenue of the United States. Such measures include requiring payment of duties (including AD/CVD) before shipments are released to the importer ("live entry") and the posting of Single Transaction Bonds in the amount necessary to protect the revenue of the United States. In some instances, CBP may seize shipments for certain types of AD/CVD violations, such as smuggling. CBP works closely with U.S. Immigration and Customs Enforcement Homeland Security Investigations to disrupt distribution channels of imported goods that seek to evade AD/CVD, and pursue civil penalties as appropriate.

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

ENFORCEMENT

Question. Enforcement of the trade remedy laws is one of the most critical commercial functions of Customs and Border Protection. In 2008, CBP set up the "e-allegations" system so that interested third parties could submit claims of Customs fraud and evasion.

Has CBP issued a subsequent report on the "e-allegations" program from 2013 and do you have current data on how many "e-allegations" have been made this year and the status of those allegations?

Answer. Since the inception of U.S. Customs and Border Protection's (CBP) e-Allegation program in 2008, our agency has received approximately 10,000 allegation claims. Every allegation receives an initial triage assessment to determine its level of criticality, and is subsequently assigned for further analysis or action. CBP implemented enhanced measures for tracking, reporting, and communicating information about allegations with the trade community based on the recommendations of a Government Accountability Office report in May 2012. CBP is continually working with our automated programming experts from the Office of Information Technology to add fields to the e-Allegations system that allow for streamlined reporting. CBP has received more than 800 allegation claims thus far in fiscal year 2014, of which approximately 23 percent are currently open under a state of active analysis and/or pending results of targeting, investigation, or other coordinated actions.

Question. What does CBP need to be more responsive to industry's claims of anti-dumping/countervailing duties fraud and evasion and what types of information from industry would be helpful to you and your team in addressing these allegations?

Answer. CBP's most valuable partner in antidumping and countervailing duty (AD/CVD) enforcement is U.S. industry. U.S. industry provides critical insight to CBP on enforcement issues related to developments in AD/CVD and other trade sensitive imports, and advise CBP staff on the latest industry-wide changes for such commodities. CBP meets regularly with U.S. industry representatives to discuss AD/CVD circumvention schemes, and U.S. industry representatives share valuable market and product intelligence with us. Specifically, CBP meets with industry representatives to obtain market intelligence and commodity expertise, and provide technical advice to make the measures more enforceable. The more specific information that industry can provide, and especially detailed information on individual shipments, is especially valuable to addressing allegations from industry. By work-

ing with the trade community, CBP deepens its understanding of the way business and industry operates in the ever changing global marketplace and leverages that information for risk analysis and targeting.

CBP has effective relationships with many U.S. industries, and welcomes market intelligence, and allegations of AD/CVD evasion. CBP reviews, responds to, and acts upon every allegation received, and closely monitors to ensure that that allegations are responded to and acted upon. CBP has specific protocols in place to ensure that CBP is responsive to industry allegations while meeting the requirements of the Trade Secrets Act and the Privacy Act.

CBP is also in the process of revising CBP Form 5106 (Importer I.D. Input Record) to provide additional data on new importers and entities doing business with CBP. This type of information will enhance CBP's risk assessments of new importers in order to reduce instances of unpaid duties (including AD/CVD) and abuse of trade and admissibility law (such as AD/CVD evasion) through shell companies or other related schemes.

INTER-AGENCY COOPERATION AND INFORMATION SHARING

Question. Inter-agency cooperation is critical for detecting and addressing circumvention and promoting strong trade enforcement. For example, Customs and the Department of Commerce may obtain information indicating that duty evasion is occurring, but they are limited in their ability to share information with each other and with other government agencies.

How can Commerce and Customs work with each other and with other U.S. government agencies to strengthen trade enforcement and prevent circumvention?

Answer. U.S. Customs and Border Protection (CBP) is committed to ensuring that antidumping and countervailing duty (AD/CVD) laws are vigorously enforced. To this end, CBP has established key partnerships with the U.S. Department of Commerce (Commerce), U.S. Department of the Treasury (Treasury), Office of the U.S. Trade Representative, U.S. Immigration and Customs Enforcement Homeland Security Investigations, and other partner agencies to provide comprehensive enforcement. Commerce is one of CBP's key partners in AD/CVD enforcement. CBP holds biweekly meetings at the working level and quarterly meetings at the executive level with Commerce to coordinate AD/CVD-related administration and enforcement activities. CBP and Commerce interact at the working level on a daily basis on numerous technical issues. CBP also meets, as needed, with Commerce, Treasury, and the Office of the U.S. Trade Representative as a group to confer on AD/CVD issues and collaborate on strengthening inter-agency efforts on AD/CVD enforcement. CBP and its inter-agency partners have effective collaboration on trade enforcement, and constantly work together on ways to broaden this cooperation.

Question. Do you agree that barriers preventing Customs, Commerce, and other government agencies from sharing proprietary information hinder trade remedy law enforcement and should be removed?

Answer. We agree that the ability to share information between government agencies assists with trade law enforcement, and CBP is consulting with Commerce on how we can improve information sharing on trade remedy law enforcement. Information sharing between government agencies is essential to ensure that government agencies carry out their respective responsibilities in trade remedy law enforcement. For AD/CVD enforcement, CBP and Commerce share extensive information. CBP provides substantial information to Commerce to assist with Commerce's responsibilities as the administering authority for AD/CVD. Commerce refers to CBP the allegations of fraud or evasion it receives from the public in addition to evidence it uncovers during the conduct of its own AD/CVD proceedings on a continuing basis, and provides vital technical assistance to CBP on evasion-related issues.

QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

Question. Commissioners DiNucci and Wagner, It is my understanding that data submitted by Vietnamese shrimp exporters change dramatically from 1 year to the next, without explanation, and in ways that favor their antidumping calculations.

Would you describe for the committee what the Department is doing to verify any explanation or documentation that changes significantly between review periods?

Answer. U.S. Customs and Border Protection defers to the U.S. Department of Commerce.

Question. Will you verify the responses in the current 10th review period?

Answer. U.S. Customs and Border Protection defers to the U.S. Department of Commerce.

Question. Commissioners DiNucci and Wagner, as you may know, 40 percent (or \$689 million) of all uncollected duties since 2001 is in the seafood sector. Please explain to the committee why the U.S. seafood industry has been hit disproportionately by duty evasion and what specific measures are available to the CBP to address the problem?

Answer. The U.S. Department of the Treasury, in its July 2007 report on Duty Collection Problems, fiscal years 2003–2006, specifically commented on the antidumping and countervailing duty (AD/CVD) collection issues related to agriculture/aquaculture products (including seafood) as follows:

... 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 one or more years after the goods had entered), many of the companies were no longer in operation. Because the antidumping 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, U.S. Customs and Border Protection (CBP) recognized the collection issues specific to AD/CVD agriculture and aquaculture imports and, therefore, applied to AD/CVD shrimp imports a revised bond policy, which the United States believed appropriately 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), where it was found inconsistent with U.S. WTO commitments and struck down by the CIT. 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. CBP continues to explore alternatives consistent with WTO rules that may allow it to set bond amounts on the basis of risk.

CBP employs its legal authority to require additional security, in the form of a Single Transaction Bond, to protect the revenue when CBP reasonably believes that a risk of revenue loss exists on seafood and other AD/CVD imports, on a case-by-case basis. These measures have been very effective in protecting the revenue and facilitating compliance with AD/CVD requirements. This practice was challenged and upheld recently at the CIT.

CBP also works closely with the U.S. seafood industry to identify and target seafood importers at risk of AD/CVD evasion.

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

Question. For years, our Nation's export and import sector has witnessed a number of methods used to evade and circumvent current trade laws, including the transshipment of products from one country to another before coming to the U.S. and the use of fraudulent content identifiers. Despite trade laws designed to protect against unfair practices, it is my understanding that dumping and subsidization of foreign products through circumventing the system have become increasingly common. This negatively impacts American businesses that should be able to compete on a level playing field.

Do you believe that current enforcement activities of duty evasion are sufficient?

Answer. U.S. Customs and Border Protection (CBP) is committed to ensuring that antidumping and countervailing duty (AD/CVD) laws are vigorously enforced. CBP takes all indications or allegations of evasion very seriously and employs all available methods in accordance with law to address these matters. While CBP's current enforcement activities of duty evasion are effective, parties are using increasingly complex strategies to attempt to evade AD/CVD. CBP needs to constantly develop new approaches of AD/CVD enforcement to meet the challenges posed by complex AD/CVD evasion schemes. For example, CBP is aggressively employing its legal authority to require additional security, in the form of a Single Transaction Bond, to protect the revenue when CBP reasonably believes that a risk of revenue loss exists on seafood and other AD/CVD imports. In fiscal year 2013, CBP piloted AD/CVD audit surges to cover multiple importers of individual AD/CVD commodities, and expand the reach of AD/CVD audits. These AD/CVD audit surges measure the risk of a sector of AD/CVD imports, determine the suitability of full audits, and provide informed compliance for future imports. CBP will continue to closely monitor AD/CVD evasion schemes and take the appropriate actions to counter these schemes.

Question. What specific actions is Customs and Border Protection (CBP) carrying out to address duty evasion?

Answer. To target AD/CVD evasion, CBP employs significant national assets from across the agency to enforce AD/CVD laws. CBP employs many tools including import trade trend and valuation analysis, national targeting through the AD/CVD National Targeting and Analysis Group, the use of targeted reviews and audits to address high-risk cases, lab testing, and special operations. The National Targeting and Analysis Group based in Miami is responsible for CBP's Priority Trade issue of AD/CVD and utilizes the Automated Targeting System to implement efficient and effective risk management actions. This is done through the development of targeting rules that are designed to identify shipments posing a risk for evasion of ADCVD. These rules leverage pre-existing enforcement information and also identify unusual trends related to shipment activity. CBP collaborates with U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) to substantiate and act upon allegations of duty evasion and to support enforcement actions. CBP also partners with U.S. Department of Commerce on a wide range of AD/CVD issues related to enforcement responsibilities. CBP works closely with U.S. industry to obtain market intelligence and technical expertise to enforce AD/CVD. CBP established an AD/CVD working group under the Advisory Committee on Commercial Operations of Customs and Border Protection to help address these issues.

CBP is also in the process of revising CBP Form 5106 (Importer I.D. Input Record) for new importers and entities doing business with CBP. The goal of this revision is to provide additional data on and vetting of new importers in order to reduce instances of unpaid duties (including AD/CVD) and abuse of trade and admissibility law (such as AD/CVD evasion) through shell companies or other related schemes.

Question. Does CBP have adequate resources to properly enforce our Nation's trade laws, including defending against the practice of duty evasion?

Answer. CBP is using its resources in new and innovative ways to meet the challenges posed by complex duty evasion schemes. CBP is undergoing a rigorous transformation of how the agency processes trade through the formation of ten industry-focused Centers of Excellence and Expertise (CEEs). The CEEs are enhancing CBP trade personnel's ability to specialize in commodities (including those subject to AD/CVD), building advanced knowledge in their respective industry, and increasing CBP's understanding of trade risks such as duty evasion schemes. CBP is also colocating personnel with HSI personnel in regional Trade Enforcement Coordination Centers in order to increase CBP-HSI collaboration and focus on trade enforcement issues. CBP is committed to ensuring that trade laws are enforced, and is strategically using its resources to meet these challenges.

QUESTION SUBMITTED TO PAUL PIQUADO

QUESTION SUBMITTED BY SENATOR THAD COCHRAN

Question. Assistant Secretary Piquado, the production of farm-raised catfish is very important to my state and the antidumping action against imported catfish from Vietnam is critical to rural jobs in the domestic industry. Imports of the Vietnamese fish were at their highest level last year, and remain at incredibly low prices, despite the antidumping order. What are you doing to ensure that this order is being effectively enforced and administered?

Answer. We are fully committed to vigorously addressing the market distorting effects of unfair trade practices in strict accordance with our trade laws, regulations and obligations.

The Department of Commerce (Commerce) published the antidumping duty (AD) order in the case of Frozen Fish Fillets from Vietnam on August 12, 2003. With respect to ongoing reviews, we published the preliminary results of the (2012/2013) AD administrative review, and concurrent new shipper review, on July 11 and 14, 2014, respectively. Our comprehensive analysis in the AD administrative review resulted in dumping margins ranging from \$0.58/kg (17 percent) to \$2.39/kg (38 percent). Regarding new shipper reviews, Commerce carefully examines all requests for new shipper reviews to ensure that artificial transactions are not used to secure an artificially low AD margin. In the ongoing new shipper review of catfish from Vietnam, we found that the sale used as the basis for the company's request for a new shipper review and individual cash deposit rate did not meet the requirements of U.S. law. If we affirm this determination for the final results, imports from this company will remain subject to the Vietnam-wide rate of 2.39 percent.

QUESTION SUBMITTED BY SENATOR RICHARD C. SHELBY

Question. For years, our Nation's export and import sector has witnessed a number of methods used to evade and circumvent current trade laws, including the transshipment of products from one country to another before coming to the United States, and the use of fraudulent content identifiers. Despite trade laws designed to protect against unfair practices, it is my understanding that dumping and subsidization of foreign products through circumventing the system have become increasingly common. This negatively impacts American businesses that should be able to compete on a level playing field.

—Do you believe that current enforcement policies concerning duty evasion are sufficient?

—What specific actions is the Department of Commerce carrying out to engage foreign governments and relevant entities on the issue of duty evasion?

Answer. The Department of Commerce (Commerce) is committed to the strong enforcement of the AD/CVD laws. As part of this commitment, Commerce has forged strong partnerships with the Department of Homeland Security's U.S. Customs and Border Protection (CBP) and the U.S. Immigration and Customs Enforcement (ICE). Information sharing is essential to successful enforcement and to this end, Commerce holds bi-weekly meetings with CBP and ICE at the working level to discuss enforcement issues, share information, and coordinate our interaction to address potential fraud and evasion of AD and CVD laws in a timely manner. Commerce and CBP also meet quarterly at the executive level to coordinate and share information related to AD/CVD administration and enforcement. Further supporting these efforts, Commerce forwards to CBP and ICE's office of Homeland Security Investigations (HSI) on a continuing basis any evidence of fraud or evasion it uncovers during the conduct of an AD/CVD proceeding. Additionally, Commerce refers to CBP allegations of fraud or evasion it receives from the public. Just as significantly, Commerce also partners with the Department of Justice (DOJ), providing technical support and information to assist DOJ in the prosecution of any AD/CVD fraud that is uncovered. Commerce, CBP and ICE/HSI also continue to consult on a regular basis on how we can improve information sharing for purposes of strengthening trade remedy enforcement going forward.

CONCLUSION OF HEARING

Senator LANDRIEU. So thank you all, and the meeting is adjourned.

[Whereupon, at 4:12 p.m., Wednesday, July 16, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

MATERIAL SUBMITTED SUBSEQUENT TO THE HEARING

[CLERK'S NOTE. The following outside witness testimony was received subsequent to the hearing for inclusion in the record.]

PREPARED STATEMENT OF AMERICAN WIRE PRODUCERS ASSOCIATION (AWPA)

INTRODUCTION

The American Wire Producers Association (AWPA) appreciates the opportunity to submit this written statement in connection with the Subcommittee's hearing on "Strengthening Trade Enforcement to Protect American Enterprise and Grow American Jobs." Specifically, our members would like to highlight the need to enact S. 662, "Enforcing Orders and Reducing Customs Evasion Act of 2012" (ENFORCE, as approved by the Finance Committee in July 2012) as an essential trade enforcement tool. We remain firm in our view that the U.S. Government needs to be more proactive in ensuring that foreign producers and exporters cease the illegal evasion of antidumping and countervailing duties by transshipping goods through third countries and illegally declaring the goods as a product of that third country; falsifying documents to misrepresent country of origin or misclassify the goods; and other "creative" means of evading the duties imposed on the goods by the U.S. Government.

American wire and wire products manufacturers have been seriously and adversely impacted by these trade-distorting policies, making it almost impossible for our industry to compete with unfairly-traded imports. The ENFORCE Act's provisions included in S. 662 will increase the transparency, responsiveness and effectiveness of Customs and Border Protection's (CBP) enforcement activities and thus, greatly improve the effectiveness of our trade laws and the relief that they are intended to provide to U.S. industries and American workers injured by unfairly-traded imports.

BACKGROUND

The AWPA is a trade association which represents companies that collectively produce more than 80 percent of all carbon, alloy and stainless steel wire and wire products in the United States. The 82 member companies employ more than 20,000 workers in over 215 plants and facilities located in 35 states and 139 Congressional Districts.

American wire and wire products manufacturers are entrepreneurial and work hard to maintain their competitive market position despite heavy import pressure on their products. They pride themselves on their high productivity and constant reinvestment in the latest technology and equipment, keeping the American wire industry one of the most globally competitive segments of the steel industry.

CIRCUMVENTION AND EVASION OF DUTIES

Domestic producers and industries may petition the U.S. Commerce Department and the U.S. International Trade Commission (ITC) to investigate imports that are believed to be sold at less than fair value or "dumped" in antidumping duty (AD) investigations or which benefit from improper government subsidies in countervailing duty (CVD) investigations. AD/CVD investigations and orders are the primary means by which U.S. industries combat unfairly-traded imports. However, these remedies are only effective to the extent the orders are enforced and attempts to illegally evade the orders are stopped.

The Situation Today:

Foreign exporters and U.S. importers are increasingly using various schemes to evade payment of AD/CVD duties when goods are imported into the U.S. Evasion often involves transshipping products through a third country, sometimes by repackaging or relabeling the product, and then using false documentation to declare that the third country is the country of origin. Importers also may deliberately misclassify imports, claiming that they are a different product or that they are excluded from the scope of the case. Other common tactics to avoid AD/CVD duties include subjecting the products to minor alterations or sending parts to a third country where insignificant completion or assembly operations are performed. Such products are then improperly identified as a product of the third country in blatant circumvention of the order.

These actions not only violate U.S. law and deprive American companies of the relief which the AD/CVD laws are intended to provide, they also result in hundreds of millions of dollars that are lost annually to the U.S. Treasury in the form of uncollected duties from wire and wire products alone. In addition, there are a host of other industries being impacted, including glycine, honey, diamond saw blades and tissue paper products. In these lean economic times, failure to collect these duties is unconscionable and unacceptable.

AWPA Position:

A number of AWP member companies have successfully obtained multiple AD and CVD orders against imported wire products that were found to be sold at dumped prices or unfairly subsidized by foreign governments. These companies have experienced firsthand the effects of the illegal evasion schemes used by foreign producers and U.S. importers to evade the payment of lawfully-owed duties. These illegal schemes have caused further injury to these companies and caused the loss of more American jobs.

We fully support the enactment of the ENFORCE Act. This legislation establishes a process for Customs and Border Protection (CBP) to investigate claims that AD/CVD orders are being evaded:

- Domestic producers can formally petition CBP to investigate possible evasion.
- Once an investigation is initiated, CBP must make both a preliminary and a final determination as to whether an importer is engaged in evasion.

To make a determination of evasion, CBP is directed to focus on whether the correct amount of duty is being collected on the merchandise, rather than on an importer's intent to engage in evasion.

CBP is authorized, however, to use its full authority and enforcement tools, including collaboration with Immigration and Customs Enforcement (ICE) to pursue additional criminal charges when an importer's intent is involved.

- CBP is required to act and publicly report on its findings within set timeframes.
- The bill prescribes enforcement and remedial measures for each determination, and specifically instructs CBP to use all its existing tools to enforce the U.S. customs and trade remedy laws.

The legislation does NOT give CBP the authority to expand the existing scope of covered merchandise or expand CBP's existing authority to investigate goods subject to AD/CVD orders.

We look forward to working with the Members and staff of the Homeland Security Subcommittee on this serious trade enforcement problem. In these challenging economic times, we are not asking for special treatment, just the opportunity to compete fairly with our international trading partners.

Also I have attached my testimony (see below) from a Small Business Committee hearing held earlier this year which details my long, arduous and very expensive trade enforcement fight which continues to this day.

Sincerely,

[This statement was submitted by Milton Magnus, President, American Wire Producers Association]