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OVERSIGHT OF THE U.S. CUSTOMS AND BORDER PROTECTION AGENCY

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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OVERSIGHT OF THE U.S. CUSTOMS AND BORDER PROTECTION AGENCY

WEDNESDAY, MAY 11, 2016

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Crapo, Cornyn, Isakson, Portman, Heller, Wyden, Stabenow, Cantwell, Menendez, Carper, Cardin, Brown, Bennet, and Casey.

Also present: Republican Staff: Chris Campbell, Staff Director; Everett Eissenstat, Chief International Trade Counsel; Douglas Petersen, International Trade Counsel; and Andrew Rollo, Detailee. Democratic Staff: Elissa Alben, Senior Trade and Competitiveness Counsel; Greta Peisch, International Trade Counsel; and Jayme White, Chief Advisor for International Competitiveness and Innovation.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order. I would like to welcome everyone to our hearing this morning and welcome the Honorable Gil Kerlikowske, the Commissioner of U.S. Customs and Border Protection. The Commissioner last appeared before this committee during his confirmation hearing in January of 2014. A lot has happened since then, so we are happy to have the Commissioner here again today.

The Finance Committee, and in fact the entire Congress, has been extremely active on trade over the past year and a half. Just last night, the Senate by unanimous consent passed the American Manufacturing Competitiveness Act, a bipartisan, bicameral bill that will provide tariff relief to American job creators by establishing a reform process for the consideration and passage of Miscellaneous Tariff Bills or MTBs.

Once it is signed into law, this legislation will allow American manufacturers to lower their production costs on parts that cannot be found in the United States. This is absolutely essential if we want American companies to be able to compete effectively in the 21st-century global marketplace.

Passage of the MTB bill is long overdue, and I am very pleased that we have finally gotten it through Congress and over to the President for his signature. Many members of the committee—on

both sides of the aisle—worked to get this bill over the finish line. I want to commend everybody on the committee, especially Senators Portman, Burr, and Toomey, for their efforts, and others on the Democrat side as well, especially the ranking member and others.

This MTB bill closely resembles legislation we reported out of the Finance Committee last year. In fact, it was just about a year ago that we began floor debate on several of our committee's trade bills that all eventually became law. One of those bills, the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Customs bill, was signed into law on February 24th of this year.

The passage and signing of the Customs bill marked the end of a legislative process that began almost 10 years ago and underwent many, many iterations. With the law now in place, CBP and other agencies have the tools necessary to ensure that America is able to compete in the world economy while also ensuring that our trading partners play by the rules.

As we all know, CBP has the dual responsibility of facilitating legitimate trade and travel while also protecting the United States from illicit goods and inadmissible people, such as terrorists. This dual mission is vitally important to ensuring the strength of our economy and the security of our borders. The overarching goal of our Customs bill was to facilitate the efficient movement of low-risk and compliant goods to the marketplace while also allowing CBP to focus its resources on goods that could do harm to the economic or physical security of the United States.

To that end, I would like to take a few minutes to discuss some specific ways that the recently passed law enhances and modernizes the way CBP operates.

The new statute includes a number of elements that were designed to help facilitate trade. For example, the law requires CBP to consult with private-sector entities to identify commercially significant and measurable trade benefits for participants in public/private-sector partnership programs. It also raises the de minimis level from $200 to $800 and modernizes the duty drawback process.

In addition, the new law provides a number of new enforcement tools. These tools include a new process at CBP, with strict deadlines and judicial review, for dealing with evasion of our anti-dumping and countervailing duties laws and a significant expansion of CBP's authorities to protect intellectual property rights at the border. Given the importance of intellectual property to our economy, these new authorities are long overdue, and they were among my top priorities in crafting and passing the Customs bill.

On top of that, the law includes a codification of the Centers of Excellence and Expertise, which, among other things, ensures that the post-release process for goods coming into the United States will be aligned by industry rather than the port of entry where a shipment arrives. These Centers provide tailored support to unique trading environments and eliminate the need for importers to work with individuals at multiple ports of entry that may slow down legitimate trade with needless and duplicative inquiries. The Centers also allow CBP to enforce our trade and Customs laws uniformly

on a nationwide basis and to prevent nefarious trade practices, including what some have called "port shopping."

The new statute also provides the necessary authorization and funding to fully implement the Automated Commercial Environment, or ACE, and requires the completion of the International Trade Data System, or ITDS, by the end of this year. The completion of ACE and ITDS will allow for the electronic submission of all import requirements through a single window and process. Once fully implemented, this will simplify and streamline the submission of import documents, reducing the paperwork burden on the private sector and ensuring that the CBP has the data it needs to identify high-risk imports and importers.

Much has changed since 2003 when CBP was first established. The new law is the first comprehensive authorization of the agency since that time, and many of the improvements that CBP has made internally over the years have been codified in the statute, including increased coordination between the two offices primarily responsible for trade facilitation and trade enforcement, the Office of Trade and the Office of Field Operations. We included this codification to address concerns that many had expressed about CBP over the years, namely, that its security mission could overshadow its trade mission.

There are many other significant provisions in this bill, several of which were championed by members of this committee on both sides. I hope we will have an opportunity to touch on some of those in more detail today.

While most of us are pleased with these new changes in our Customs laws, simply providing new tools and putting new mandates in place will not, in and of itself, improve conditions on the ground. As with the passage of any new law dealing with any important government agency, congressional oversight is going to be key to ensuring that the statute is implemented in a manner that reflects our intent. That is why I have requested Commissioner Kerlikowske to appear before the committee today.

With passage of the Customs bill, the Commissioner has many new authorities to implement. I am looking forward to hearing about how the Commissioner intends to use these authorities as well as a robust discussion of CBP's ongoing efforts to facilitate trade and enforce our laws.

With that, I will now turn to Senator Wyden for any opening remarks he would care to make.

[The prepared statement of Chairman Hatch appears in the appendix.]

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you, Mr. Chairman.

Across the world, trade cheats are looking for any way they can to break our trade laws and rip off American jobs. Customs and Border Protection is often our number-one defense against them. It is tasked with spotting the illegally dumped steel and solar technology, the counterfeit chainsaws and computer chips, before jobs are lost or economic damage is done.

Earlier this year, the Finance Committee spearheaded the first big package of Customs legislation in decades as part of the Trade Enforcement Act. Back when the last overhaul was passed, our Customs agency was fighting a very different foe.

Suffice it to say, Gil Kerlikowske comes from the Pacific Northwest and is an individual who has really reached out to this committee. I very much have appreciated it. I remember those days, because I was chair of the Trade Subcommittee here at the Finance Committee.

Suffice it to say, those were days when it was a lot harder for foreign companies to evade duties by concealing their identities. Now the Internet makes it easier to move quickly and stay hidden in the shadows. Blocking counterfeit products from creeping into our market used to mean stopping the right shipping container. Now counterfeit products are often tougher to trace. They can be spread out in individual boxes shipped straight to the doorsteps of American homes.

Since the last Customs overhaul, China shifted its unfair trade practices into overdrive. And in many cases, the old schemes to get past our trade laws and rip off American jobs have taken on a new spin. So, in the wake of the Trade Enforcement Act becoming law, this committee has an important role to play in ensuring that Customs and Border Protection is meeting the mark on its trade mission. This mission remains as critical as ever, even with CBP now under the Department of Homeland Security. It is all about focusing like a laser on enforcing our trade laws, protecting American workers, and defending our economy.

I have indicated that I have spoken with Gil Kerlikowske on this issue and he has made it clear that he wants to make tough enforcement—tough, aggressive, strong enforcement of our trade laws—a top priority on his watch.

The early signals are, this focus is producing concrete results. For example, our new legislation closed a truly outrageous old loophole in U.S. trade law that allowed for certain products made by slave or child labor to be imported to this country. Now, Mr. Commissioner, throwing this loophole into the trashcan was a priority for Senator Brown and me. The reason why that was particularly offensive is you had a doctrine known as consumptive demand where, basically, economics trumped human rights.

To me, that is contrary to everything that the United States stands for. So I have been very glad to see that we are starting to see real action in terms of enforcing this trade law. I know the agency has taken action to stop the imports of soda ash and several other industrial products from two companies that were alleged to be using forced labor. That is not what our country is all about. That is why Senator Brown and I pushed so hard for that legislation. We are glad to see the agency moving to bring actions against these companies.

Now, the agency has a variety of other tools to fight against the trade cheats, and our new Customs legislation added to the kit. I will be especially interested in hearing about CBP's plans to implement the ENFORCE Act, which gives the agency 6 months to put in place procedures to ensure that American workers are not injured by foreign products that are evading our laws.

This has been particularly important because, on another front, when I was chairman, we set up a sting operation to catch people who were cheating. Basically, we were flooded with requests from people who wanted to evade our trade remedy laws.

Finally, the agency has an important role to fight unfair competition and job loss by cracking down on duty evasion and bringing in revenue for taxpayers. CBP is also responsible for keeping illegally harvested timber out of our market and for protecting consumers from unsafe products. It is essential that, in the fight against trade cheats, each of these enforcement tools is fully implemented.

We tried in the Trade Enforcement Act to say that we were really going to start a new day, Mr. Commissioner, a new day where we would have what I call "trade done right," and the centerpiece of it is tougher and stronger and real enforcement of the trade laws. Otherwise, in this trade debate, people say, "I hear Congress is chasing a bunch of new trade deals and new trade agreements. How about enforcing, first, the laws that are on the books? You can talk to us about new trade laws in the future after you have been serious and aggressive and strong about enforcing the laws on the books."

I have been pleased that you are sending a signal that that is your top priority. We are glad to have you here, Mr. Commissioner, and obviously, members feel strongly about these issues. I look forward to our colleagues' comments.

The CHAIRMAN. Well, thank you Senator Wyden.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. Once again, our witness today is U.S. Customs and Border Protection Commissioner Gil Kerlikowske.

Mr. Kerlikowske was nominated to his current position by President Obama, and was sworn in March 7, 2014 to this position.

He oversees an annual budget of more than $12 billion and manages more than 60,000 employees. Commissioner Kerlikowske's role is to oversee the dual CBP mission of protecting national security objectives and promoting economic prosperity and security.

As Commissioner, he runs the largest Federal law enforcement agency and the second-largest revenue-collecting agency in the Federal Government. As the head of an agency with such broad authorities and responsibilities, Mr. Kerlikowske relies on the advice of experts in their respective areas while making determinations on issues that could range from the admissibility of a foreign traveler to the classification of the newest smart phone.

Before his nomination to his current position, Mr. Kerlikowske served as Director of the White House Office of National Drug Control Policy. Prior to that, Mr. Kerlikowske spent 4 decades serving in various law enforcement and drug policy positions, including 9 years as Chief of Police for Seattle, WA; Deputy Director for the U.S. Department of Justice Office of Community Oriented Policing Services; Police Commissioner of Buffalo, NY; and a lengthy career as a law enforcement officer in the St. Petersburg, FL police department.

Mr. Kerlikowske, we just want to welcome you to the committee. We are glad to have you here. So, we welcome you once again to

the Finance Committee. Your full written statement will be placed in the record. I would invite you to summarize your testimony at this time.

STATEMENT OF HON. R. GIL KERLIKOWSKE, COMMISSIONER, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Commissioner KERLIKOWSKE. Well, thank you, Chairman Hatch, Ranking Member Wyden. It is an honor to be back with you and the members of the committee.

In your opening statement and in the ranking member's opening statement, you covered quite a bit of many of the important things that I was going to mention. To say that it is a bit intimidating with the knowledge level of trade and intellectual property—I think Senator Portman, in his previous life, has forgotten more about trade issues than I will probably ever know.

It is important for me to have promised at the confirmation hearing, in front of you several years ago, that as much as the security issues were absolutely primary for me, the border security issues, it was very clear that our economic security was of critical importance also. I think there was great concern expressed to members during the confirmation process that, as a former police chief, I would solely be focused on the border security issues and not recognize the importance of the trade issues and our economic security.

I would like to tell you that I believe in the 2-plus years that I have had the job, I have made every effort to make sure that I am open to the trade community, that I recognize the importance of trade, that I recognize the importance of leveling the playing field.

I would also tell you that, certainly, enforcing 500 U.S. trade laws for 47 Federal agencies, $2.4 trillion in imports, $40 billion in fees that are collected, $26 million of truck, rail, and sea cargo containers a year, and 328 ports of entry, only help to explain not only the importance, by also the complexity of this.

During the 2-plus years that I have had the job, I think that trade transformation has been primary with me: how we will work with, communicate, and cooperate with the private sector, our other governmental agencies, and the consumers, has been absolutely important.

You mentioned the Automated Commercial Environment or the Single Window which we are on track to complete at the end of this year, which will give all of those, not only partner government agencies, but all of the importers and exporters a view into where their property is and where things are. So it streamlines and automates the process. We have already implemented, I believe, seven of the eight key elements. It is progressing well. That is, again, a result of the partnership.

Mr. Chairman, you mentioned the Centers of Excellence and Expertise, so I will not belabor that, but all 10 are up and running as of March of this year. It adds subject matter expertise in a variety of commodities such as automotive, electronics, pharmaceuticals, et cetera that, as you mentioned, apply to all 328 ports of entry.

The act passed and signed into law is tremendously helpful for us in many areas. I think that coming from an enforcement back-

ground and being able to replicate enforcement priorities and strategies throughout the 60,000 members of Customs and Border Protection will only lead to a robust enforcement of the variety of laws and a strong utilization of the tools that have been provided.

On March 29th and April 13th, I issued what are called withhold-release orders to two large shipments of chemical, fiber, and potassium products, all as a result of the reasonable suspicion standard that they were derived from forced labor in China. In other words, they were not allowed to be brought here to this country. You will see more of that.

We have established a trade enforcement taskforce. I wanted to call it a SWAT team, but it is a trade enforcement taskforce whose sole objectives will be to look for and identify potential violations under that reasonable suspicion standard and to be able to take the appropriate action that is needed as well as pursue enforcement actions for anti-dumping violations.

We will continue to work closely with the members of this committee and certainly with the staff. Having had the experience of working with a number of members who are currently in the President's Cabinet in my earlier position has made relationships strong and powerful in this area.

So I appreciate the opportunity to be here.

The CHAIRMAN. Well, thank you so much.

[The prepared statement of Commissioner Kerlikowske appears in the appendix.]

The CHAIRMAN. I think we will have some questions. I will turn to Senator Grassley first, then Senator Wyden.

Senator GRASSLEY. Mr. Director, earlier this year, the *Washington Times* reported that you told the Border Patrol agents to, quote, "look for another job if their view is different from those of the Obama administration." You apparently made that comment in response to criticism by Border Patrol agents of a new "catch and release" policy for agents in the field.

In testimony before the House Judiciary Committee, Brandon Judd, president of the National Border Patrol Council, claimed that agents were told not to do the paperwork to initiate removal proceedings before releasing unlawful border crossers. I want to quote Mr. Judd: "It has been so embarrassing that DHS and the U.S. Attorney's Office have come up with a new policy. Simply put, the policy makes mandatory the release without an NTA of any person arrested by the Border Patrol for being in the country illegally as long as they do not have a previous felony arrest, conviction, or as long as they claim to have been continuously in the United States since January 2014. The operative word in this policy is 'claim.'"

Such a remark and such a policy sends a signal to the men and women in the field protecting our borders that they are not valued and that their mission to secure the homeland is not taken seriously. So a very simple question: do you regret telling the agents to find a new job if they do not like the administration's immigration enforcement policies?

Commissioner KERLIKOWSKE. I will be happy to answer that question, but I would like to just for a second provide a little bit of the context. For 14 years, I ran two of the largest police departments in this country. Not every police officer agreed with every

administrative decision or decisions that were made by Mayors and city council members.

If you were unable to follow the rules and the regulations and the lawful and ethical authorities that were put forward—if you were not able to do that, then you should not hold that position. You should look for something else. That is exactly the statement in that context that I would make to members of the United States Border Patrol, who by the way, I believe follow the rules, regulations, and laws as authoritatively as possible.

During the 2-plus years that I have served in this position, the United States Border Patrol has not had a stronger supporter. So I would answer your question and say, no, in the context I explained, I do not regret my statement.

Senator GRASSLEY. Well, that is sad that you would not regret that, because what they want to do is protect our borders, and by this policy, they are not able to protect our borders.

Back in November, I and House Chairman Goodlatte sent Secretary Johnson a letter asking about aliens from countries of concern, for example, Syria, Iraq, and Afghanistan, who have been apprehended while attempting to cross the U.S. border. The letter asked for information related to each such apprehension, including whether the alien made a claim of asylum, whether the alien was detained, and what, if any, relief from removal or immigration benefit the alien was granted. It is unacceptable that 4½ months have gone by and the department has not answered. So let me ask you: have Syrians been apprehended at the border in the last fiscal year? I can say the same things for Iraqis or Afghanis, but have any been apprehended?

Commissioner KERLIKOWSKE. Yes. There have been apprehensions. I think at the end of each fiscal year, when I take a look at the numbers, we apprehend people from well over 100 different countries. So you are correct, Senator.

Senator GRASSLEY. Should we be concerned that terrorists posing as refugees are potentially slipping across the border?

Commissioner KERLIKOWSKE. I think we should be concerned about anyone attempting to enter the country illegally, and particularly from special interests countries where there could be even greater concern that they could be a threat. That is why we put into place many oversight mechanisms for the people who are apprehended.

I know, Senator Grassley, that your letter is very important to Secretary Johnson. It is also a bit complex, because it does involve CBP, USCIS, and Immigration and Customs Enforcement.

Senator GRASSLEY. Whatever it takes—4 months. Do what you can to get us an answer as soon as possible.

Commissioner KERLIKOWSKE. I will.

Senator GRASSLEY. My last question: in July 2015, the Mexican drug lord, El Chapo, escaped from maximum security prison. He was recaptured by Mexican police in January of this year. El Chapo's daughter is a U.S. citizen, and she told the *Guardian* newspaper that the drug lord visited at her California residence twice in 2015, during the period that he was on the run from police after escape.

Can you with 100-percent certainty say that these reports are false and that El Chapo did not enter the United States during the 7-month period after his escape from Mexican prison?

Commissioner KERLIKOWSKE. I can say that we looked into that very thoroughly. We had absolutely no piece of evidence other than her anecdotal remark to a reporter that he had entered the country, but I certainly cannot say with absolute authority that no, that never happened. We just never found any hint or scintilla of evidence that he ever did.

Senator GRASSLEY. I assume you interviewed the daughter?

Commissioner KERLIKOWSKE. I do not know whether the daughter was interviewed by Customs and Border Protection. That would actually be either through the FBI or through Immigration and Customs Enforcement, but I will be happy to ask if that was done.

Senator GRASSLEY. Yes, and if it has not been done, that is a sad comment.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman. Let us go to the ENFORCE Act, if we could, Commissioner. This was a special priority of mine. It was begun when I was chair of the subcommittee. Many colleagues on both sides of the aisle worked on this.

What I was just stunned by was just how brazen some of these so-called "trading partners" have been with respect to trying to get around our trade laws. In China, for example, there were websites on how to avoid duties, how to avoid their legal responsibilities, and offers to provide services to carry this out.

So you had the website, and then people on top of that were talking about how they could offer services. Basically, just scofflaws thumbing their nose at U.S. trade law enforcement because they knew they could get away with it, because too often they would look at trade enforcement and there was not any there.

So that is what we began pushing back on when we wrote the law, and obviously, these past remedy laws were pretty much useless in protecting American jobs, so we wanted to turn the page and go to something different.

Why don't you begin today by describing how you are going to implement the ENFORCE Act within the 180-day deadline. In other words, this is going to be a special priority of mine and of this committee. I think it would be very good if you would kind of go step-by-step. Obviously, you are going to have to have some conversations with the domestic industries directly impacted by evasion, but if you would, tell us step-by-step how you are going to implement the law.

Commissioner KERLIKOWSKE. So one is, I have made it very clear, and it has been very clear from not only this committee, but also from the intent of Congress, that a much more aggressive and assertive enforcement posture is needed within Customs and Border Protection. Announcing the fact that we have the Trade Remedy Law Enforcement Division, adding essentially a SWAT team within Customs and Border Protection to look for these violations, is important.

We will plan on issuing an interim final rule within that 180-day process. We have certainly heard quite a bit in my meetings with nongovernmental organizations and the stakeholders, some of whom are represented in this room, what they hope and would like to see that would be possible to give us a more forward-leaning posture when it comes to that enforcement.

So the Trade Remedy Law Enforcement Division, the fact that we are communicating a change in the way we go about looking for these violations—too often I would see that we would request or want a position paper issued by a nongovernmental organization. I said, we do not need as much of a formal position as just give us a tip. Just give us the information and we will proceed with it, because not everyone is equipped or has the finances within the private sector to do that.

So there are a host of duties that we have taken and a host of outreach mechanisms that we have taken to make sure that we are going to be doing the enforcement. I think our staff, my staff, has heard more than 100 times—at least 100 times—that we have to put points on the board. That means those withhold-release orders, seizures, going after the money. And we can be much more aggressive than, in fact, we have been in the past, and we will be.

Senator WYDEN. And the point is, because I think—I have used that phrase, "points on the board." The point is, you are not going to bring thousands and thousands of tough enforcement actions in the first 15 minutes. The point is to try to bring a handful of really well-targeted enforcement actions so that these rip-off artists say, it is a new day out there, that you cannot just brazenly violate the trade laws and expect to get away with it.

I have sensed that that is your take as well. I appreciate it.

Up to now, the agency has used what is called the "e-Allegations" system to accept allegations of evasion. How does that system differ from ENFORCE as you see it?

Commissioner KERLIKOWSKE. So the e-Allegations system has been around for several years, and it allows more sophisticated, more knowledgeable organizations or stakeholders to give us the information electronically. I do not think that is much different than when we would get tips in a police department.

There was one, I think, primary problem with the e-Allegations system, and that is that—going back to my law enforcement experience—if your home was burglarized and we took a report and then we never told you what happened, what we were doing, what did the investigation produce, did we get your property back—if we never closed the loop with you, you would become very frustrated and maybe, perhaps, not report a crime again.

I think that closing the loop with the people who provide the e-Allegations within the constraints of the law that we have to follow has been very important, and I think that the trade community has heard that message, and we are going to do a better job.

Senator WYDEN. One last question, if I might, on the implementation of the forced labor changes. As I indicated, I thought that the previous loophole was just offensive to all the values that the country stands for—this notion that somehow economics trumps human rights and concern for people who have been exploited in the past.

As I understand it, nongovernmental organizations, and importers and others, are asking some questions as well on how this is going to be implemented. I can tell you that at home, in Oregon, I was particularly proud, because our chocolate industry is stepping up. A company called Tony's Chocolonely—it was Chocolonely because he was the only person at that time, the only person in the chocolate industry, who was willing to say, I am not going to condone these forced- and slave-labor kind of practices. They are really stepping up.

But there are a lot of questions from the nongovernmental organizations and importers on how you are going to implement the provision. So if you would, your thoughts on that.

Commissioner KERLIKOWSKE. Sure. Our standard of "reasonable suspicion" is, frankly, a relatively lower moderate standard from the standard "beyond and to the exclusion of every reasonable doubt." So we can make that decision, and of course, if that decision is incorrect—that in fact it was not produced from derived labor, prison labor—there can be an appeal. We are certainly willing to listen and to go through the process of those appeals, but it is absolutely critical that we go beyond waiting for a petition, that we take the information that we need.

I think I was never more moved in this process than just a couple of weeks ago when I issued the withhold/release orders. Those came about from Mr. Harry Wu, who just recently passed away, a renowned human rights activist and active in the Pacific Northwest, who was so pleased and proud of our actions.

Senator WYDEN. Thank you.

The CHAIRMAN. Thank you.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman. Mr. Chairman, the United States is the world's leader in trusted and recognized brands, the ones in demand, the ones that command the best prices and, therefore, the ones most vulnerable to knockoffs. It is our hard-earned reputation as a global economic and cultural leader that makes us a target. That makes protecting that reputation and the investments that we put into them so important.

That is why I know that my colleagues are as shocked as I am by the latest report by the OECD showing that of nearly half a trillion dollars in global trade that is made up of counterfeited and pirated goods, the United States is the biggest victim of all, accounting for fully 20 percent of the knockoffs. Postal parcels are the top method of shipping these fake goods, amounting for 62 percent of seizures over 2011–2013, reflecting the growing importance of online commerce and international trade and the ease of evading detection when using small packages.

Now, this issue was first bought to my attention 2 years ago by families and businesses in New Jersey hurt by counterfeit prom and bridal dresses that they were tricked into purchasing online. They looked at one and they thought it was the same quality, but for far less money, and they purchased it.

Now, I understand that online search engines, like Google, bear some responsibility, as they seem to aid and abet these counterfeiters by failing to police the use of copyright-protected imagery in online ads. But CBP also has a duty to prevent fake products from

entering our market. Now, the OECD has confirmed that counterfeit shipments are one of the biggest issues confronting our Customs and border enforcement system today.

That is why I am pleased that the Customs bill that we passed included report language that I authored with you, Mr. Chairman, to raise the enforcement priority for counterfeit products, especially those that are marked as "gifts" to evade Customs duties and detection.

Now, I have two samples here of packages which contain counterfeit dresses sent to U.S. Customs. Both of them were sent from a business address in Suzhou, China, and are clearly marked as gifts. So the question, Commissioner, that I have for you is, does a package marked as a gift that originates from a business address in a country like China, which is documented by CBP, the OECD, and other sources as being a major source of counterfeits, trigger any red flags for our agents? What is the typical screening process that these packages go through, and can you share with us what specific steps CBP is taking to deal with this in compliance with the report language issued by the committee?

Commissioner KERLIKOWSKE. Senator Menendez, I think you have clearly hit on one of the most difficult challenges we face right now with the absolute explosion of e-commerce. We have personnel at DHL and personnel in our international mail rooms, et cetera, but the volume and the flow are significant.

Unlike manifests on containers coming into the United States, we do not get manifests on the shipping, on the port. I would tell you that the expertise is more of an art, in fact, than anything, but the expertise of the people whom we have assigned to these locations, plus the cooperation we get from the private sector and from the United States Postal Service, has been very helpful.

So I could not tell you definitively that a package coming from China will automatically be taken out and then looked at or searched, but we do look at these things very carefully. Every single day, we detect everything from club drugs to not only the intellectual property rights violations as you just mentioned, but a variety of other things, including counterfeit identifications. More needs to be done though.

Senator MENENDEZ. Let me ask you, Commissioner—I appreciate that.

I assume we use algorithms in shipping to decide which containers we are going to look at. We look at places and/or companies that we know consistently are producing counterfeited products and sending them as gifts. There must be some technological ability to at least begin to narrow the window and help us focus our agents' time in a way that is more effective. I would like to work with you on this, because I think it is incredibly important. We cannot afford to lose 20 percent of half a trillion dollars.

Commissioner KERLIKOWSKE. Senator, I could not agree more. Thank you, and algorithms, country of origin, addresses of the shipper, who is the forwarder, if there is a broker involved—and maybe with the de minimis we will see less of that. I look forward to working with your staff on this.

Senator MENENDEZ. Thank you.

One final thing, Mr. Chairman: I am glad to see that, by unanimous consent, the MTBs were passed. But one of the things that was not included in there and that I would like the Commissioner to explain to members of the committee—CBP is statutorily barred from refunding erroneous collected duties from companies. So these are, in fact, companies that are told, you have to pay this duty. They pay it dutifully, and then they appeal. Then their appeals are upheld, and they say, yes, we charged you the wrong tariff or the wrong duties. Does CBP have any authority to right these wrongs without congressional action?

Commissioner KERLIKOWSKE. I think you caught me there, Senator. When the chairman mentioned that a certain amount of subject matter expertise exists far within CBP and not with me, on this issue, I am going to ask you——

Senator MENENDEZ. I see that you have subject matter authority sitting behind you that suggests that maybe my question is on point.

Commissioner KERLIKOWSKE. Okay.

Senator MENENDEZ. If that is the case, Mr. Chairman, I know that we collectively as Republicans and Democrats alike certainly want people to pay their fair taxes, but we do not want them to pay that which they are not responsible for. And when they do, and it is upheld that they have paid more than they should, then we should have the wherewithal to find a means—and I would hope to work with the chairman—to get these people reimbursed.

I have companies in New Jersey that tell me, they paid as they were told, but they knew that it was wrong. They appealed, they won, but they cannot get reimbursed because they are statutorily barred from doing so.

The CHAIRMAN. We have to work on that.

Senator MENENDEZ. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Carper, you are next.

Senator CARPER. Thanks so much.

Commissioner, I want to thank you for your service.

The CHAIRMAN. Senator, excuse me. I am going to have to go vote. Senator Brown will be next, then Senator Portman.

Senator CARPER. All right—thank you. Thanks, Mr. Chairman.

Commissioner Kerlikowske, it is great to see you. Thank you for your service in so many different ways. It is a pleasure to work with you in my role—not just here, but also in the Homeland Security Committee, which I serve as the senior Democrat.

I want us to be helpful to you. You have a tough job, and we want to make sure that we are being helpful to you and to the folks you lead. I have some concern about what seems to be some serious understaffing issues at CBP. Your own workforce staffing model shows the agency is down by, I think, about 2,000 agents from what I understand you need. While Congress has provided funding in the past to hire a number of new officers, I understand that you have not been able to fill all of these slots or keep pace with retirements. Could you just take a minute and please discuss the challenges you face with respect to hiring? I am just going to keep your answers very short and crisp.

Commissioner KERLIKOWSKE. Every law enforcement agency I know, including Customs and Border Protection, is having some va-

riety of difficulty hiring—State and local level. We have done a better job. You appropriated, Congress appropriated, for 2,000 people. We are about 750 below that total.

We have been working with members of Congress to include looking at the ages that we can hire people, either at an older age or letting them stay on longer. We have reduced the amount of time that it takes to process someone from well over 360 to 400 days to about 160. We are going to move as aggressively as we can to fill those positions.

Senator CARPER. Thank you. I understand that there is a statutory requirement to polygraph all applicants, and that might be one source of significant delay. Is that the case? If so, is there some adjustment called for?

Commissioner KERLIKOWSKE. So we have been looking at and have made some adjustments, not in the quality or reducing our standards for hiring but, in fact, not taking as long on the polygraph examination, which can be up to 8 hours when, in fact, it would be someone whom we know we are not going to hire after the first 15 minutes of conversation during the polygraph, and we can move on to someone else.

So the polygraph is important——

Senator CARPER. That is what my father would call "good common sense."

Reimbursable service agreements—I understand that CBP has a pilot program that allows private entities such as airport authorities or others to reimburse CBP for the cost of additional hours of CBP inspections. As I understand it, there is growing demand for these agreements—more so than is allowed under current law.

Could you just take a moment and discuss with us how these programs work and whether, in your view, they should be expanded? Again, just very briefly.

Commissioner KERLIKOWSKE. They can pay for additional services at land borders. As you know, in Philadelphia they pay for additional agricultural inspectors' overtime to cover produce coming in to make sure it is fresh. Unfortunately, we are capped when it comes to the number of airports that can be funded or apply for that or be accepted once a year. So we, actually, would be very appreciative of moving forward to having more of these organizations. As long as we are transparent about how many people you get for how many hours and how much it will cost, it seems that private business has been very accepting of this and recognizes the need.

Senator CARPER. Good. I am going to ask my staff to follow up with your folks on that, please.

The third question I have relates to fees. In my view, things that are worth having are worth paying for. That includes inspection services by CBP, officers at ports of entry. For a number of years, I have supported the administration's proposal to raise, somewhat, the Customs fees to help pay for CBP officers. I was upset when Congress, last year, redirected some of the fee money as an offset for the transportation bill. I thought that was shameful.

Do you agree that we should increase the fees, somewhat, that have traditionally been dedicated to CBP, and keep those fees reserved for that purpose, not for some other purpose? What impact would that have on staffing?

Commissioner KERLIKOWSKE. The President's budget request, even at the time it added the additional 2,000 Customs and Border Protection officers, also included funding for an additional 2,300, as our workload staffing models showed. Those 2,300 would be paid for by fees, some of which have not been elevated in many years. I think it would be helpful to have that funding source go to Customs and Border Protection to essentially pay for the services that we render.

Senator CARPER. I have 20 seconds left. Just take those 20 seconds. Give us one other idea of something that we need to do, we could do, under the legislative branch that would help make your folks more productive, more effective.

Commissioner KERLIKOWSKE. I think that the support for—we are looking, for example, at radios and vehicles, et cetera. Many of these things are not as well-funded as we are with personnel. We need to invest in technology, and we need to support the equipment that they need to do the job.

Senator CARPER. Thank you again. Thanks for your leadership.

Senator BROWN. Mr. Kerlikowske, thank you for joining us. Since the enactment of the Customs reauthorization, how many additional full-time employees have you tasked with ensuring that our ban on the importation of goods made with forced labor, to which Senator Wyden referred, is fully enforced?

Commissioner KERLIKOWSKE. We added an additional 24 people to the taskforce to begin that targeting process, but we are also, at our national targeting center, making sure that they are as wary about these types of violations as they have been about other types of things that could be harmful coming into the country. So we are starting out with the 24 people working through our targeting processes to enhance forced labor and anti-dumping enforcement.

Senator BROWN. Is it your goal to block all imports made with forced labor from coming into the U.S.?

Commissioner KERLIKOWSKE. Yes.

Senator BROWN. How do you plan to achieve that other than the number of employees? Talk that through briefly, please.

Commissioner KERLIKOWSKE. I think the history is, and certainly the outreach that not only we have done, but the outreach that the nongovernmental organizations have made to me as you know—and we very much appreciate you setting up a meeting here in the future with these organizations. They have, essentially, the boots on the ground in these foreign countries where they are incredibly knowledgeable about things that could be made with forced labor.

We need their information. We need to be able to get back to them that we have acted upon their information, because that exchange is going to be critical. I think that is going to be important.

The other part is that we just received authorization for nine additional foreign government attachés funded through the State Department. So the more people that we have overseas to learn about this information, the better we will be able to target.

Senator BROWN. Does that suggest, Mr. Kerlikowske, that you will self-initiate investigations into whether imports are made with forced labor, because CBP has never done that before. Do you plan to do that?

Commissioner KERLIKOWSKE. I do plan to do that. The response has always been that we want a petition, that we will assist in the petition to make sure that it meets all of the requirements. I want us to be leaning much more forward, and where we get information, we should be able to follow it up, and we should be able to utilize other investigative resources within the Department of Homeland Security and throughout the Federal Government to move aggressively on these, not just wait for the petition.

Senator BROWN. That is so important. This will not be done well without self-initiation. So thank you very much for your assertion there.

One other issue I want to talk about is—in your estimation, what percentage of steel imports coming into the U.S. are evading antidumping or countervailing duties?

Commissioner KERLIKOWSKE. I cannot answer. I do not know the percentage, but I know that whether it is through live entry, or single-transaction bonds, or a variety of other mechanisms that we are utilizing right now, steel is at the top of the priority list. That was made clear to me last week in Salt Lake City, at the American Iron and Steel Institute Conference, by all of the members there.

Senator BROWN. It is very important to see what CBP can do to get that percentage down to zero. We know the number of jobs lost all over the—particularly the industrial Midwest, but throughout our economy, because of illegal dumping of steel.

Commissioner KERLIKOWSKE. And we are working with too, the United Kingdom and their issues with steel, the government of Mexico, the government of Canada, and also the government of Australia.

Senator BROWN. Thank you, and thank you for your work in your previous job too in my State and elsewhere. Thank you so much, Mr. Kerlikowske.

Commissioner KERLIKOWSKE. Thank you.

Senator PORTMAN [presiding]. Thank you, Senator Brown. And Senator Brown, thanks for your work on the slave labor import issue that is a part of this Customs bill, but also Senator Brown just talked about the steel side. Let me just make a specific point here.

Senator Brown and I have worked on some cases together, including one that has to do with tubular product, called OCTG, Oil Country Tubular Goods. Companies in Ohio, like U.S. Steel, were very happy when we won a case that Senator Brown and I both supported, and we were able to put in place some relief.

Now they are seeing evidence of fraud, circumvention, numerous Chinese websites actively promoting their ability to evade this specific tariff that is in place by falsifying the country of origin of Chinese-made pipe product. So it is happening right now as we talk.

One of the things that we got into this legislation, as you know—I know Senator Brown supports it strongly as well—is the ENFORCE Act. I have been a supporter of the ENFORCE Act because, even when we are successful in these cases, if there is evasion, it still does not help the workers we represent. So Senator Brown and I got legislation through called the Level the Playing Field Act. It changes the way you deal with antidumping and coun-

tervailing duty cases, as you know. The Commerce Department, ITA, and ITC are now being asked to implement that. We are aggressively pursuing their implementation of that.

That will help. It gets relief faster. It is more meaningful relief—shut down the business and fire people in order to get the relief you need—but it does not help if you do not have the ENFORCE Act enforced as well. The ENFORCE Act will keep people from evading that countervailing duty, duty, or antidumping duty by going to another country.

I will give you another example. There are some folks at Pennex Aluminum in Leetonia, OH. Again, we helped them to win a countervailing duty case and an antidumping case against unfair Chinese aluminum exports. By the way, it allowed them to create more jobs and to invest $38 million in their plant. So this is a relatively small aluminum plant in Ohio that was able to benefit directly.

Now they have a new concern. The Chinese aluminum producers are evading Customs duties by shipping their products through different countries, under different names.

American Spring Wire employs 250 people in Bedford Heights, OH and can tell the same story. American Spring Wire was a successful petitioner in a trade case against China, and won significant duties on imports of steel wire from China. Chinese traders circumvented the orders by transshipping the wire through Malaysia. Imports from Malaysia, Mr. Commissioner, were nonexistent in 2008, like none. They increased to 4.7 million pounds in 2009, and then surged to 32.8 million pounds in 2010, while imports from China, by the way—because of the orders that were in place—declined.

So this is happening, and these duty evaders are becoming more brazen every day. Just yesterday I received an e-mail from a group that specializes in duty evasion. Someone had passed it along to my office. The e-mail explains how the company, this duty evasion company, provides a professional trading solution to help Chinese exporters sneak their products past you, past the U.S. Customs Service, by routing them through Malaysia.

So I am very concerned about this issue, because we can have great successes on the law, and yet they can evade. I guess one question I would ask of you is, we have given you the tools now, and specifically, CBP has the tools now to strengthen their investigations, to make it a de facto case, rather than having to prove intent. We have given you the tools you need. Are you putting them in place? I am told that last month some of your senior officials said that you do not expect to meet the deadline for implementing these regulations. I hope that is not true. Can you comment on that today? Are you guys going to meet the deadlines? Are we moving ahead with these regulations?

Commissioner KERLIKOWSKE. There are a number of deadlines that were included in the passage of the law. It is our intent—although there are several that are very challenging for quickly working and putting together—but it is my intent that we will meet those deadlines, including an interim final rule on the issue that was discussed earlier. So we would like to do that.

Regardless of, right now, the importance on the rulemaking, our posture to do the enforcement and listen to, whether it is the wire

companies in Alabama or Ohio, is very critical to us because of the transshipment issue. So we need to be more aggressive. We need to have better outreach, and we need to be able to take those tips and that information and move forward on the transshipment which we see.

This is frustrating to me, as I know it is to you and the people you represent.

Senator PORTMAN. Yes, again, we are facing a real crisis in Ohio right now on steel. We know that there is over-capacity overseas. It is being dumped in America. We have been winning cases. Foreign steel imports have now taken a record 29 percent of the U.S. market share. That was 2015 numbers. We believe it is higher in 2016. We have had 13,500 layoffs in the last year, over 1,000 layoffs in Ohio alone, of steel workers.

Outside of this effort to enforce the ENFORCE Act which we talked about today, what else have you been doing that could help the administration to address this steel import crisis, and is there coordination between what you are doing and what Commerce at ITA and what the ITC is doing?

Commissioner KERLIKOWSKE. I have now attended a number of meetings with Secretary Pritzker, Secretary Lew, and a number of others. I worked closely with Ambassador Froman before he became the USTR. So the coordination and the fact that we have embedded over at USTR someone from Customs and Border Protection all ensure, I think, better coordination.

Also, very much, along with the President's Economic Advisor, Mr. Zients, we are very much onboard with our role in the enforcement side of this and moving as aggressively as we can as an organization to do the enforcement. Also as the ranking member had said, to send a message to those who would evade and also, of course, to send a message to the stakeholders, to the people who are most impacted and affected by this: (1) we are listening to them; (2) we are going to take their information; and (3) we are going to get back to them with what we found and what we are going to be doing to up the game when it comes to enforcement.

Senator PORTMAN. We need to see some of those actions. We need to see, as you say, that message being sent by actual successes and blocking what we know is going on. And I will provide you with this e-mail I received yesterday as just one example of what is happening in the real world. You are an enforcement guy. We expect you to enforce it strongly.

By the way, Senator Brown, I missed you in Cleveland at our hearing, which was very sobering, about the prescription drug and heroine epidemic.

Senator Casey?

Senator CASEY. Thanks very much.

Commissioner, thank you for your testimony and for your public service, which did not just start with this job. I know you have been in law enforcement a long time. We appreciate that.

I want to raise two basic issues with you, one that will focus on a question, the other is a brief statement, and I will follow it up more in writing.

One of the biggest challenges we have specifically, as it relates to ISIS but also counterterrorism generally, is cutting off financing,

shutting down their money. We took a good step in the right direction recently when the President signed into law a bill that I introduced in the Senate, the so-called "Protect and Preserve International Cultural Property Act."

Basically, the core of it is restricting the import of cultural artifacts that have been illicitly or illegally smuggled out of Syria. When they do that, they create a revenue stream.

So that is a good step in the right direction. The administration, as you know, has taken a lot of steps to shut down financing, but we have to be dogged and vigilant on this because, if we do that, it is almost as important as any other part of our strategy. Part of your work will involve implementation of import restrictions as it relates to this. So I just urge you to do a couple of things.

Number one, keep working on accelerating the training for your officers; number two, make sure you are sharing information and best practices as appropriate in this area and then partnering with nations on the front line. We have a lot of work to do on this. What I will do is follow up with a question for the record.

The second issue is one that you have heard about already from both Ohio Senators and maybe others whom I missed. It is unfair, illegal competition from countries like China. In the case of China, they have engaged in state-sponsored, cyber-enabled economic espionage—so, a higher sophistication of unfair competition.

In 2015, there were over 12,000 steel industry layoffs announced. In 2014, steel imports to the U.S. increased by 36 percent. Some of these numbers, I know you have heard. Then there is this transshipment issue which was raised before: Chinese manufacturers and distributors engaging in this transshipment of steel to the U.S. through third parties, whether it is Malaysia or Vietnam.

I guess I would ask you, in light of existing authority, is there more that you need to be able to counteract that, more by way of authority, or more by way of tools or dollars?

Commissioner KERLIKOWSKE. I think at this point we are very engaged in making sure that we meet the deadlines of the authority that we have been given, but at the same time, we want to make the changes within the organization to look at that culture of being, frankly, much more aggressive or much more assertive on the investigative standpoint, using the authority of, essentially, reasonable suspicion to make that withhold/release order.

I have made it clear that I would rather err on the side of issuing that order. Then in fact, if it was not as a result of derived goods, or antidumping, or countervailing duty issues, that they could very much appeal that and that would be satisfied. But I think the message that we are going to be using those authorities more assertively will send a powerful message to those who would violate our trade laws.

Senator CASEY. I think it is critical. We know that in a State like Pennsylvania—it is true of Ohio and a number of other States that are directly affected by this—you have folks who have worked their whole lives, developed a highly skilled workforce—and in the case of an individual—skills they have developed to make steel, to outproduce the world, to out-innovate the world, and just when they are prepared to do that, that is when the unlevel playing field

emerges and they get undercut in the most pernicious way imaginable.

So just like I have continued to challenge folks like you on homeland security and shutting off financing, we ask you as well to be determined and vigilant on this issue of just insisting that China and countries like it play by the rules. I think that it is that simple. We may have a follow-up question on that as well. I will make sure that we get the first issue to you in writing.

Thanks very much.

Commissioner KERLIKOWSKE. Thank you, Senator.

Senator PORTMAN. Thank you, Senator Casey. I appreciate you raising the issue of Ohio and Pennsylvania and the fact that we are looking for a level playing field. If we have that, we will be okay. But that means that, on the front lines, we have to continue to not just enforce current law, but enforce this new law, what we gave you in the new tools.

Senator Isakson?

Senator ISAKSON. Thank you very much, Senator Portman.

Commissioner, first of all, Georgia, my home State, has the largest, busiest airport in the world, Hartsfield-Jackson, which just announced last week an expansion to a sixth runway which will increase the freight import coming into Hartsfield-Jackson alone by 15 percent.

We have the Port of Brunswick and the Port of Savannah. The Port of Brunswick is where most of the automobiles imported into the United States come through. The Port of Savannah has gone up by 52 percent in capacity since 2007 and is getting ready to go up another 33 percent because of the deepening of the harbor and the channel to 47 feet.

While both ports give you high marks for the work that you have done, there is a serious question with regard to capacity. In Savannah, since 2007, while we have had an increase of 52 percent of containers coming through, the level of CBP employees has stayed the same or actually dropped slightly, number one.

Number two, in comparison to other ports, we have about the same number of personnel as the Port of Charleston with 1.9 million containers, rather than 3.7 in Savannah, and Jacksonville with 926,000 containers, rather than our 3.7 million.

My point is, it appears the capacity is heavily limited because of the number of personnel vis-à-vis the work that is being done. Can you comment on that?

Commissioner KERLIKOWSKE. Sure. We do a workload staffing model when it comes to, particularly, the airports and to the seaports. The workload staffing model is based upon what exists.

Although there are a number of ports—Charleston, Newark, and others—that are also doing the deepening, there are certainly some questions right now about capacity, for shipping to continue on at the level that it has been, given the widening of the Panama Canal.

So we will look at that, and I will go back and talk with our staff about the numbers of people, because I know Savannah and the U.S. Attorney just recently had one of the largest settlements of, I think, over $15 million for furniture imported from China that was violating duties. So I know that it is an aggressive team down

there, but if they do not meet the need to get that cargo in expeditiously and safely, then I will certainly get back to you.

Senator ISAKSON. My question certainly is not quality of work. I have flown to the outer market with the Coastguard. I have seen the known shipper problem being worked. I have seen CBP people working. Our issue is only capacity, not the question of the quality of work.

The second question is this. We have heard testimony from the State Department that they revoked 9,500 visas since 2001 for foreign nationals coming into the United States, but we do not have a good exit strategy—I mean, a biometric exit visa process. The US-VISIT program does a good job coming in, but on exit from the country, what are we doing on biometric exit?

Commissioner KERLIKOWSKE. So biometric exit right now—I think we need to move a section in front of the bill right now that does the technology on biometric exit which exists in a different part of DHS to put it under my authority, because I need those tools and I need that equipment in order to move forward with biometric exit.

We very much appreciate what Hartsfield-Jackson Airport did, being a test site for some of the new handheld detectors, because as you know, none of the airports is designed to have a facility or a location where we can easily check people with some type of biometrics: iris scan, facial recognition, portable fingerprint readers. None of those is designed to hold people. We want to make sure they are getting moved through quickly, but I think the technology is going to be the game-changer, and the experiments at Hartsfield-Jackson will be a big help.

Senator ISAKSON. Well, the people at Hartsfield-Jackson appreciated being focused on by your agency, and we appreciate that. I can personally testify, watching the VISIT program work on those coming into the country, that biometrically secure visa on entry is a perfect program and a great way for us to satisfy the American people. We are doing everything we can do to reduce the number of bad actors getting into the United States of America.

Thank you for the work you do.

Commissioner KERLIKOWSKE. Thanks, Senator.

Senator PORTMAN. Senator Cantwell?

Senator CANTWELL. Commissioner Kerlikowske, great to see you. I too want to echo and thank you for all of your service in this administration and in the Northwest as well. So great to see you.

One of the things that you, I am sure, understand is that Senator Collins and I gave U.S. Department of Homeland Security the authority to expand preclearance overseas. One of the things that we are doing is, obviously, moving our borders to those overseas airports so that we can do the kind of checking on preclearance before people get to the United States—so places like Turkey, Belgium, the U.K.

So I do not know if you have an update about how that process is going and what airports you think that we really need to target. I know you mentioned the need for more technology, so I wanted to give you a chance to talk about what those needs are.

Commissioner KERLIKOWSKE. I would tell you that the expansion of preclearance is one that is very much appreciated, and I know

even with Senator Isakson. During the time that preclearance was being considered in Abu Dhabi, that was important: for us to be able to go back and to make sure that as Congress and the law states, there must be American flag carriers at these locations. That is tremendously important from an economic viewpoint, but also from the fact that we received great cooperation with these American flag carriers.

We are in negotiation with ten airports in nine countries. Secretary Johnson could not have a higher priority than preclearance. I believe by the end of this year that we will have two, if not three, countries signed on to preclearance. They certainly will not implement until, at least, the following year, but to sign those agreements pushing our borders out is helpful not only for the issue of security, but it is also helpful for the fact that those planes can then land as, essentially, a domestic flight.

We are working very closely with Sea-Tac Airport as they design their new international terminal. What will the international terminal look like? This is the technology answer to your question. Will all of this space be needed? Will there be booths needed, or can more be done with mobile platforms? Can more be done with smaller amounts of equipment in order to clear people coming in through Customs?

The design that we are doing with Sea-Tac is probably going to be one of those international terminals of the future. I think the technology—mobile passport control, global entry, automated passport control kiosks—those are the kinds of things that not only improve our safety and security, but they also improve people moving through more expeditiously.

Senator CANTWELL. I am sure you have seen the news that Sea-Tac has record growth, so we have had lots of issues about moving people. We are all for technology, and we are all for making sure that we are doing a better job at these overseas airports and making them more secure. Any thoughts on how that technology helps us?

Commissioner KERLIKOWSKE. The facial comparison is one. As you know, a Customs officer now looks at a very small picture—the photograph on the passport—and compares it to the person. That picture can be up to 10 years old. It is not always easy to make sure that the person in the picture is the person in front of you.

So at both Dulles Airport and also at JFK, we are doing experiments with facial comparison. It looks at the biometric chip. The person standing in front of the camera is compared to that biometric chip, and it gives us a percentage of how accurate that is. I can tell you that the accuracy with the electronic system far exceeds the accuracy of the human system.

Senator CANTWELL. Do you think we could get standardization with other countries on a biometric that is a retinal and fingerprint biometric standard?

Commissioner KERLIKOWSKE. I do not know. I will be headed overseas in another week and a half, and part of the discussions will be around information sharing.

As you know, the EU just passed PNR: Passenger Name Record. So working together to share that information will be helpful, but

I think the long-term future for safety and security of not just our country, but others, will be in that recognition of using biometrics that are interoperable.

Senator CANTWELL. I think you were still in the Northwest when we had the Ressam case where somebody cooked up an identity and went to three different countries before he came loaded with explosives to our Port Angeles, so to me getting standardization on those biometrics that are certain technologies, I think is very, very important, so thank you.

Senator PORTMAN. Thank you, Senator Cantwell.

Senator Stabenow?

Senator STABENOW. Thank you very much, Mr. Chairman.

Welcome, Commissioner. I appreciate your being here today and, of course, representing Michigan, what you do is very important to us in a variety of ways.

I wanted to speak specifically about things related to the auto industry. I hear more and more from auto parts manufacturers in Michigan about a rapidly growing trend in the importation of counterfeit auto parts. Counterfeit auto parts not only damage a brand's reputation, as you know—I have had very specific examples in Michigan where this has happened—but they pose serious safety risks to unsuspecting customers.

The Federal Trade Commission estimates that counterfeit auto parts cost the industry about $12 billion a year in lost sales, including $3 billion in the U.S. alone. The FTC also estimates that the use of counterfeit parts has resulted in as many as 250,000 fewer manufacturing jobs.

So this is very serious for us. I was wondering if you could talk about what the CBP is doing to address the issue, and what can we do in Congress that would be helpful?

Commissioner KERLIKOWSKE. Thank you, Senator. As you know, Secretary Johnson, I think, has made three trips to the Detroit and Port Huron areas. I think I have been up there three or four times.

Recently, your staff was able to attend a town hall with the stakeholders in Detroit as we talked about the work of CBP and the city and also working closely with them. Because of the law that you have passed and the President signed, our commercial advisory, our stakeholders, are now enshrined in that law as a part of that.

So we have several auto manufacturing organizations that are a part of that. They meet four times a year with me to talk about what are the critical and important issues. I have also heard from Congressman Levin and others on this, saying that they want to see what enforcement action we are going to take.

So getting that information, being able to make sure that brake pads, and airbags, and other things that could be incredibly dangerous and are counterfeit, are not being allowed to be a part of this—that information comes from the people who are closest to the ground. I am sure I will be back before the end of this year, in Michigan. I think I am scheduled, actually, for another visit in September. I will make sure that I am reaching out to those manufacturers.

Senator STABENOW. Do you feel like you are getting information in a timely way? Are you getting specific information, actionable information, that you can do something about?

Commissioner KERLIKOWSKE. So I think that the information that we get is helpful, and it is often quite timely. Then there becomes a definitional problem of "actionable." Almost like "actionable intelligence."

The problem for us has been that we were not as good about getting back to who provided the information and telling them that this was helpful. It is a lead, but right now it is not enough for us to move on. When they do not hear anything back, I think they get frustrated like, well, it just went into a black hole and nobody did anything with it.

So I have made a concerted effort to make sure that our folks are getting back to the people who have made those complaints to let them know what we did with it. They deserve that.

Senator STABENOW. Okay. Thank you. Finally, one other question. You mentioned Port Huron. By any measure, border crossings through Detroit are some of the busiest in the country, the busiest one in Detroit, Detroit-Windsor.

I am pleased that we have the work going on now with the Gordie Howe International Bridge and our partners with Canada. This is going to be very important. However, Port Huron is also the third busiest crossing on the northern border in terms of value and shipments.

Despite the critical importance of the bridge to the economy, the U.S. Customs plaza at the site is woefully inadequate to manage this high level of traffic. This is something I have worked on for years. We actually had dollars in the budget at one point to move forward, and then dollars got redirected.

So an expansion of the plaza has been planned for over a decade. Unfortunately, the community has also been left hanging because plans started, land was acquired, and then everything stopped.

There are a number of planned Customs projects, I know, across the country, but what is being done to address the backlog, and will you commit to working with me to make the Blue Water Bridge Customs plaza a priority?

Commissioner KERLIKOWSKE. I know that when Secretary Johnson was up there for the visit to the Blue Water Bridge, he also was asked and committed to making this a priority. As you know, whether it is the Peace Bridge in New York, or a number of other locations, some of our Customs infrastructure is in need of upgrading. If we are going to be able to move people and cargo through expeditiously, those locations need to be improved upon.

I do not know the exact status right now of the facility at Port Huron, but I will be happy to get back to your staff on that. I would commit to you that I would be very engaged in trying to get this done. I was born in St. Joe, so maybe that helps.

Senator STABENOW. Okay. And just finally, what can we do to help? What should Congress be doing to alleviate this backlog?

Commissioner KERLIKOWSKE. I think that looking at our infrastructure—and also it was mentioned earlier in a question—we need to make sure that we are not just investing in people or boots on the ground, but that we are investing in technology and that we

are investing in some of the equipment that just has a life cycle or a lifespan that makes it difficult to utilize. So infrastructure, technology, and frankly, R&D in those areas, are as important in the long run.

Our wait times, by the way, in international airports are down for people coming into this country, people clearing Customs. They would not be down if it was not for that infusion of technology.

Senator STABENOW. Thank you.

Senator PORTMAN. Thank you, Senator Stabenow.

Senator Carper?

Senator CARPER. Mr. Chairman, how are you?

Senator PORTMAN. I am well, thank you. I am glad you are back with us. Senator Carper was here previously to hear testimony.

Senator CARPER. Mr. Chairman, I would like to make a unanimous consent request for testimony for the record from the National Treasury Employees Union, which raises some important concerns about CBP funding and staffing levels—I would just ask unanimous consent, if there is no objection, that this be made a part of the record.

Senator PORTMAN. Without objection.

[The statement appears in the appendix on p. 29.]

Senator CARPER. Thanks very much.

I just could not get enough. I just wanted to come back and ask a couple of follow-up questions.

The last question is going to be—I wanted to come back to the thing I just touched on before I had to run and vote. That is, what can we be doing? What can we be doing to be better partners with CBP and the Department of Homeland Security, folks who are a part of your team?

I want to talk a little bit with you about opioids and synthetic drugs, something that our chair has more than a little bit of interest in, and so do I. I think we all do. The Homeland Security and Governmental Affairs Committee has had a number of hearings on the devastating impact of opioids and synthetic drugs on our communities. Many of these drugs are entering the U.S. from other countries, including through the U.S. mail.

Can you discuss with us the challenges that CBP faces in trying to identify and intercept these shipments?

Commissioner KERLIKOWSKE. The e-commerce issues coming in through the United States Postal Service, international mail, or through the express carriers, the explosion of e-commerce, has made this a huge challenge. We do not see as much at all when it comes to the opioids because, quite frankly, they are manufactured here or they are shipped here quite legally, because they are legal drugs.

I think Senator Portman and others—we could not be more familiar with the devastation that the opioids have caused. When I traveled with the Senator to the southern tier of Ohio in Appalachia, it was pretty devastating in some very poor communities.

So the e-commerce and the search for counterfeit goods, for illegal drugs—we often see the club drugs people attempt to bring in through those locations. I think that has been the greatest challenge. I think we are going to have to do a lot more in the future.

After the Yemen printer cartridge attempt, changes were made when it came to air commerce packages coming in, but I think we are going to have to look at a variety of other mechanisms and work closely. By the way, DHL, FedEx, and UPS are incredibly great partners. Our people are located in their facilities, et cetera. I think we will have to do more with the United States Postal Service on these issues, because the challenge in the explosion of e-commerce is going to also increase that potential.

Senator CARPER. Okay. Thank you. As you know, one of the things I focus on, as does Senator Portman—we like to focus not just on the symptoms of problems, but root causes. My view is, we need a national policy. Whoever is our next President, I think, should lead it. Just like we are going to have a moonshot with respect to cancer and trying to defeat cancer, we need something, I think, similar to that with national leadership with a lot of participation up and down the line, not just State, local, and Federal Government, but all kinds of nonprofits, the medical community, and so forth.

Just give us a thought on a root cause. If you were in our shoes trying to do something on the root-cause side with respect to this epidemic of opioid and synthetic drugs, heroine abuse, what might be something we should be doing on the root-cause side?

Commissioner KERLIKOWSKE. Well, I think everything is moving in the right direction. I think the CDC is looking at the mandating of training for doctors. We work with the hospitals to look at the accreditation process where the bar of—by saying that a patient must leave and that they are pain-free is a bar that is a bit unreasonable, and, in my opinion, led to over-prescribing of opioids.

I think that that spiral and the national attention—I think your hearing was the fourth hearing. From Phoenix to New Hampshire, et cetera, and Milwaukee, it is an epidemic on both heroine and opioid prescription drugs that is significant.

I think it will only be reversed, not through interdiction and not through enforcement, but only be reversed through prevention programs, including a very robust effort by the educational community.

Senator CARPER. All right. Thanks. I have 5 seconds left. Just give us one good takeaway in terms of something we can do—you can repeat something you have already said—something we can do in the Congress to help enable you and your team.

Commissioner KERLIKOWSKE. Senator Stabenow beat you to that question, but I would say that research and development, the technology issues, and then supporting the infrastructure, all of the things that just are not boots on the ground, but are the things that support the boots on the ground and make them better and more efficient.

Senator CARPER. I call those force multipliers.

Commissioner KERLIKOWSKE. Those are key. Thank you.

Senator CARPER. Great. Thanks again for the leadership. Thanks for joining us today.

Commissioner KERLIKOWSKE. Thank you.

Senator PORTMAN. Thank you, Senator Carper. Senator Carper consistently talks about the root causes regardless of the issue. With regard to opioids, I would just say as we are having this hear-

ing today, as you know, the House is considering legislation that is not as comprehensive as the legislation that passed the United States Senate on March 10th. One of the issues that needs to be strengthened, in my view, is on the prevention side, as you said; specifically, this issue of an awareness campaign as to the link between the prescription drugs, the narcotic pain pills, and the current heroine and prescription drug epidemic.

Four of five heroin addicts who will overdose today—and one is dying every 12 minutes on average—will have started with prescription drugs, as you know from your previous experience. I appreciate your coming to southern Ohio—and we were seeing the tip of the iceberg. It turned out it has only grown since then. Although the pill mills have been largely shut down in that part of the country thanks to some of the work you helped me to do to get at the high-intensity drug trafficking area there in Adams County and Scioto County, the heroin has come in as a less-expensive, more-accessible alternative. The results are devastating, as you know.

We did have a hearing on this, and we learned that one of the unfortunate realities is that fentanyl, which as you know is a synthetic heroin sometimes 50 times stronger, is being laced with heroin and is causing increasing deaths, particularly in my State of Ohio. We may lead the Nation in fentanyl overdoses, which is tragic, but it is coming in from China, primarily, and by the mail as you indicated, often to the United States, and is then being transshipped to Mexico and then brought back in in combination with, sometimes, heroin made to look like a prescription drug.

That is precisely what is happening in my home State. It is something where we need to do more, as you said. I wonder if you could elaborate a little more on that in terms of what you could do at Customs and Border Protection to be able to stop this influx of heroin over the border.

We believe that the vast majority is coming over the border, specifically with regard to fentanyl, which is again the synthetic which, as you say, is often in the U.S. mail system. What more could you do and what resources do you need to be able to do a better job of keeping this poison from coming into our country?

Commissioner KERLIKOWSKE. I think the fentanyl issue is one that is really—we are only seeing, I understand, the tip of the iceberg, as you know from State Medical Examiner information. Oftentimes overdoses are not always tested for fentanyl. So we do not always know whether it was an opioid prescription drug, whether it was heroin, or whether it was fentanyl, because of the testing. We do not have preliminary test kits for fentanyl like we do for heroin or cocaine. So that makes it a little bit difficult.

The other great concern is the incredible danger to somebody who actually comes across the fentanyl, like one of our Customs and Border Protection officers, because of the absorption through the skin which can lead to fatalities. We also do not know about the legitimate fentanyl that is used as pain killers in hospitals, nursing homes, et cetera, how much is the diversion coming from them, but I think that it is very safe to say that the vast majority of the fentanyl is coming into the United States across our borders, not the diversion from hospitals, although that could be a source.

So I think we need test kits. I think we need better information, but I also think that we need negotiation with the countries where it is being produced. We saw some success a couple of years ago on the synthetic drugs that were coming in from China and then being sprayed on grass and other things to be smoked that caused pretty significant devastation.

China did assist us in reducing that problem by doing a better job of export control. I think we are going to need that, clearly, when it comes to fentanyl.

Senator PORTMAN. Are you doing that currently with regard to your relationship with these countries, whether it is China or other countries that are the source of some of these synthetic drugs that are being shipped across continents? Are you currently engaged in that?

Commissioner KERLIKOWSKE. I am not, and CBP is not as much as the Department of State and the INL, but our attachés in the other countries know that this is a significant issue. So that whole-of-government approach on dealing with this—which was somewhat successful on synthetics—may provide some opportunities.

I will be talking with the Department of State INL and will be happy to share back with you exactly what is going on.

Senator PORTMAN. I would appreciate that. I do think, given your background on the issue of substance abuse and your background in law enforcement, that you have a particular strength here, and CBP has a particular expertise, to be able to partner with some of these countries as compared to INL, frankly. So I would hope you would get personally engaged, and if you could give me some indication of what they are doing currently and how you all could be more involved, I think that would be very helpful.

We have a crisis. It is an epidemic, and it is something that requires all hands on deck. I think CBP has a huge role to play. Having said that, as you say, prevention, treatment, recovery, also need to be strengthened, which is what this legislation that passed the Senate provides, and the legislation passing the House today. There will be several bills that will be helpful.

We would appreciate your continued advocacy within the administration for getting something done on this issue so that Congress can be a better partner with State and local governments and the nonprofits that are out there fighting this fight every single day.

Thank you, Mr. Commissioner, for being here today. I appreciate everybody's participation in the hearing. As we all made clear today when talking about this Customs bill, this was an important bipartisan accomplishment.

I talked a lot about the ENFORCE Act today and the need for us to administer that well. We hope that this committee will continue to work together on a bipartisan basis to make sure that the oversight is done properly and make sure that the bill is implemented as intended.

I would ask that Senators submit any questions for the record by Wednesday, May 25, 2016. With that, this hearing is adjourned.

[Whereupon, at 11:40 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

SUBMITTED BY HON. THOMAS R. CARPER

Statement of Anthony M. Reardon
National President
National Treasury Employees Union
"Keeping Pace With Trade, Travel, and Security:
How Does Customs and Border Protection Prioritize
and Improve Staffing and Infrastructure?"
Before the House Committee on Homeland Security
Subcommittee on Border and Maritime Security

April 19, 2016

Chairman McSally, Ranking Member Vela, distinguished members of the subcommittee; thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 25,000 Customs and Border Protection (CBP) Officers and trade enforcement specialists stationed at 328 land, sea, and air ports of entry across the United States (U.S.) and 16 Preclearance stations currently at Ireland, the Caribbean, Canada and United Arab Emirates airports.

NTEU supports the Administration's Fiscal Year (FY) 2017 budget that provides $12.9 billion for Customs and Border Protection (CBP), an increase of 5.2% over FY 2016. In FY 2017, CBP plans to have onboard 23,861 CBP Officers at the ports of entry—which achieves the hiring goal of 2,000 additional CBP Officers initially funded in FY 2014.

The most recent results of CBP's Workload Staff Model (WSM)—factoring in the additional 2,000 CBP Officers from the FY 2014 appropriations—*shows a need for an additional 2,107 CBP Officers through FY 2017. The Agriculture Resource Allocation Model (AgRAM) calculates a need for an additional 631 CBP Agriculture Specialists for a total of 3,045.* CBP's FY 2017 budget submission seeks congressional approval to fund these 2,107 new CBP Officers through an increase in user fees, but includes no additional funding to address the current 631 Agriculture Specialist staffing shortage.

There is no greater roadblock to legitimate trade and travel efficiency than the lack of sufficient staff at the ports. Understaffed ports lead to long delays in commercial lanes as cargo waits to enter U.S. commerce and also creates a *significant hardship for CBP employees.*

An example of the negative impact staffing shortages have on CBP Officers can be found at the San Ysidro port of entry where CBP has instituted involuntary temporary duty assignments (TDYs) to address a staffing crisis there. At John F. Kennedy (JFK) Airport, CBP has granted overtime exemptions to over one half of the workforce to allow managers to assign overtime to Officers that have reached the statutory overtime cap. Both involuntary overtime—resulting in 12 to 15 hour shifts, day after day, for months on end—and involuntary work assignments far from home disrupt CBP Officers' family life and destroy morale. Ongoing staff shortages directly contribute to CBP's perennial ranking at the very bottom of the Part-

nership for Public Service's "Best Places to Work" Survey—314 out of 320 agency subcomponents on the latest survey.

For years, NTEU has maintained that delays at the ports result in real losses to the U.S. economy. According to the U.S. Department of the Treasury, more than 50 million Americans work for companies that engage in international trade and, according to a University of Southern California (USC) study, "The Impact on the Economy of Changes in Wait Times at the Ports of Entry," dated April 4, 2013, for every 1,000 CBP Officers added, the U.S. can increase its gross domestic product (GDP) by $2 billion, which equates to 33 new private sector jobs per CBP Officer added. This analysis was supplemented by USC in its update entitled "Analysis of Primary Inspection Wait Times at U.S. ports of Entry" published on March 9, 2014. This study found that by adding 14 CBP Officers at 14 inspection sites in 4 international airports, the potential total net impact would be to increase annual GDP by as much as $11.8 million.

CBP Officer Hiring Challenges

Of major concern to NTEU is that CBP continues to fall short in its authorized hiring efforts by approximately 800 of the 2,000 officers that were funded by Congress in 2014. According to CBP, they hope to have hired the 2,000 authorized by the second quarter of 2017. CBP contends that they are unable to find eligible applicants to fill the vacant positions.

One factor that may be hindering hiring is that CBP is not utilizing available pay flexibilities, such as recruitment awards and special salary rates, to incentivize new and existing CBP Officers to seek vacant positions at these hard to fill ports, such as San Ysidro.

NTEU and CBP are currently negotiating over the agency's proposal to draft CBP Officers to work involuntary TDYs at San Ysidro for longer than 90 days. CBP has made this proposal because its solicitation for volunteers to staff this TDY is no longer keeping up with what CBP believes to be its staffing requirements. Yet, while asserting that it would prefer to use volunteers and not involuntarily draft employees, CBP has rejected NTEU proposals that would incentivize employees to volunteer. For example, CBP has balked at offering any monetary incentives or seeking legislative changes to allow special hiring incentives such as student loan repayments to entice more individuals to apply to work in San Ysidro.

To help address staffing shortages, NTEU is also exploring whether our members would be interested in CBP offering an entry level age waiver of 40 years and a mandatory retirement age waiver of 60 years as a means to attract a larger pool of potential applicants and to reduce attrition rates due to the statutory mandatory retirement at age 57 years.

Finally, the best recruiters are likely current CBP Officers. Let me rephrase that and say that current CBP Officers could be the best recruiters. Unfortunately, based on their experiences with the agency, many officers would never encourage their family members or friends to seek employment with CBP. That ought to be telling them something pretty important too. I have suggested to CBP leadership that they look at why this is the case.

In its FY 2017 budget submission, CBP offered several proposals to mitigate the ongoing staffing shortage of 2,107 CBP Officers that will continue into FY 2017 and beyond. One of these proposals is to backfill 50 CBP Officer attrition vacancies in FY 2017 with CBP Technicians in order to free up CBP Officers from administrative duties. NTEU supports the hiring of additional CBP Technicians to free up CBP Officers from administrative duties as long as CBP is not reducing the current onboard goal of 23,821 CBP Officers. However, CBP's proposal, as outlined in its FY 2017 budget submission, proposes *a one for one replacement of 50 CBP Officer positions with 50 CBP Technicians.* NTEU strongly opposes this proposal.

CBP Technicians cannot "backfill" CBP Officer positions, because they are not qualified as CBP Officers. *With an ongoing shortage of 2,107 CBP Officers, hiring new CBP Officers should be CBP's priority.* NTEU supports hiring additional CBP Technicians to give administrative support to CBP Officers, but strongly objects to CBP replacing CBP Officer positions made vacant through attrition with CBP Technicians.

A funding proposal in the FY 2017 CBP budget submission that NTEU strongly supports is for Congress to authorize a $2.00 increase in immigration and customs user fees to fund the hiring of the 2,107 additional CBP Officers needed to end the current CBP Officer staffing shortage.

NTEU was disappointed that Congress, in last year's highway bill, indexed customs user fees to inflation, but diverted this fee increase to serve as an offset for highway and infrastructure funding, rather than to hire additional CBP Officers.

By diverting the difference in the amount of customs user fees collected currently and the additional amount indexed to inflation to non-CBP related projects both increases the cost to the private sector by escalating the current level of customs user fees paid over the next 10 years, and compels the private sector to separately fund—through Reimbursable Service Agreements (RSA)—CBP inspectional staffing and overtime. NTEU will work to redirect this $400 million a year funding stream back to CBP for its intended use—to pay for CBP inspection services provided to the user.

Reimbursable Service Agreements (RSA)

In recent years, in order to find alternative sources of funding to address serious CBP Officers and Agriculture Specialist staffing shortages, CBP received authorization and has entered into RSAs with the private sector as well as with state and local government entities. These organizations reimburse CBP for additional inspection services including overtime pay and the hiring of new personnel that in the past has been paid for entirely by user fees or appropriated funding. According to CBP, since the program began in 2013, CBP has entered into agreements with 21 stakeholders, providing more than 112,000 additional processing hours for incoming commercial and cargo traffic at a cost of nearly $13 million to these public and private sector partners.

Section 560 of the FY 2013 DHS appropriations bill authorized CBP to enter into five reimbursable fee agreements for a 5-year term with the City of El Paso land port of entry; the City of Houston Airport System; Dallas/Fort Worth International Airport; Miami-Dade County; and the South Texas Assets Consortium (STAC.) It should be noted that agricultural inspectional services are not eligible for reimbursement under the Section 560 program, as it is limited to "customs and immigration" inspectional services such as salaries, benefits, relocation expenses, travel costs and overtime as necessary at the City of El Paso land ports and solely to overtime at the three air ports of entry.

An expansion of the Section 560 RSA CBP pilot program was authorized by Section 559 of the Consolidated Appropriations Act of 2014 (Pub. L. 113–76). Section 559 expanded on the Section 560 RSAs by allowing for increased services at newly selected ports, to include customs, immigration, agricultural processing, and border security services. Because of the need for CBP Agriculture Specialists to process incoming produce, STAC quit the 560 program and applied for the 559 program. Under Section 560, RSAs were limited to CBP Officer overtime and staffing, except in the air environment where only CBP Officer overtime reimbursement is allowed. Under both Section 560 and 559, reimbursement for the hiring of additional CBP Officer and CBP Agriculture Specialist positions is allowed at sea and land ports, but only overtime reimbursement is allowed at airports.

The new Section 559 has no restriction on the number of RSAs for sea and land ports and no limits on the terms of agreement for customs, agricultural processing, border security services and immigrations inspection-related services. These costs may include salaries, benefits, administration, transportation, relocation expenses and overtime expenses incurred as a result of the services requested.

NTEU's RSA Concerns

NTEU believes that the RSA program would be entirely unnecessary if Congress authorized user fees collected to be indexed to inflation, with the additional funding provided by indexing being used as set forth in existing statute. NTEU also believes that the RSA program is a band aid approach and cannot replace the need for Congress to either authorize an increase in customs and immigration user fees indexed to inflation or to authorize increased appropriations to hire additional new CBP Officers to adequately address CBP staffing needs.

Further, NTEU strongly believes that CBP should not enter into a RSA if it would negatively impact or alter services funded under any Appropriations Acts, or services provided from any Treasury account derived by the collection of fees. RSAs simply cannot replace CBP appropriated or user fee funding—making CBP a "pay to play" agency. NTEU remains concerned with CBP's new Preclearance expansion program that also relies heavily on "pay to play."

NTEU also believes that the use of RSAs to fund CBP staffing shortages raises significant equity and other issues, which calls for an engaged Congress conducting active oversight.

For example:

- How does CBP ensure that RSAs are not only available to ports of entry with wealthy private sector partners? (When RSAs were first considered, there was a proposal to require 30% of the total RSA funds collected be reserved for ports with greatest need, not just those that have partners with the greatest ability to pay.)
- How does CBP ensure that RSA funds pay for the hiring of new CBP Officer and Agriculture Specialist personnel and are not simply used to pay for relocating existing CBP personnel from other ports (robbing from Port A to staff Port B without hiring additional staff)?
- How does CBP ensure a long-term public-private funding stream? (When RSAs were first considered, there was a proposal to have RSA pay up front for 10 years over 3 installments.)

There are also some port locations where staffing shortages are so severe currently, that even entering into a RSA program may be problematic. In 2009, there were approximately 10.7 million international travelers processed at New York's JFK. By the end of 2015, it is estimated that JFK will process 14.5 million passengers, a 30% increase in mission critical work over a 6 year period. Over this same period, NTEU estimates that there has been a net gain of approximately 100 officers to process over 3.5 million additional travelers.

For the last 2 years JFK management has received overtime cap waivers for CBP Officers compelling these officers to work 12, 13, or 15 hour shifts day after day for months on end. Officers were required to come in additional hours before their standard shifts, to stay an indeterminate number of hours after their shifts (in the same day) and compelled to come in for more overtime hours on their regular days off as well.

The majority of CBP Officers are already working all allowable overtime, much of which is involuntary. I want to be clear that all CBP Officers are aware that overtime assignments are an aspect of their jobs. However, long, extensive periods of overtime hours can severely disrupt an officer's family life, morale and ultimately his or her job performance protecting our nation.

CBP is currently negotiating separate RSAs with British Airways and American Airways at JFK. In this situation where existing Officers' overtime at JFK is already stretched beyond their limits, the RSA should be restricted to hiring new CBP Officers, and not to simply expanding overtime hours.

Another concern is that CBP continues to be a top-heavy management organization. In terms of real numbers, since its creation, the number of new managers has increased at a much higher rate than the number of new frontline CBP hires. CBP's own FY15 end of year workforce profile (dated 10/3/15), shows that the Supervisor to frontline employee ratio was 1 to 5.6 for the total CBP workforce, 1 to 5.7 for CBP Officers and 1 to 6.6 for CBP Agriculture Specialists.

The tremendous increase in CBP managers and supervisors has come at the expense of national security preparedness and frontline positions. Also, these highly paid management positions are straining the CBP budget. With the increased use of RSAs to fund additional CBP Officer new hires, NTEU urges that CBP return to a more balanced supervisor to frontline employee ratio.

Agriculture Specialist Staffing

CBP employees also perform critically important agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. For years, NTEU has championed the CBP Agriculture Specialists' Agriculture Quality Inspection (AQI) mission within the agency and has fought for increased staffing to fulfill that mission. The U.S. agriculture sector is a crucial component of the American economy generating over $1 trillion in annual economic activity. According to the U.S. Department of Agriculture, foreign pests and diseases cost the American economy tens of billions of dollars annually. NTEU believes that staffing shortages and lack of mission priority for the critical work performed by CBP Agriculture Specialists and CBP Technicians assigned to the ports is a continuing threat to the U.S. economy.

NTEU worked with Congress to include in the recent CBP Trade Facilitation and Enforcement Act (Pub. L. 114–125) a provision that requires CBP to submit, by the end of February 2017, a plan to create an agricultural specialist career track that includes a "description of education, training, experience, and assignments necessary for career progression as an agricultural specialist; recruitment and retention

goals for agricultural specialists, including a timeline for fulfilling staffing deficits identified in agricultural resource allocation models; and, an assessment of equipment and other resources needed to support agricultural specialists."

CBP's FY16 AgRAM, shows a need for an additional 631 frontline CBP Agriculture Specialists and supervisors to address current workloads through FY 2017, however, even with the 2016 increase in AQI user fees, CBP will fund a total of 2,414 CBP Agriculture Specialist positions in FY 2017, not the 3,045 called for by the AgRAM.

NTEU urges the Committee to authorize the hiring of these 631 CBP Agriculture Specialists to address this critical staffing shortage that threatens the U.S. agriculture sector.

CBP Trade Operations Staffing

CBP has a dual mission of safeguarding our nation's borders and ports as well as regulating and facilitating international trade. In FY 2015, CBP processed more than $2.4 trillion worth of trade goods and collected $46 billion in revenue. Since CBP was established in March 2003, however, there has been no increase in CBP trade enforcement and compliance personnel even though inbound trade volume grew by more than 24 percent between FY 2010 and FY 2014.

In 2011, CBP established the Centers of Excellence and Expertise (CEEs)—10 industry-specific Centers—requiring significant changes in CBP trade operations employees' workload and work practices.

In 2014, four of the CEEs began operating at an accelerated level of processing and became fully operational. On March 24, 2016, the remaining six CEEs came on board. Critical for supporting the CEE's virtually-managed and geographically dispersed workforce is the completion of the Automated Commercial Environment (ACE). Now 3 years behind schedule and more than $1 billion over budget, CBP began rollout of the ACE "single window" for industry filing electronic trade entries on March 30, 2016. According to industry users, the ACE rollout has been challenging. Users have experienced network error and system-wide crashes.

The rollout of CEEs has raised many issues affecting trade operations staff at the ports including insufficient frontline staffing and insufficient training for both frontline employees and supervisors. NTEU urges Congress to authorize the hiring of additional trade enforcement and compliance personnel, including Import Specialists, to enhance trade revenue collection.

Additional CBP Personnel Funding Issues

NTEU commends the Department for increasing the journeyman pay for CBP Officers and Agriculture Specialists. Many deserving CBP trade and security positions, however, were left out of this pay increase, which has significantly damaged morale. NTEU strongly supports extending this same career ladder increase to additional CBP positions, including CBP trade operations specialists and CBP Seized Property Specialists. The journeyman pay level for the CBP Technicians who perform important commercial trade and administration duties should also be increased from GS–7 to GS–9.

NTEU also supports extending enhanced retirement that was granted to CBP Officers in 2008 to the approximately 120 CBP Seized Property Specialists, the only armed, uniformed officers at CBP that do not receive Law Enforcement Officer retirement.

RECOMMENDATIONS

Funding for additional CBP staff must be increased to ensure security and mitigate prolonged wait times for both trade and travel at our nation's ports of entry. The use of RSAs as an alternate source of funding is merely a band-aid approach and cannot replace the need for Congress to authorize an increase in customs and immigration user fees or to provide sufficient appropriations to hire 2,107 new CBP Officers to adequately address CBP staffing needs.

Therefore, NTEU urges the Committee to:

- Authorize increases in trade, travel and agriculture inspection and enforcement staffing to the level called for in CBP's most recent WSM that shows a need for 2,107 additional CBP Officers and an additional 631 CBP Agriculture Specialists through FY 2017;
- Authorize an increase in journeyman pay to additional CBP personnel, including CBP Technicians, Import and other Commercial Operations Specialists,

and enhanced retirement to armed, uniformed CBP Seized Property Specialists; and

- Engage in robust oversight of RSAs to ensure that this program does not replace primary funding sources or result in inequitable distribution of CBP Officer resources.

Lastly, NTEU asks Congress to support legislation to allow CBP to increase user fees to help recover costs associated with fee services and provide funding to hire additional CBP Officers. If Congress is serious about job creation, then Congress should either authorize funding or raise immigration and custom user fees to hire the additional 2,107 CBP Officers as identified by CBP's own Workload Staffing Model.

The more than 25,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea and land ports. These men and women are deserving of more resources to perform their jobs better and more efficiently.

Thank you for the opportunity to testify before the Committee on their behalf.

PREPARED STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R–Utah) today delivered the following opening statement at a hearing to examine the U.S. Customs and Border Protection's (CBP) efforts to enhance trade facilitation and enforce U.S. trade laws, including the implementation of the Trade Facilitation and Trade Enforcement Act of 2015.

I would like to welcome everyone to our hearing this morning.

And welcome to the Honorable R. Gil Kerlikowske, Commissioner of U.S. Customs and Border Protection. The Commissioner last appeared before this committee during his confirmation hearing in January 2014. A lot has happened since then. So, we are happy to have the Commissioner here again today.

The Finance Committee—and, in fact, the entire Congress—has been extremely active on trade over the past year and a half.

Just last night, the Senate, by unanimous consent, passed the American Manufacturing Competitiveness Act, a bipartisan, bicameral bill that will provide tariff relief to American job creators by establishing a reformed process for the consideration and passage of Miscellaneous Tariff Bills, or MTBs.

Once it's signed into law, this legislation will allow American manufacturers to lower their production costs on parts that can't be found in the United States. This is absolutely essential if we want American companies to be able to compete effectively in the 21st-century global marketplace.

Passage of the MTB bill is long overdue and I'm very pleased that we've finally gotten it through Congress and over to the President for his signature. Many members of the committee—on both sides of the aisle—worked to get this bill over the finish line. I want to commend all of them—especially Senators Portman, Burr, and Toomey—for their efforts.

This MTB bill closely resembles legislation we reported out of the Finance Committee last year. In fact, it was just about a year ago that we began floor debate on several of our committee's trade bills that all eventually became law. One of those bills, the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Customs bill, was signed into law on February 24th of this year.

The passage and signing of the Customs bill marked the end of a legislative process that began almost 10 years ago and underwent many iterations. With the law now in place, CBP and other agencies have the tools necessary to ensure that America is able to compete in the world economy while also ensuring that our trading partners play by the rules.

As we all know, CBP has the dual responsibility of facilitating legitimate trade and travel while also protecting the United States from illicit goods and inadmissible people, such as terrorists. This dual mission is vitally important to ensuring the strength of our economy and the security of our borders. The overarching goal of our Customs bill was to facilitate the efficient movement of low-risk and compli-

ant goods to the marketplace while also allowing CBP to focus its resources on goods that could do harm to the economic or physical security of the United States.

To that end, I'd like to take a few minutes to discuss some specific ways that the recently-passed law enhances and modernizes the way CBP operates.

The new statute includes a number of elements that were designed to help facilitate trade.

For example, the law requires CBP to consult with private-sector entities to identify commercially significant and measurable trade benefits for participants in public/private-sector partnership programs. It also raises the de minimis level from $200 to $800 and modernizes the duty drawback process.

In addition, the new law provides a number of new enforcement tools.

These tools include a new process at CBP, with strict deadlines and judicial review, for dealing with evasion of our antidumping and countervailing duties laws and a significant expansion of CBP's authorities to protect intellectual property rights at the border. Given the importance of intellectual property to our economy, these new authorities are long overdue and they were among my top priorities in crafting and passing the Customs bill.

On top of that, the law includes a codification of the Centers of Excellence and Expertise, which, among other things, ensures that the post-release process for goods coming into the United States will be aligned by industry rather than the port of entry where a shipment arrives. These Centers provide tailored support to unique trading environments and eliminate the need for importers to work with individuals at multiple ports of entry that may slow down legitimate trade with needless and duplicative inquiries. The Centers also allow CBP to enforce our trade and customs laws uniformly on a nationwide basis and to prevent nefarious trade practices, including what some have called "port shopping."

The new statute also provides the necessary authorization and funding to fully implement the Automated Commercial Environment, or ACE, and requires the completion of the International Trade Data System, or ITDS, by the end of this year. The completion of ACE and ITDS will allow for the electronic submission of all import requirements through a single window and process. Once fully implemented, this will simplify and streamline the submission of import documents, reducing the paperwork burden on the private sector and ensuring that CBP has the data it needs to identify high-risk imports and importers.

Much has changed since 2003 when CBP was first established. The new law is the first comprehensive authorization of the agency since that time, and many of the improvements that CBP has made internally over the years have been codified in the statute, including increased coordination between the two offices primarily responsible for trade facilitation and trade enforcement—the Office of Trade and the Office of Field Operations. We included this codification to address concerns that many had expressed about CBP over the years, namely, that its security mission could overshadow its trade mission.

There are many other significant provisions in this bill, several of which were championed by members of the committee. I hope we will have an opportunity to touch on some of those in more detail today.

While most of us are pleased with these new changes to our customs laws, simply providing new tools and putting new mandates in place will not, in and of itself, improve conditions on the ground. As with the passage of any new law dealing with any important government agency, congressional oversight is going to be key to ensuring that the statute is implemented in a manner that reflects our intent.

That is why I've requested Commissioner Kerlikowske to appear before the committee today.

With passage of the Customs bill, the Commissioner has many new authorities to implement. I am looking forward to hearing about how the Commissioner intends to use these authorities as well as a robust discussion of CBP's ongoing efforts to facilitate trade and enforce our laws.

With that, I'll turn to Senator Wyden for his opening remarks.

PREPARED STATEMENT OF HON. R. GIL KERLIKOWSKE, COMMISSIONER, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Chairman Hatch, Ranking Member Wyden, and members of the committee, 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 Nation's trade laws.

As America's unified border agency, CBP protects the United States against terrorist threats and prevents the illegal entry of inadmissible persons and contraband, while facilitating lawful travel and trade. 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.

CBP's trade enforcement and facilitation mission is highly complex. We enforce nearly 500 U.S. trade laws and regulations on behalf of 47 Federal agencies, facilitate compliant trade, collect revenue, and protect 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 in imports and generates over $40 billion in duties, fees and taxes. In addition to applying the multitude of tariffs and the processing of mass amounts 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 completed negotiations for the Trans-Pacific Partnership Agreement with 11 Pacific region countries, and is currently negotiating the Transatlantic Trade and Investment Partnership (T–TIP) with the European Union (EU). These are important agreements for the United States that will promote U.S. international competitiveness, jobs, and growth. In fiscal year (FY) 2015, FTAs accounted for over $636 billion in imports.

The enactment of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA), Pub. L. No. 114–125, or "the Act" in February 2016 demonstrates that economic competiveness and enforcement of our trade laws are among our Nation's highest priorities. This law is a major milestone for CBP, as it is the agency's first authorization since its creation within the Department of Homeland Security (DHS) in 2003. It supports CBP's efforts to ensure a fair and competitive trade environment, sending a strong message that CBP will effectively enforce U.S. trade laws, including safeguarding Intellectual Property Rights (IPR), combating Anti-dumping/Countervailing Duty (AD/CVD) evasion, and prohibiting the importation of forced labor-derived goods.

My testimony will discuss CBP's progress in some of our key trade facilitation and trade enforcement efforts, including implementation of the Act, and our path forward in securing and enabling international commerce and promoting the growth of the U.S. economy.

CBP'S TRADE TRANSFORMATION

CBP recognizes its vital role in the economy and has embarked on a "Trade Transformation," a series of initiatives that create efficiencies for U.S. businesses, the government, and the consumer.

In addition to enhancing the import process, CBP is working to modernize its export process in support of 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. businesses.

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 that have equities in the trade process, is working toward standard-

izing government procedures, streamlining processes, driving efficiencies through automation, and aligning and harmonizing with industry business processes.

The need for consistency and harmonization has been a driving force behind our transformation efforts. Currently, there are hundreds of paper forms being used to import and export goods. 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. CBP's cargo processing system, the Automated Commercial Environment (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. Through ACE, 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. ACE is being developed and deployed in increments, and CBP is on track to deliver all core trade processing capabilities in ACE by December 31, 2016.

Close collaboration with the trade community, and developing public-private partnership programs, is an essential component of CBP's Trade Transformation efforts. The Customs-Trade Partnership Against Terrorism (C–TPAT) program is a public-private partnership program wherein members of the trade community volunteer to adopt tighter security measures throughout their international supply chains in exchange for enhanced trade facilitation, such as expedited processing. The C–TPAT program now has more than 11,000 members, with C–TPAT imports accounting for 54 percent (by value) of all imports to the United States. Additionally, in collaboration with the U.S. Consumer Product Safety Commission and the U.S. Food and Drug Administration, CBP is working to complete another important pilot, our Trusted Trader program, which unifies C–TPAT and the Importer Self-Assessment processes.[1]

The C–TPAT program continues to expand and evolve as CBP works with our foreign partners to establish bilateral mutual recognition of respective C–TPAT-like programs. Mutual Recognition as a concept is reflected in the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade, a strategy designed with the support of the United States, which enables Customs Administrations to work together to improve their capability to detect high-risk consignments and expedite the movement of legitimate cargo. These arrangements create a unified and sustainable security posture that can assist in securing and facilitating global cargo trade while promoting end-to-end supply chain security. CBP currently has signed Mutual Recognition Arrangements with New Zealand, the EU, South Korea, Japan, Jordan, Canada, Taiwan, Israel, Mexico, and Singapore and is continuing to work towards similar recognition with China, Brazil, the Dominican Republic, India and other countries.[2]

Another public-private partnership program that focuses on cargo entering the United States via air is CBP's Air Cargo Advance Screening (ACAS) program. This pilot, which currently has 51 participants, will run through July 2016, after which we look forward to identifying a path forward for permanent status. Additionally, CBP is implementing a multifaceted approach to e-commerce, particularly as it impacts sales and imports through the mail and express environments. We are educating consumers and working with major e-commerce businesses to identify and prevent the sale and import of counterfeit or dangerous products, and look forward to continued partnerships with the trade community to help us evolve with the growth in e-commerce.

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[1] Federal 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.*

[2] CBP also has multiple Customs Mutual Assistance Agreements, which allow for the exchange of information, intelligence, and documents that will ultimately assist countries in the prevention and investigation of customs offenses. The agreements are particularly helpful for U.S. Attaché offices, as each agreement is tailored to the capacities and national policy of an individual country's customs administration. See *http://www.cbp.gov/border-security/international-initiatives/international-agreements/cmaa.*

A hallmark of our transformation efforts is the implementation of the Centers of Excellence and Expertise[3] (Centers), established in 2011 to increase uniformity at the POEs, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen our knowledge about industry practices. In 2014, 4 of the 10 Centers became fully operational, and, I'm proud to announce that, last month, the remaining 6 became fully operational. These virtually-managed Centers align CBP with modern business practices, focusing on industry-specific issues, and provide tailored support to unique trading environments.

Through the implementation of CBP's Trade Transformation initiatives 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. businesses. Additionally, these transformative efforts help CBP strengthen trade enforcement efforts and address ongoing challenges such as AD/CVD collection, by improving and modernizing our trade processes.

CBP'S TRADE INTELLIGENCE AND TARGETING

As the Nation's unified border 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 that may affect national security, U.S. business competitiveness, or the collection of revenue.

Enforcement of trade laws and interdiction of illegal cargo are based on trade intelligence and advanced risk-based targeting. Partnerships with other Federal agencies and the trade community are essential to expanding CBP's trade intelligence. CBP works closely with U.S. Immigration and Customs Enforcement's Homeland Security Investigations (ICE/HSI), the Department of Justice's Drug Enforcement Administration, the Financial Crimes Enforcement Network, and the Departments of Commerce and Health and Human Services to promote information sharing and the exchange of trade intelligence.

Through collaboration with industry, CBP deepens its understanding of the way businesses and industries operate in the ever-changing global marketplace and leverages that information for risk analysis and targeting. A key element in CBP's trade intelligence and targeting efforts are the 10 Centers. The Centers redefine how CBP works collaboratively with industry members to understand trade risks and support 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.

Depending on the specific pathway, CBP performs targeting activities throughout the import process—prior to departure from origin, before cargo arrives at a POE, at the time of entry, and after the cargo is conditionally released. In accordance with the Trade Act of 2002, Pub. L. No. 107–210, and the SAFE Port Act of 2006, Pub. L. No. 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 POE 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 entering the United States. Incorporating information from CBP and other law enforcement databases, 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), officers at our numerous Advance Targeting Units (ATUs) located at our domestic POEs, as well as our seasoned experts at the National Targeting Center for Cargo Operations (NTC–C). Upon arrival of cargo at a POE, using targeting results to prioritize inspection of high risk cargo, CBP has the authority to perform an exam of the goods; detain, and where appropriate, seize, or request re-export of the goods; or release the goods. In the post-entry environment, CBP assesses duties, determines statutory and regu-

[3] The 10 Centers are: Pharmaceuticals, Health and Chemicals—New York, NY; Agriculture and Prepared Products—Miami, FL; Automotive and Aerospace—Detroit, MI; Apparel, Footwear and Textiles—San Francisco, CA; Base Metals—Chicago, IL; Petroleum, Natural Gas and Minerals—Houston, TX; Electronics—Los Angeles, CA; Consumer Products and Mass Merchandising—Atlanta, GA; Industrial and Manufacturing Materials—Buffalo, NY; and Machinery—Laredo, TX.

latory compliance, and collects import statistics. Effective targeting not only enables CBP to detect and address potential risks before a shipment arrives at a POE, 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,[4] 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 to heighten the connectivity between the participating government agencies' 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. Providing in-depth risk analysis for high priorities, the NTAGs work in concert with the Centers, and the NTC–C Tactical Trade Targeting Unit (T3U), to enhance trade targeting expertise. These entities work with the entire life-cycle of trade fraud enforcement—from information intake, analysis, targeting, investigative case support, and operational assessments.

Each of these entities brings a particular targeting skill set to the table. For example, by virtue of the Centers' industry-based knowledge, CBP can apply critical trade intelligence toward 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 FY 2015, referrals from the T3U resulted in 341 seizures with a Manufacturer's Suggested Retail Price (MSRP) value of over $92.1 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 FY 2015, the T3U supported ICE/HSI case work concerning goods worth an estimated $179 million total MSRP, including 132 criminal arrests, 81 indictments, 65 convictions, 179 search warrants and 3 administrative arrests.

CBP TRADE ENFORCEMENT OPERATIONS

In the performance of its trade enforcement operations, CBP has identified several high-risk areas, designated as Priority Trade Issues[5] (PTI) that could cause significant revenue loss, harm the 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.

Antidumping and Countervailing Duties

AD/CVD[6] has been identified by CBP as a PTI because collection of these duties is critical to the U.S. economy and the competitiveness of U.S. businesses. While the

[4] The 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).

[5] The five current PTIs are Intellectual Property Rights; Textiles and Apparel; Import Safety; Trade Agreements; and Antidumping and Countervailing Duties. The Trade Enforcement and Facilitation Act of 2015 added Agriculture programs and Revenue to the list of PTIs.

[6] 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

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vast majority of manufacturers, importers, customs brokers, and other parties involved in shipments of goods subject to AD/CVD orders accurately provide shipment information and pay appropriate duties, CBP has a core statutory responsibility to detect and deter the circumvention of AD/CVD laws and collect all revenue owed to the U.S. Government that arises from the importation of goods. CBP is constantly enhancing our AD/CVD detection and enforcement protocols, including advancing our targeting and analysis, streamlining our administrative processes, and utilizing all available authorities to meet the challenges posed by the increasing complexity of AD/CVD evasion schemes.

CBP's AD/CVD targeting and enforcement activities are applied at every stage in the import process. CBP personnel at POEs are continuously reviewing import information to detect AD/CVD evasion and noncompliance, deter future evasion, and bring importers into compliance with AD/CVD requirement.

For instance, in FY 2015, entry summary reviews and cargo exams of solar panels resulted in the identification of $56 million in potential loss of revenue of AD/CVD duties and the recovery of almost $8 million in AD/CVD duties on shipments of solar cells and panels from China and Taiwan. Also, an audit of an importer of tapered roller bearings from China discovered a loss of revenue of $36 million, most of which was antidumping duties. In another example, Import Specialists detected AD/CVD evasion on tires from China, with over $7 million in AD/CVD duties identified, penalties imposed, and collection efforts ongoing.

Since 2013, CBP has broadened the use of single transaction bonds to ensure additional protection 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. Furthermore, in 2014, as part of our strategy to resolve AD/CVD debts, CBP created a team within the Office of Administration dedicated to AD/CVD collection. 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 duties 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.

CBP, in collaboration with ICE/HSI and the Department of Commerce, 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 work closely with ICE/HSI to establish the evidence of criminal violations. A few examples demonstrating the success of this collaborative relationship include:

- *Operation Honeygate*—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.
- *Lined Paper*—An ICE/HSI investigation, with substantial CBP support, culminated in the criminal indictments of Chinese, Taiwanese, and U.S. companies and officials for illegally transshipping lined paper from China in order to evade over $25 million in antidumping duties.
- *Aluminum Extrusions*—ICE/HSI agents, 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.

Another recent example of this effort is our enforcement of AD/CVD orders on steel products. In FY 2015, CBP, in coordination with ICE/HSI, was able to successfully seize over $900,000 worth of steel products that violated AD/CVD laws and assess $45.5 million in penalties for AD/CVD violations on importers of steel products. In FY 2015, CBP also conducted over 7,200 entry summary reviews of steel imports for AD/CVD issues, and identified violations with a value of over $970,000. Additionally, in January 2016, an examination by CBP port personnel resulted in CBP identifying nearly $200,000 in AD/CVD violations. CBP industry experts at the Base Metals Center of Excellence and Expertise are actively enforcing 149 AD/CVD orders on steel products. CBP works closely with our steel industry partners and

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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.

the Department of Commerce to educate both CBP personnel and steel industry members through seminars that explain how AD/CVD enforcement can best be implemented in the current trade environment.[7]

Intellectual Property Rights

CBP enforces IPR, another PTI, by seizing products that infringe on U.S. trademarks, copyrights, and by enforcing exclusion, seizure, or forfeiture orders of the International Trade Commission with respect to products found to infringe U.S. patents. The theft of intellectual property and trade in fake goods threaten America's economic vitality and national security, and the American people's health and safety. CBP, in close collaboration with ICE/HSI, protects businesses and consumers every day through an aggressive IPR enforcement program.

CBP uses technology to increase interdiction of fake goods, facilitates partnerships with industry, and enhances enforcement efforts through the sharing of information and intelligence. In addition to seizing goods at U.S. borders, CBP conducts post-import audits of companies that have been caught bringing fake goods into the United States, issues civil fines and, when appropriate, refers cases to other law enforcement agencies for criminal investigation.

Strong partnerships with our Federal enforcement counterparts, effective targeting of high-risk shipments, and frontline interceptions of cargo at U.S. POEs produced more than 28,000 seizures of fake products in FY 2015, with an estimated MSRP of $1.35 billion that could have cheated or threatened the health of American consumers. CBP also enforced 152 exclusion orders enforcement action in FY 2015. CBP's collaboration with the HSI-led National Intellectual Property Rights Coordination Center[8] (IPR Center) resulted in 538 arrests, with 339 indictments and 357 convictions. IPR seizures increased nearly 25 percent in 2015 from 2014, representing DHS' busiest year on record for IPR related seizures.

For example, in recent months, CBP officers nationwide have seized record numbers of counterfeit self-balancing scooters, commonly referred to as "hoverboards."[9] As of February 19, 2016, there have been 245 hoverboard seizures, totaling more than 63,000 pieces, with a MSRP of $24.7 million. Hoverboard seizures have been recorded in 42 different ports of entry. The hoverboards contain batteries that are deemed unauthorized, and therefore counterfeit, as well as fake trademark logos. Major safety concerns have also surfaced following reports of fires possibly caused by substandard and counterfeit lithium ion batteries that power some hoverboards.

Invaluable to the enforcement of all trade laws, CBP's Laboratories and Scientific Services Directorate (LSSD) has been part of U.S. trade enforcement since 1841. LSSD plays a key part in the enforcement of trade priorities, including AD/CVD, IPR, classification, value, and transshipment. In FY 2015, this division handled 1,035 samples relating to 294 entries of importations of suspect AD/CVD violations[10] and 700 samples relating to 125 importations of suspect IPR violations.[11] 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.

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[7] In FY 2015, CBP, in partnership with the U.S. steel industry, conducted five AD/CVD seminars, which took place at key trade locations in California, Georgia, Illinois, New York, and Texas, for CBP personnel and customs brokers. In FY 2016, CBP will conduct additional Steel Seminars in Laredo, Texas; New Orleans; Philadelphia; Long Beach, California; and Detroit.

[8] The IPR Center is one of the U.S. Government's key weapons in the fight against criminal counterfeiting and piracy. Working in close coordination with the Department of Justice Task Force on Intellectual Property, the IPR Center harnesses the tactical expertise of its 23 member agencies to share information, develop initiatives, coordinate enforcement actions and conduct investigations related to intellectual property theft.

[9] CBP officers have seized hoverboards at ports in Chicago, Houston, Buffalo, International Falls, Miami, Charleston, Puerto Rico, Savannah, Sterling, Norfolk, and at John F. Kennedy airport.

[10] The commodities analyzed involving the Nation's various AD/CVD orders included: honey, garlic, monosodium glutamate, glycine, melamine, plastic carrier bags, polyethylene terephthalate film, manganese dioxide, potassium phosphate salts, stilbenic optical brightening agents, chlorinated isocyanurates, steel, steel pipe, line pipe, steel nails, steel wire hangers, steel threaded rods, stainless steel wire rod, petroleum wax candles, aluminum extrusions, aluminum tubing, electrolytic multilayered wood flooring, artist canvases, thermal paper, tissue paper, coated paper, paper clips, pencils, solar cells and panels, narrow woven ribbons, woven electric blankets, refined brown aluminum oxide, and magnesia carbon bricks.

[11] The commodities analyzed involving potential IPR violations included: integrated circuits, network routers, electronic memory media (compact flash, SD, USB drives, etc.), movie DVDs, wearing apparel, pharmaceuticals, smartphones, perfume, video game consoles, and food.

Partnerships with the trade community are critical to rooting out unfair trading practices and illegal trading activity. U.S. industry, trade associations, and importers provide critical insight to CBP on enforcement issues related to developments in AD/CVD, IPR, and other trade sensitive imports. CBP meets regularly with U.S. industry representatives to discuss circumvention schemes, and U.S. industry representatives share valuable market and product intelligence with us. CBP's online referral process, e-Allegations, facilitates the process for the trade community to provide CBP with critical information. Since e-Allegations' inception in June 2008, CBP has received more than 10,500 commercial allegations. While the majority of e-allegations are IPR-related, nearly 10 percent are AD/CVD-related.[12] 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/HSI for further investigation. Intellectual Property Rights holders can also use our web-based tool, e-Recordation, to record their trademarks and copyrights with CBP. Recordation makes information on protected rights available to CBP offices throughout the United States.

THE TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015

The Act strengthens CBP's trade enforcement capabilities and provides the agency with new tools to better enforce AD/CVD and IPR laws. It enhances our targeting capabilities and collaboration efforts with our international counterparts and with IP rights holders. The Act also strengthens our enforcement of other illicit trade activities, such as honey transshipment, and provides revenue-protecting provisions such as increased bonding for high-risk imports.

Effective March 10, 2016, the Act eliminates the "consumptive demand" exemption, meaning that goods made with indentured, child, or other forced labor are no longer allowed into the country just to meet U.S. demand. With this change, CBP will no longer be legally required to weigh consumptive demand considerations to process information concerning forced labor. Since March 10, 2016, CBP has executed several withhold/release orders related to suspicions of goods made by convict or forced labor. Specifically, on March 29, 2016, I directed CBP frontline personnel to detain certain chemical, fiber, and potassium products believed to be manufactured in Chinese prisons. CBP will be updating its regulations to clarify this new provision, along with the process through which we are notified of potential violations of forced labor laws. In addition, effective March 10, 2016, CBP implemented an increase to the de minimis value for an imported shipment from $200 to $800. CBP has made the needed changes in ACE and we are training field personnel. This change will save businesses money, exempting low-value shipments from certain duties and taxes.

The Act also authorizes several critical CBP programs and lays a strong foundation for many of our most vital initiatives. The law authorizes continued funding for operations and maintenance of ACE—the backbone of the U.S. Government's "Single Window." As we continue to drive toward the President's year-end 2016 goal for delivery of all core trade processing capabilities in ACE, continued funding will ensure that ACE and the Single Window are fully supported over the long term.

Supporting CBP's efforts in modernizing the way we work with the trade and do business, the Act formally recognizes the Centers and their importance to modernizing and streamlining operations by industry sector, generating expertise that also improves CBP's enforcement capabilities. The Act also simplifies and modernizes the drawback process for duty refunds, making drawback more workable for CBP while increasing efficiencies for trade stakeholders. Furthermore, recognizing the value of our industry advisory committee in improving CBP's trade operations and policies, the Act enhances the role of the Customs Operations Advisory Committee within DHS, and increases involvement from our ICE/HSI partners.

In the travel environment, the Act improves funding mechanisms and supports CBP's Preclearance efforts, better positioning us to push our security efforts outward and increase locations around the globe to meet our goal of processing 33 percent of U.S.-bound air travelers through Preclearance by 2024. In addition, in accordance with the IPR outreach provisions in the Act, CBP revised Form 6059B, Customs Declaration Form, to include a warning to travelers of the penalties associated with transporting IPR-infringing goods.

The Act has a significant impact on CBP, both organizationally and operationally, and we are working aggressively to shift resources and develop processes to ensure

[12] As of April 5, 2016.

swift and effective implementation of the Act. We are establishing within the Office of Trade a Trade Remedy Law Enforcement Division, led by a director and a dedicated NTAG for evasion. We are also drafting numerous regulations, covering a broad span of trade enforcement areas, including IPR information sharing with rights holders; procedures for investigating claims of evasion of AD/CVD orders and timelines; allowing donations of certain equipment, training, and other support services from the private sector for enforcing IPR; and setting minimum standards for brokers and importers regarding importer identity verification.

As we move forward, CBP will work closely with this committee and with our trade partners to implement the provisions of the new law. For example, we will be collaborating with the private sector to ensure that participants of CBP's voluntary partnership programs, such as C–TPAT, are receiving significant and measurable trade benefits in exchange for their participation. We also look forward to working with our industry partners to educate the trade community about how to file allegations with CBP. Since the Act was executed, CBP has hosted webinars, industry phone calls and participated in events on a range of topics related to implementation of the numerous provisions in the Act. We look forward to continuing our strong dialogue and partnership with private industry and with this committee as we work to implement the Act's trade enforcement and trade facilitation provisions.

CONCLUSION

CBP recognizes and is committed to our vital role in supporting the U.S. trade agenda. We will continue to enhance our Trade Transformation initiatives, which strengthen our enforcement capabilities and streamline trade for low-risk legitimate shipments. We will also continue to advance our risk-based targeting to enforce trade laws and interdict illegal cargo to ensure compliance with statutory and regulatory authorities and to minimize loss of revenue.

CBP is committed to working with our Federal, international, and private sector partners to enhance our trade intelligence, detect and resolve unfair or unlawful trade practices, and develop solutions to facilitate legitimate trade and protect the U.S. economy.

Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for the opportunity to testify today. I am happy to answer any questions you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO HON. R. GIL KERLIKOWSKE

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

SYRIAN AND IRAQI ANTIQUITIES

Question. A number of press reports claim that antiquities from Syria and Iraq are being sold in the United States, and those reports have linked such trade to terrorism financing. What law enforcement actions has CBP taken to determine the extent to which such antiquities are being trafficked in the United States and to implement existing import restrictions on trafficked antiquities? And, to what extent, if at all, has CBP assessed the risk of terrorist financing from such activities?

Answer. U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and its U.S. Customs and Border Protection partners monitor the importation of antiquities and cultural property from conflict areas, which include Iraq and Syria. Cultural property from those countries has been sold in the United States both legally and illegally for some time. It often takes 5 to 10 years from the time an artifact is looted, to the time it comes up for sale.

While there are no confirmed cases linking the funding of terrorism from cultural property imported into the United States, HSI Special Agents are serving as liaisons to the Federal Bureau of Investigation's (FBI) Counterterrorism Division and the Terrorism Financing Operations Section. These Special Agents will support all ICE investigative efforts involving the theft and exploitation of cultural property, art, and antiquities for the purposes of providing illicit financial resources to further terrorism. ICE is committed to using all of its authorities to disrupt and prevent acts of terrorism and the material support of terrorism, to include the profiting by smuggling or trafficking of cultural property by any individual or organization associated with terrorism.

CBP is actively enforcing existing import restrictions on trafficked antiquities, effecting seizures of trafficked cultural property, pursuing civil administrative penalties against violative parties involved, and supporting Department of State repatriation of those antiquities to the rightful countries of origin.

Specifically, through the National Targeting Center–Cargo (NTC–C), CBP has conducted tactical trade targeting to identify (for CBP examination and/or investigative referral) suspected shipments of antiquities from Syria and Iraq, which may be trafficked in the United States and to implement existing import restrictions on trafficked antiquities in general.

CBP has neither obtained nor developed any evidence that conclusively supports a link between the trafficking of Syrian and Iraqi cultural artifacts and the financing of terrorist operations. CBP has also not assessed the risk of any terrorist financing obtained from the trafficking of antiquities from Syria and Iraq for sale in the United States and is unaware of the scope and extent of any such activity.

However, CBP actively collaborates with HSI to investigate the trafficking of antiquities for sale in the United States, *e.g.,* by conducting data analysis, targeting and examinations in support and referring interdictions of cultural property to HSI for investigative consideration. The purpose of this close CBP coordination is to assist HSI efforts to identify, arrest, and convict criminal associates of organizations responsible for the smuggling of trafficked antiquities.

CBP's National Targeting Center (NTC) has collaborated with the FBI, HSI, and Department of State (DOS) for targeting antiquities smuggling out of the territories in Syria and Iraq to United States. NTC will participate in FBI-led meetings in Switzerland to assess the movement of antiquities through the free trade zone. These meetings are not yet scheduled at the time of our response to this question. NTC also participated in an FBI-led conference on countering antiquities smuggling, held in Denver, Colorado this past July. NTC is working with various agencies to support law enforcement efforts related to importations of antiquities.

ADVANCE ELECTRONIC DATA

Question. Virtually every other week a company comes into my office describing the challenges that they face battling counterfeit products. Many of these counterfeit products are being advertised and sold on-line. The products are then shipped in small packages, often through the U.S. Postal Service. This appears to be a very serious problem that harms both job-creators and consumers. Todd Owen, the Executive Assistant Commissioner of CBP's Office of Operations, has spoken publically about the need to collect electronic data in advance specifically because there is no way to identify and stop counterfeit products through manual inspection alone.

Does CBP currently have authority to require advance electronic data from all small package shippers, including the U.S. Postal Service? If not, what additional authority would CBP need to require such data?

Answer. For all modes of transportation, CBP has the authority to collect advance electronic data. With respect to shipments by the United States Postal Service, however, DHS must exercise its authority in consultation with the Postmaster General and determine the extent to which the advance electronic data requirements may be applied to USPS shipments. CBP continues to work with USPS in obtaining advance electronic data from multiple countries, as they receive it from other countries through a Memorandum of Understanding. Currently, CBP receives limited advance electronic data on international mail packages from the following countries: Australia, Canada, China, France, Hong Kong, South Korea, Singapore, Spain, and the United Kingdom.

CBP has played an integral part in working with the Universal Postal Union (UPU) to amend Article 9 of its convention to adopt a security strategy that ". . . includes the principle of complying with requirements for providing electronic advance data on postal items. . . ."

CBP has also been actively involved in developing the implementing provisions of this Article in cooperation with UPU subsidiary bodies and other international organizations. Along with these efforts, USPS and DHS have contributed significantly to efforts to: establish international electronic messaging and data sharing standards agreed to by the UPU and World Customs Organization (WCO); develop a global postal electronic data model; and establish minimum security standards for physical screening and security of all facilities world-wide that process international mail.

ADDITIONAL MUTUAL RECOGNITION AGREEMENTS

Question. Mutual recognition arrangements, or MRAs, can be very effective tools to enhance trade facilitation and trade enforcement. As you know, the United States currently has a number of MRAs in place.

Can you please tell us what additional countries are being considered for MRAs? Is CBP prioritizing MRAs for countries that are signatories to existing free trade agreements with the United States?

Answer. CBP has established procedures prior to engaging countries and their supply chain security programs in joint work plans and Mutual Recognition Arrangement (MRA) discussions. There must be an established Authorized Economic Operator (AEO) program of an operational nature for CBP to engage within these efforts. While it is not a pre-requisite, CBP does consider trade volume and free trade agreements that we are signatories with when prioritizing countries and AEO programs to engage with.

Since 2007, CBP has signed a total of 11 MRAs with the following countries/programs: New Zealand, Canada, Mexico, Jordan, Japan, South Korea, Taiwan, Singapore, the European Union, Israel and the Dominican Republic. Out of those 11, 7 are with countries that the U.S. has a free trade agreement in force with.

CBP/Customs–Trade Partnership Against Terrorism (C–TPAT) has signed joint work plans towards an MRA with the following countries: China, India, Brazil, Peru and Uruguay. Such joint work plans detail the process by which C–TPAT and the AEO program will engage in a systematic and multi-step analysis of each other's program to determine compatibility and to verify if an MRA is feasible.

CUSTOMS BILL SECTION 303

Question. Section 303 of the customs bill closes a statutory loophole regarding the seizure and disclosure of information related to circumvention devices. Can you please provide us with CBP's timeline for implementation of this new provision?

Answer. CBP is currently drafting regulations to implement section 303 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) and and is seeking input from rights owners in this regard. CBP anticipates that it will have completed work on this initiative within the 1 year period provided for in TFTEA.

NEW RULES IMPLEMENTING DRAWBACK SIMPLIFICATION

Question. The recently enacted customs bill includes new rules simplifying the administration of the duty drawback system that will go into effect 2 years after the date of enactment the bill. As you know, this is an arcane area of the law that we have been working to simplify for at least 10 years. Can you share with us the status of your efforts to write new rules implementing drawback simplification? And how do you intend to engage stakeholders for their input?

Answer. The drawback community and CBP have a history of working together. CBP has been engaging the trade community on this effort ever since passage of the Trade Facilitation and Trade Enforcement Act of 2015 to include the Trade Support Network (TSN) and the Commercial Customs Operations Advisory Committee (COAC). CBP meets and communicates regularly with a smaller working group that is part of the TSN drawback committee to review system requirements and policy. Furthermore, CBP recently attended the American Association of Exporters and Importers Drawback Committee meeting on June 8, 2016, to share progress and seek stakeholder input. CBP continues to meet with the drawback community. There have been several drawback working group meetings where CBP and the drawback community discussed the upcoming implementation. We also have intermittent conference calls with working group members to discuss specific drawback issues that need to be addressed.

While the associated regulatory changes are not required until February 24, 2018, CBP has begun laying the groundwork for promulgating new regulations to ensure that the deadline is met. CBP Office of Trade/Policy and Office of Trade/Regulations and Rulings have been involved since the passage of the Act addressing what regulations would need to be updated. CBP is coordinating a regulation working group which will be made up of Trade and CBP personnel to address all concerns. Initial discussions are planned with this new workgroup and a timeframe for new regulations are being addressed. This new working group will address the additional regulations.

INFORMATION SHARING

Question. The new customs law requires CBP to share information and photos of suspect counterfeit merchandise with rightsholders when CBP determines that doing so would help determine whether the merchandise is counterfeit.

How is CBP complying with section 302 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)?

Answer. As a general matter, section 302(a) of TFTEA provides that if CBP suspects that violative Intellectual Property Rights (IPR) merchandise is being imported, and determines that examination or testing by the right owner would assist the agency in determining the existence of a violation, it shall disclose certain information appearing on the imported merchandise or its retail packaging. Accordingly, CBP is in the process of drafting regulations that would implement section 302(a).

In drafting the regulations to implement section 302, however, we are also taking into account section 499 of the Tariff Act of 1930, as amended by the Customs Modernization Act, which provides that when merchandise is detained CBP shall advise the importer of the nature of any information which, if supplied, might accelerate the disposition of the merchandise. To this end, we anticipate following the same approach as was adopted in the recently published final rule on trademark disclosure (80 Fed. Reg. 56370 (September 18, 2015); *see also* 19 CFR § 133.21). These regulations require that the importer be notified of a detention and given 7 business days in which to present information that would establish to CBP's satisfaction that the detained merchandise does not bear a counterfeit mark.

Question. In the previous 2 fiscal years, how many times has CBP requested assistance from rightsholders to determine the legitimacy of an import(s)?

Answer. CBP does not systematically track the frequency with which it requests assistance from right owners at detention. In order to do so, CBP would need to implement certain system changes to capture the data. As a general matter, however, CBP often reaches out to rights holders when additional information would be helpful in determining if an imported article bears a counterfeit mark or piratical work.

TFTEA COMPLIANCE

Question. With the signing of the TFTEA, CBP's authority for sharing of information with rightsholders from the National Defense Authorization Act of 2012 was terminated. However, stakeholders have informed me that CBP continues to cite the terminated authority when requesting assistance from rightsholders. When does CBP intend to comply with the new law?

Answer. CBP is aware that subsection 818(g) of the National Defense Authorization Act (NDAA) of 2012 no longer has force or effect. The NDAA was one of a number of authorities pursuant to which CBP's trademark disclosure regulations were promulgated. In order to comply with section 302 of the TFTEA, CBP will be issuing implementing regulations as noted above. CBP's recently-promulgated trademark disclosure regulations, at 19 CFR § 133.21 remain in effect, however.

IMPORTER RESPONSE

Question. Under current regulations, CBP provides an importer with up to 7 days to provide information substantiating the legitimacy of their import(s) before requesting assistance from a rightsholder. In the previous 2 fiscal years, what is the average time it takes for an importer to respond to CBP?

Answer. As noted above, CBP does not systematically track rights holder assistance, nor the average time it takes for an importer to respond to a request for assistance. As a general matter, however, anecdotal evidence suggests that most right owners respond to requests for assistance within a matter of days.

Question. In the previous 2 fiscal years, how many importers have provided CBP with information that has substantiated the legitimacy of their import(s) and negated the need to request assistance from a rightsholder?

In the previous 2 fiscal years, how many importers have provided CBP insufficient information to CBP to substantiate the legitimacy of their import(s)?

Answer. As noted above, there is limited tracking of detention information, and the tracking process varies between ports. However, many ports maintain detention packets with information on why detained merchandise was released. If merchandise detained for a possible IPR violation is released, the log notes may or may not

indicate why the goods were released. Factors leading to release may include, importer-provided information, IPR owner information, or even a lack of cooperation on the part of the IPR owner (*e.g.,* they do not timely respond and we do not have enough information to move from a reasonable suspicion to probable cause).

VOLUNTARY ABANDONMENT PILOT PROGRAM

Question. As an alternative to the normal seizure process, CBP has been piloting a voluntary abandonment program in the express consignment environment. Under what statutory authority does the voluntary abandonment pilot program operate?

When a seizure is made in the traditional seizure process, CBP provides the rights holder with eight data elements. During the voluntary abandonment pilot, however, CBP has stated that it would be a violation of the Trade Secrets Act (18 U.S.C. 1905) to provide all eight elements, and thus CBP only provides five of the eight data elements to rights holders. Please provide a detailed explanation regarding why it is permissible to provide all eight data elements to rights holders under the traditional seizure program but impermissible when goods are "stopped" using the voluntary abandonment pilot.

Answer. CBP developed the Voluntary Abandonment Program as a pilot program to prevent illicit goods from entering commerce in response to a significant increase in IPR infringing merchandise being imported through purchases made on the Internet.

The Voluntary Abandonment Program is based on a different legal authority than the detention and seizure process. The ability of importers to abandon their merchandise is governed by 19 U.S.C. 1506, which requires CBP to make an allowance in duty liability for merchandise abandoned to the United States, and 19 U.S.C. 1609, which provides CBP with the authority to forfeit property to which no claim of ownership is given. CBP regulations on abandonment include 19 CFR §§ 127.12, 127.13, and 158.42. Under the Voluntary Abandonment Program, both the importer of record and ultimate consignee of the merchandise must agree to voluntarily relinquish their proprietary interest in the merchandise.

In contrast to voluntary abandonment, CBP must make an affirmative determination of infringement during the detention and seizure process. When CBP detains suspected counterfeit merchandise, the agency initially only shares information that is not protected by the Trade Secrets Act with rights holders (the 5 elements listed in 19 CFR § 133.21(b)(4)). In addition, when CBP needs the assistance of rights holders to determine whether detained merchandise bears a counterfeit mark, the agency has special statutory authority to share additional information that is protected by the Trade Secrets Act with rights holders (19 CFR § 133.21(c)). Only after CBP has determined that detained merchandise is counterfeit and seizes merchandise does the agency provide rights holders with 3 additional data elements protected by the Trade Secrets Act pursuant to 19 CFR § 133.21(e).

INTELLECTUAL PROPERTY RIGHTS

Question. It is widely documented that Canada refuses to enforce intellectual property rights (IPR) for in-transit cargo destined for the United States.

What is CBP doing to target these shipments and prevent them from entering the United States?

Answer. CBP has implemented a three-pronged approach to IPR enforcement incorporating: (1) direct engagement with rights holders through several roundtable events; (2) increased international cooperation with foreign governments through bilateral agreements (*e.g.,* China and Singapore) and multilateral partnerships like Asia-Pacific Economic Cooperation that facilitate joint or simultaneous enforcement operations; and (3) increased focus on express consignment shipments which accounted for 52 percent of all IPR seizures in fiscal year 2015. High risk shipments are identified through CBP's targeting systems, and interdiction and seizure data provide valuable intelligence for use in targeting subsequent shipments and tracking trends. In addition to CBP engagement with Canada Customs counterparts on IPR-related issues, targeting of high risk in-transit cargo entering the U.S. via Canada occurs at both the national and the port levels and through local IPR enforcement operations.

Question. CBP recently released its fiscal year 2015 statistics on seizures of IPR infringing imports. How many of these seizures are from cargo transiting through Canada?

Answer. During fiscal year (FY) 2015, CBP's enforcement efforts resulted in 28,865 IPR seizures which represented a 25 percent increase over FY 2014. CBP was able to identify 109 seizures or 0.38 percent that were sourced from Canada (*i.e.,* exported from (including transitioning through) or made in Canada).

EXCLUSION ORDER PROCEEDINGS

Question. Given the critical role that intellectual property plays in our economy and the emphasis that the Congress has placed on supporting CBP's role to stop infringing products at the border, I am interested in examining CBP's efforts to increase the transparency, efficiency, and effectiveness of the enforcement of section 337 exclusion orders.

Many stakeholders have proposed that CBP, when investigating the applicability or inapplicability of an ITC exclusion order to a particular product, institute inter partes proceedings rather than ex parte proceedings in which rightsholders may not participate. I would support such inter partes proceedings. I understand that CBP is in the process of developing such a proposal. Please provide a detailed explanation of the proposal, including its development progress and CBP's plans for finalization.

Answer. CBP is drafting a Notice of Proposed Rulemaking (NPRM) to amend part 177, CBP Regulations (19 CFR part 177) by creating a new subpart C to implement an inter-partes proceeding in respect of ruling requests submitted to the agency in connection with the administration of exclusion orders issued by the U.S. International Trade Commission (ITC).

JURISDICTION

Question. As you know, the ITC issues an exclusion order based on an extensive legal and factual record developed with the benefit of an adversarial process, expert testimony, outside counsel, the expertise of an Administrative Law Judge, and review by the Commission. Some have argued, therefore, that complex legal and factual issues regarding allegedly redesigned products are more appropriately directed to the ITC rather than CBP. What are your views?

Answer. The ITC has advised that section 337 expressly places the responsibility for the enforcement of exclusion orders expressly with the Secretary of the Treasury, and as delegated, to the Commissioner of CBP. Accordingly, CBP is of the view that questions concerning the enforcement of exclusion orders, including redesigns, are appropriately directed to CBP. In order to enforce exclusion orders, the Regulations and Rulings Directorate, Office of Trade, has attorneys who are members of the patent bar and familiar with 337 practice, and are able to adjudicate the admissibility of articles potentially subject to ITC exclusion orders. CBP understands that questions about redesigned articles can also be addressed to the ITC but notes that CBP's NPRM proposal would complement those procedures.

CURRENT REGULATORY ENVIRONMENT

Question. Under the current regulatory environment, how do CBP and the ITC work together to administer exclusion orders?

Answer. CBP meets regularly with the ITC to review specific exclusion orders as well as to discuss general matters relating to the enforcement and administration of exclusion orders. Following the issuance of an exclusion order, the ITC provides CBP with electronic copies of the administrative record. When making infringement determinations, CBP reviews the administrative record at the ITC, including the Administrative Law Judge's Initial Determination and the Commission Opinion. In situations where the record is unclear CBP requests assistance from the ITC regarding the record; however, if there are no questions concerning specific findings in the ITC record, CBP does not contact the ITC inasmuch as the ITC has made it clear that CBP, not the ITC, is responsible for infringement determinations at the border.

Question. What are the benefits and the limitations of the current regulatory environment, in which both CBP and the ITC have certain authorities and obligations?

Answer. The current system functions well given that CBP, as a border agency, is best placed to make admissibility determinations. The disadvantage of the current system, however, is that CBP determinations can be challenged in a forum where neither the ITC nor the complainant are represented. Accordingly, as a matter of public policy the current system could be improved as noted below in the response to the following question.

Question. What can be done to improve the effectiveness and to increase the efficiency of the administration of exclusion orders?

Answer. From CBP's perspective, one way to improve the effectiveness and to increase the efficiency of the administration of ITC exclusion orders is to establish an inter-partes procedure at CBP to adjudicate rulings requests submitted to the agency in the post-issuance phase. The ITC Trial Lawyers Association, among others, has supported the concept. As noted above, CBP is working on a notice of proposed rulemaking to address this concern.

QUESTIONS SUBMITTED BY HON. RON WYDEN

TRADE ENFORCEMENT ACT ENFORCE PROVISIONS

Question. One of my top priorities in the Trade Enforcement Act is the Enforce procedures to combat evasion of anti-dumping and countervailing duty orders. The Enforce provisions represent years of work by this committee, starting with a sting operation I undertook as chairman of the Trade Subcommittee to reveal the brazen evasion of U.S. trade laws by foreign, often Chinese, exporters. Although CBP has put in place new initiatives to address evasion, it hasn't been enough, as was evident from a recent filing of U.S. Steel describing the ease with which importers can find foreign exporters willing to evade U.S. laws. If trade cheats evade our laws, domestic businesses are harmed, making our trade remedy laws all but useless in protecting American jobs. The Enforce provisions, if robustly implemented, can go a long way to preventing this result. It is important both to get it done now, and to get it done right.

Can you describe how CBP plans to implement the Enforce provisions within the 180-day deadline, and what steps it has taken to engage stakeholders, including the domestic industries directly impacted by evasion?

Answer. CBP has drafted regulations implementing section 421 of title IV of the TFTEA (Enforce and Protect Act, EAPA). The interim final rule implementing those regulations was published within the statutory deadline, on August 22, 2016, and parties have 60 days within which to provide comments to CBP. CBP has engaged, and will continue to engage impacted stakeholders throughout the implementation process.

CBP's West Coast Trade Symposium addressed TFTEA during the General Session on opening day and discussed title IV in detail during panel discussions on day 2. CBP has also participated in multiple meetings and discussions with various trade groups including the American Institute for International Steel and the Retail Industry Leaders Association. Furthermore, within CBP's Trade Remedy Law Enforcement Directorate, a Trade Enforcement Task Force has been stood up that will initially administer the new EAPA provisions and coordinate across CBP resources to ensure timely and transparent management.

Question. In particular, the Enforce process should be transparent and allow all interested parties an opportunity to meaningfully participate. Can you assure me that CBP shares this priority and describe how the Enforce procedures will reflect this?

Answer. CBP agrees that the EAPA allegation process should be transparent and encourage participation. During the investigation phase, CBP will be reaching out to all interested parties with questionnaires and other forms of inquiries in order to gather pertinent information related to the investigation. Also, all parties to the investigation will be informed of CBP's decision to investigate and will be provided ample opportunity to contribute evidence on the record.

"E-ALLEGATIONS" SYSTEM

Question. Up to now, CBP has used the "e-allegations" system to accept allegations of evasion. Can you describe to me how that system differs from the ENFORCE process, as you see it? For example, what opportunities will interested parties have to participate in the investigations once they are initiated?

Answer. CBP will create a separate track in the existing e-allegations system in order to accommodate the open and transparent processing of EAPA allegations. The previous system allowed for anonymous submissions; however, under the new EAPA allegation processing guidelines, parties to the investigation will be notified

by CBP and will be given the opportunity to provide documentary evidence to be placed on the record.

REVENUE COLLECTION

Question. A fundamental task of CBP is to collect revenue. CBP's collection of tariffs on imports is the second largest source of revenue for the Federal Government. In CBP's own estimation it collected 98.61% of import revenue owed in 2015. Over 98% sounds pretty good, until you realize that means over $400 million in duties went uncollected in a single year. Just think what that means over 2 years, or 10. In addition, CBP's revenue collection protects U.S. businesses and workers. Much of the uncollected revenue comes from foreign goods subject to anti-dumping and countervailing duty orders put in place to protect U.S. manufacturers from unfair trade practices.

Congress said in the Trade Enforcement Bill that revenue collection is a priority trade issue. What is CBP doing to make revenue collection a priority, particularly when that revenue is also collected to protect American workers and business?

Answer. Revenue protection is one of the oldest missions of CBP, dating back to 1789 when the U.S. Customs Service was established. For many years, revenue was considered a Priority Trade Issue (PTI), and the Trade Facilitation and Trade Enforcement Act of 2015 once again elevates revenue to PTI status. As such, the Drawback and Revenue National Targeting and Analysis Group (NTAG) located in Chicago, IL, focuses its efforts on applying risk management principles to target misclassification, undervaluation, and other material revenue risks, while also addressing drawback policy and enforcement issues to prevent the over-refunding of duties. In fact, the NTAG uses Trade Compliance Measurement statistics as one means to identify areas in which duties are owed, and implements corrective action aimed at collecting unpaid duties. CBP has also established a Trade Enforcement Task Force to focus on issues involving anti-dumping and countervailing duty (AD/CVD) evasion, which includes a renewed focus on ensuring AD/CVD duties are collected.

CENTERS FOR EXCELLENCE AND EXPERTISE (CEES) AUTHORITY

Question. The Trade Enforcement Act reflects the priorities of Congress, and is the result of a great deal of deliberation on how we can best protect U.S. revenue and ensure that American businesses and workers aren't harmed by unfair and illegal trade practices. In some cases, this means significant reorganization that is also meant to change the way that CBP approaches trade enforcement. It is critical that CBP does not think it can merely change titles and call it a day for implementing these changes. For example, the Centers for Excellence and Expertise ("the CEEs") are sector-based centers of trade enforcement and facilitation. The CEEs reflect our highly sophisticated economy—we shouldn't have folks sitting at ports looking at shipments of steel, for example, not knowing what other shipments may be coming in at other ports of the same product.

We need experts in the product, with knowledge of what is going on across our ports of entry. Leaders of the CEEs need to have complete authority over those reporting to them, and the tools to be effective. How are you ensuring that this is happening?

Answer. The Centers of Excellence and Expertise (Centers) represent one of CBP's modernization efforts to better align the trade component with the current business models of the importing community. As such, the Centers are organized on an industry basis, applying account-based principles, in which the agency works with the account as a whole rather than the traditional focus on individual transactions. Additionally, the Centers have national authority to make trade decisions and determinations, and the trade staff for a Center is located at various ports of entry (POE) in order to ensure transparency and visibility into shipments and products being imported at all locations. This means that all of an importer's trade transactions are being processed by one Center, which provides uniformity and predictability to the importer while also positioning CBP to better understand the global activities of companies and the industry. CBP can then use this enhanced knowledge obtained through the Centers to strengthen enforcement methods on a national basis, rather than on a port basis. CBP is fully dedicated to ensuring that this transformation effort serves as the premier model for trade enforcement and facilitation; that the Centers are fully and permanently staffed with trade personnel; and that our automated systems provide the flexibility and capability for national processing. From an organizational perspective, the Centers are national POE for trade processing

with the permanent staff under their chain of command located across many POE across the Nation.

DE MINIMIS THRESHOLDS

Question. The Trade Enforcement bill didn't only include enforcement provisions, it also included a provision to help small businesses that has long been a priority of mine. It raises the de minimis threshold for small shipments to be exempt from customs duties and other filing requirements—from $200 to $800. There is a vibrant economy of small businesses thanks to the spread of the Internet and platforms like eBay, Etsy and others, and the best way for us to support them is to cut out the red tape. Not everyone can hire a customs broker to help them import raw materials, or export to their customers abroad. I hope that the U.S. example will encourage other countries to raise their de minimis thresholds. To achieve these goals, the U.S. threshold increase must be meaningful.

Will CBP or any other agency place any requirement on imports under the new threshold that did not apply when it was at $200?

Answer. CBP has been engaged with the trade community and our Partner Government Agencies (PGA) concerning the TFTEA section 901, de minimis provision. CBP has implemented only the value increase from $200 to $800 at this time. No other requirements were changed. CBP has been gathering comments from our PGA community and providing information and education about the de minimis provisions for each PGA. CBP will not place any additional requirements for the new value threshold. At this time, we are not aware of any new requirements from another PGA.

FORCED LABOR PROHIBITION

Question. In the Trade Enforcement Act, thanks to the leadership of Senator Brown, we closed an egregious loophole that could have allowed products like these into the United States. Now we can say that the product of forced labor is never permitted here. The Trade Enforcement Act has brought some welcome attention to the prohibition, and I am pleased to see CBP's actions on two orders related to products made in China with forced convict labor, including soda ash. However, the renewed interest in the provision has raised questions from nongovernmental organizations and U.S. importers on how the forced labor prohibition will be implemented going forward.

What outreach is CBP undertaking to provide guidance to these stakeholders and partner with them on how the prohibition will be enforced going forward?

Answer. CBP is actively engaging with Non-Governmental Organizations (NGOs), industry stakeholders, foreign producers, Federal partners, and others, urging them to come forward with information regarding suspected use of forced labor with respect to goods imported into the United States.

Because many NGOs are uniquely positioned to gather information in places where CBP do not have the authority to operate, by the end of FY 2016, the CBP Office of Trade (OT) will send a forced labor Fact Sheet to 93 NGOs who are actively engaged in forced labor and forced child labor issues and leverage the CBP Centers of Excellence and Expertise to meet with other interested stakeholders.

As part of our outreach to industry stakeholders, CBP provided three breakout sessions on forced labor enforcement during the recent CBP West Coast Trade Symposium, in May 2016. The breakout sessions were attended by domestic industries, importers, customs brokers, customs attorneys, and members of the press. Furthermore, OT has met with, or provided information to, the following groups: Center for American Progress; Central American Sugar Association; Chicken of the Sea; Deloitte; Environmental Defense Fund; Federal Human Capitol; Food Marketing Institute; Global Forum on Responsible Business Conduct, OECD; Honduran Embassy; Institute for Business and Human Rights of Georgetown Law; IO Sustainability; Laogai Research Foundation; LCDR; National Retail Federation; Nestle Corporate Affairs; Pelagic Data; Resources for the Future; Royal Thai Embassy; Sodexo; Stove Boat; Stimson; Target; U.S. Council for International Business; U.S. Fashion Industry Association; Wal-Mart; Wasserman DC; White House Council on Environmental Quality; Worker Rights Consortium; and World Wildlife Fund.

CBP is also engaged with foreign producers, interested importers, and trade groups to explain the impact of the repeal of consumptive demand and the process of any subsequent CBP enforcement action or detention.

In addition, CBP is collaborating with the Department of State, Department of Labor, and ICE/HSI to present an informational webinar on forced labor to embassy Economic and Labor Officers.

GAO'S RECOMMENDATION

Question. Near the end of the George W. Bush administration, the Government Accountability Office conducted an investigation into CBP's approach to revenue collection and found some troubling information. First, the GAO found that Homeland Security auditors had not conducted any assessments of high-risk areas within customs revenue functions and did not perform any audits focused on improving these functions. Second, CBP had not determined how many staff and what skills it needs in customs revenue positions since the agency was moved from the Department of Treasury into the Department of Homeland Security, when Congress created the department in 2003.

How has CBP responded to this criticism by the GAO and implemented the GAO's recommendations in these two areas?

Answer. The Government Accountability Office (GAO) report 07–529 (job code 320470), entitled Customs and Border Protection Needs to Improve Workforce Planning and Accountability, included two recommendations for CBP, both of which were closed as implemented, and one recommendation directed to the Department of Homeland Security (DHS) Office of Inspector General (OIG).

In recommendation 1, GAO provided that the Commissioner of CBP should develop a strategic workforce plan that aligns its human capital efforts with its objectives related to performing customs revenue functions. In response, U.S. Customs and Border Protection (CBP) adopted several documents that together contain the elements of a strategic workforce plan. In 2009, CBP issued a Resource Optimization Model that assists management in determining the optimal level of staff to meet the performance outcomes and goals of CBP's trade mission. In addition, CBP issued a Human Capital Strategy for Revenue Positions Fiscal Years (FY) 2010–2011, and CBP Trade Strategy FY 2009–2013, both of which address the principles outlined in GAO's recommendation for a strategic workforce plan. Finally, CBP officials discuss quarterly updates on the status of customs revenue staffing to evaluate progress toward human capital goals.

In recommendation 2, GAO suggested that the Commissioner of CBP establish specific customs revenue performance measures and targets as well as evaluate, track, and report performance measures in annual agency Performance and Accountability Reports for congressional and public oversight of customs revenue functions. In response, in FY 2009, CBP developed two new measures for the Department of Homeland Security's FY 2010–2011 Annual Performance Plan: (1) the percentage of estimated revenue losses due to non-compliance with trade laws, regulations, and agreements, and (2) estimated revenue losses due to non-compliance with trade laws, regulations, and agreements (in millions). The two measures are tracked and monitored in the DHS Future Years Homeland Security Program database system and were submitted for inclusion in the FY 2011 Congressional Budget Justification.

Recommendation 3, in GAO–07–529, was directed to the DHS OIG and there was no action required of CBP.

SINGLE TRANSACTION BOND ERRORS

Question. In response to concerns about the rampant evasion of anti-dumping and countervailing duties employed by foreign suppliers, CBP told this committee that increasingly requires importers to post a "Single Transaction Bond" in order to improve the likelihood that CBP can collect any duties that are determined to be owed. In June of 2011, the Office of the Inspector General determined that CBP did not have adequate controls over its Single Transaction Bond process. Specifically, CBP could not identify the number of these bonds it required in a given year. Many of the bonds were inaccurate or incomplete, and there was no consistent policy as to when the bonds should be required. Furthermore, the Inspector General determined that more than half of the single transaction bonds it reviewed had errors that impact CBP's ability to collect on the bond.

Can you describe to the committee how CBP responded to the Inspector General's criticism and recommendations?

Answer. In response to the Office of Inspector General's recommendations, CBP developed E-Bond, which centralizes CBP's management of Single Transaction

Bonds (STBs), and helps to facilitate the collection of funds secured by STBs. E-bond is a web-based bond application which serves as the platform through which sureties provide STBs when both an entry and entry summary are filed in CBP's Automated Commercial Environment (ACE). E-bond became operational in January 2015, and since then, the number of inaccurate/incomplete STBs (among the bonds filed electronically) has decreased.

In addition, in May 2012, CBP issued guidance to CBP personnel on the use of STBs to protect against potential losses of revenue with AD/CVD. This guidance discusses when the bonds should be required and how to determine the amount of the STBs to protect the revenue.

Question. The Inspector General said that of the $12 billion in Single Transaction Bonds CBP accepted in 2009, two thirds—$8 billion—of them contained errors that could result in non-collection. What do you think those numbers are today—how many Single Transaction Bonds were accepted in 2015 and how many of them are likely to contain the types of errors the Inspector General identified?

Answer. On January 3, 2015, CBP deployed e-Bond processing in the Automated Commercial Environment (ACE). E-Bond enables sureties or their designated agent to electronically transmit a Continuous or Single Transaction Bond (STB) to CBP and receive a positive response from ACE within 10 or 15 seconds, while providing a centralized view of the number of bonds filed via e-Bond. E-Bond provides a number of validations around the bond information submitted to ACE that ensures the validity and integrity of the bond prior to ACE allowing cargo to be released. These validations help to greatly reduce or eliminate many of the items the Inspector General identified that could result in non-collection. In 2015, 107,030 STBs totaling $1,246,605,154, were filed through ACE's e-Bond program. Following July 23, 2016, when ACE cargo release becomes mandatory, all STBs will be required to be filed via e-Bond, meaning that the full universe of all STBs filed after July 23, 2016 will be available in e-Bond. CBP anticipates that the mandatory use of e-Bond will continue to lead to a significant improvement in the quality of STBs.

"PORT SHOPPING"

Question. Additionally, what measures have you taken to ensure that use of these bonds is consistent across ports—so that unscrupulous foreign suppliers can't "port shop"—and that these bonds cover the full amount of the potential liability and can actually be collected?

Answer. CBP employs targeting systems to alert all ports when one port requests an STB to address revenue threats involving AD/CVD, so that STBs will be required uniformly at each port for the particular merchandise at issue. CBP has issued internal guidance on the amount of the STBs to ensure that these bonds cover the full amount of the potential liability.

UNPAID DUTIES

Question. Can you provide recent statistics on the overall amount of unpaid duties actually covered by bonds and the collection rate?

Answer. $642.7 million in open duty bills is currently associated with bonds which have not been exhausted (*i.e.,* collections from the surety still likely/possible). $2.5B in open duty bills is currently associated with bonds where the bond has already been exhausted (*i.e.,* surety has paid).

Collections rate for FY 1986–FY 2015 is 99.5%. Calculated as (current open debt + amounts written off)/total collections.

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INFORMATION SHARING ON COUNTERFEIT PRODUCTS

Question. The import of counterfeit products is a growing threat to U.S. consumers and businesses—but trade cheats have become so sophisticated that it can also be a challenge for CBP to accurately identify fake drugs, computer chips, and even sneakers. In the Trade Enforcement Act, we gave CBP authority to share information about suspected counterfeit products with those who are best equipped to identify them—the U.S. companies who make the real thing.

Can you provide an overview of how CBP has used this authority already? And, can you provide examples of how you expect it to further CBP's detection of counterfeits in the future?

Answer. Section 302(a) authorizes CBP to disclose information appearing on merchandise or its retail packaging. Pursuant to earlier authority provided by subsection 818(g) of the National Defense Authorization Act (NDAA) of 2012, now repealed, CBP has been disclosing such information at the time of detention, either by means of digital images or by making available a sample of the article concerned, since the interim final rule on trademark disclosure was published in 2012 (See 77 Fed. Reg. 24375). Prior to supplying the information to the trademark owner, the importer is notified and given 7 days in which to respond with information that would establish that the detained merchandise does not bear a counterfeit mark, though rarely is the importer successful in establishing this to CBP's satisfaction. CBP considers that the ability to disclose "information appearing on," has been of significant help in establishing the probable cause required to seize merchandise.

As discussed in the response to previous questions, CBP is drafting regulations to implement section 302 of the customs bill and to require the disclosure of "information appearing on" in connection with suspect copyright and Digital Millennium Copyright Act violations (DMCA), subject, in the case of suspect copyright violations, to notifying and affording the importer an opportunity to provide information in accordance with statutory authority that would accelerate the disposition of the detention.

CBP anticipates that the ability to disclose information to copyright owners will greatly assist the agency in making copyright seizures, just as it has with trademarks. In contrast, CBP considers that it is unlikely that the disclosure authority will result in an appreciable increase in DMCA seizures, given that in the case of mod chips and other circumvention devices the article itself constitutes the probable cause needed to seize.

ILLEGAL LOGGING

Question. Illegal logging doesn't just hurt the environment, it hurts sawmill workers in Oregon and around the country who have to compete with an influx of cheap stolen wood. I have fought for years to stop trade in illegally harvested timber. As you know, the enforcement legislation Congress passed this year requires Customs agents to be trained in detection and seizure of illegally traded fish, wildlife, and plants.

Will you commit to work with experts such as the World Wildlife Fund and the Environmental Investigation Agency within the next 30 days to develop an effective training module on illegal logging and begin trainings, so that America's port officers are fully equipped to deal with illegal trade in wood products?

Answer. U.S. Fish and Wildlife Service (FWS) and Animal and Plant Health Inspection Service (APHIS) are the agencies with both the legal authority and expertise specific to wood and wood products under the Lacey Act. Because of this, CBP defers to FWS and APHIS to inspect and make determinations on the admissibility and origin of imported wood that may have been sourced from illegal logging. For these reasons, non-governmental organizations must work through FWS and APHIS to develop any training module on illegal logging. In turn, CBP will work with FWS and APHIS on training to ensure operational awareness of illegal logging at ports of entry for CBP personnel.

UNPAID DUTIES FROM CHINA

Question. In your testimony, you highlight recent successful criminal investigations of AD/CVD evasion, which included the illegal evasion of $180 million in duties on Chinese honey, $25 million in duties on paper from China, and $25 million on aluminum extrusions from China.

How much of these unpaid duties has CBP collected to date?

Answer. CBP supported these three ICE HSI criminal investigations of AD/CVD evasion which disrupted illegal distribution channels of imported goods, and resulted in criminal indictments, convictions, and monetary fines. Operation Honeygate resulted in the imprisonment of four individuals, the conviction of two companies, the seizure of 828 drums of honey, and monetary fines of over $7 million. The lined paper investigation resulted in the indictment of four individuals and $1.75 million in fines (the criminal prosecution and related civil actions are still ongoing). The aluminum extrusions investigation resulted in the conviction of four individuals and one company, the seizure of 14 containers of aluminum extrusions and $493,400 in bank accounts, and $4 million in fines.

To the extent that liability for AD/CVD duty payments by the importers of record was not covered by the convictions, CBP seeks to collect any duty payments from the importer of record and surety when possible. However, due to the criminal nature of these importations, which were set up with shell companies with no assets and other schemes specifically to avoid duty payments, it can be challenging for CBP to collect duties from importers beyond any amounts covered by the importation bonds.

E-CIGARETTE IMPORTATION

Question. As you know, starting January 1, 2016, the United States began to collect customs data on e-cigarettes, and the liquids used in e-cigarettes, for the first time. This follows my request to Chairman Broadbent of the U.S. International Trade Commission (USITC) asking that the U.S. Government begin tracking the imports of e-cigarettes and related products, such as the nicotine liquids used in e-cigarette devices. On October 20, 2015, the interagency committee responsible for establishing these tracking codes agreed to this request and approved the establishment of five new codes that track these imports.

After 3 months, the data thus far raises some important questions. First, China accounts for roughly 85% of all imports, but e-cigarette devices and liquids come into the U.S. from two dozen other countries. Second, the value of all e-cigarette-related imports being reported is running in the neighborhood of $20 million a month. For a U.S. retail e-cigarette market that is estimated to be in the range of $3.5 billion a year, the value of imports being reported doesn't appear to be capturing everything that's coming into the United States.

What steps does CBP take to ensure that shippers and importers properly report these imports from all of these countries, that they declare the correct customs value, and that the right duties are paid?

Answer. CBP has worked with the International Trade Commission 484f Committee to implement the additional Harmonized Tariff Schedule (HTS) commodity classification codes within our systems. Commercial imports are largely processed by customs brokers with responsibilities for declaring goods for proper classification and valuation. CBP can react to specific, actionable intelligence for non-compliance and conducts post-entry random sampling across all commodities to ensure broad compliance.

E-CIGARETTE CODES

Question. When new statistical reporting numbers are put in place—in this case, there are five new e-cigarette-related codes—what steps does CBP take to ensure that its own customs officers are aware of and implementing the new codes?

Answer. New HTS commodity codes are implemented directly in our import processing systems. Regulatory requirements for additional Partner Government Agency reporting can be flagged in our system against specific HTS codes, thereby informing both CBP officers and filers of the additional reporting requirements. Specific enforcement and compliance issues are handled through our targeting systems.

CHINESE HONEY

Question. I was pleased to hear that ICE/CBP recently seized 132,000 pounds of Chinese honey that had been fraudulently imported into the United States as Vietnamese honey. CBP labs later confirmed that there was a 99 percent chance this honey had actually originated in China. I've also heard, though, that a study commissioned by domestic beekeepers estimates that 90 million pounds of Chinese honey was fraudulently imported last year as being honey from Vietnam, India, Thailand, and Taiwan, and thereby avoided about $87 million in dumping duties. Ninety million pounds is roughly one-fourth of all U.S. honey imports last year.

This seems exactly like the duty evasion schemes Congress intended CBP to stop through the Enforce provisions in the Trade Enforcement Act. Is CBP planning on investigating this allegation?

Answer. CBP, in coordination with U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), is continuing to actively target illegally transshipped shipments of honey subject to the antidumping duty order on honey from China. Over the past several years, CBP has detected a substantial amount of illegal transshipment of Chinese honey through third countries and the misclassification of honey as syrup and other sweeteners. CBP has used a variety of enforcement techniques to enforce this antidumping duty order, including nationwide and port-specific special operations, seizures, single transaction bonds, and lab testing, as well as supporting HSI's criminal investigations. CBP's enforcement efforts on honey from China have contributed to several successful HSI criminal investigations, including Operation Honeygate.

CBP recently held three extensive meetings with domestic beekeepers, honey importers, honey packers, scientists, and other interested parties to obtain in-depth trade intelligence on honey imports, new evasion schemes (including the scheme referenced in the question), and the world honey market. Representatives from ICE HSI, the Food and Drug Administration, and the U.S. Department of Justice also participated in these meetings. CBP is using the intelligence from these meetings to further improve and expand its targeting of high-risk honey shipments.

TESTING OF HONEY IMPORTS

Question. Couldn't CBP reduce the widespread country-of-origin fraud reported in the domestic beekeepers' study by significantly increasing its testing of honey imports from these four countries?

Answer. CBP regularly tests honey imports to determine whether they are subject to the antidumping duty order on honey from China. CBP will continue to test honey imports as part of its active targeting of illegal transshipment of honey from China. These efforts are an integral part of CBP's strategy to detect high-risk activity, deter non-compliance, and disrupt fraudulent behavior on imports subject to AD/CVD. CBP has increased targeting and testing of high risk honey imports to determine whether they are subject to the antidumping duty order on honey from China.

Question. Does CBP now have the technology and other resources it needs to undertake a comprehensive testing regime for imported honey?

Answer. For over 15 years, the CBP Laboratories have been using the trace metal profiles in honey determined by Inductively Coupled Plasma Mass Spectroscopy (ICP–MS) for country of origin verifications. Using multivariate discriminant and canonical statistics, the trace metal profiles obtained by ICP–MS are compared to our honey database which consists of honey reference samples obtained from multiple countries of interest, including Vietnam, India, Thailand, and Taiwan. However, additional database samples are always needed from these countries, and from other countries of interest, in order to provide maximum support to honey transshipment investigations.

In addition to ICP–MS, CBP Laboratories also use Isotopic Ratio Mass Spectrometry (IRMS), High Performance Liquid Chromatography (HPLC), microscopy, moisture content and color analyses for enforcement of both honey AD/CVD and honey Harmonized Tariff Schedule classification. The honey industry has recently suggested that Nuclear Magnetic Resonance (NMR) technology could be used to assist in the determination of both country of origin and potential adulteration of honey. CBP has NMR instruments that could be used to investigate and validate industry's claims that it can be used for determining adulteration. However, country of origin determinations using NMR also require a honey reference database, and CBP's cur-

rent honey reference database is not suitable for NMR testing. A completely new collection of honey reference samples would need to be obtained in order to add the honey industry's suggested approach to CBP's testing protocols.

CHINESE BONDS

Question. For the past 4 years, Members of Congress—myself and Senator Thune included—have been trying to get an accurate accounting of the approximately $628 million worth of bonds that secure antidumping and countervailing duties owed on Chinese imports of honey, garlic, crawfish, and canned mushrooms. We've written numerous letters, legislated reporting requirements through appropriations measures, and secured a commitment from you to develop a strategy to identify and collect on these bonds. Yet, we do not have any clearer picture of these bonds now than we did in 2012.

Please tell me when CBP will provide an accounting of these bonds, specifically in accordance with the mandate from the Consolidated Appropriations Act of 2016, which requires CBP to make available to Congress and the public:

> ". . . a reasonably detailed inventory, including disposition, of single-entry customs bonds received by CBP as security on entries subject to any antidumping duty orders on imports of honey, fresh garlic, crawfish tail meat, and certain preserved mushrooms from October 1, 1998 through September 20, 2007. The inventory shall include details on each bond for which summary materials were previously provided to Congress, including the date of the bond, the orders against which the bonds were posted, and whether it is in litigation, pending collection or not collectible."

Answer. Assembling a detailed accounting of this type would be extremely resource intensive. CBP would have to provide individualized information concerning every STB it has received on imports of honey, fresh garlic, crawfish tail meat, and certain preserved mushrooms for entries from October 1, 1998, through September 30, 2007. Bonds are not sorted by commodity, so this would essentially require CBP to locate, examine, research, and analyze each individual STB it has received from October 1, 1998, through September 30, 2007, whether there was a bill associated with that entry or not. This would require a manual review of tens of thousands of entry files created between October 1, 1998, and September 30, 2007, some of which are located in Indianapolis under the Office of Finance and many of which are scattered at approximately 50 ports, offices, and/or Federal Records Centers. Some of these files are up to 18 years old and many have been destroyed pursuant to established records retention policies. Identifying the universe of entry files would be extremely time consuming. Then, locating the bonds would be even more time consuming (both for the Office of Finance and Office of Field Operations). After that, CBP would have to physically examine each bond to verify its applicability, and then perform a manual accounting of the events that transpired with each individual bond. Finally, entry and bond information would need to be manually entered into a new database correlating bond and debt information. As a CBP official testified, "accurately responding to such a request would be practically impossible and any attempt to do so would require personnel resources far beyond our present capabilities and CBP's ongoing mission priorities would be severely compromised," including the enforcement and collection of AD/CVD on many other commodities.

Moreover, a manual review of this scope is highly unlikely to result in greater collections by CBP. CBP has provided a detailed accounting of unpaid AD/CVD debts and the resources CBP has committed to collecting as much of these debts as possible to the House and Senate Appropriations Committees each year since Fiscal Year 2012. As CBP reported last year, collection from the surety bond(s) has been completed for a significant majority of the debts, while CBP continues to work with the Justice Department to aggressively pursue payment from the surety for other debts.

COMPREHENSIVE PLAN ON TRADE ENFORCEMENT AND FACILITATION

Question. Section 105 of the Trade Enforcement Act requires CBP to develop a comprehensive multiyear plan on joint strategic plan on trade enforcement and trade facilitation measures every 2 years, with the first plan due 1 year after the date of enactment.

In light of this requirement, and with respect to trade facilitation, can you please describe the activities that your office is currently developing in order to keep pace with technological innovation?

Answer. The Automated Commercial Environment (ACE) is CBP's signature effort to incorporate modern technological capabilities to improve the flow of cargo into and out of the United States. By the end of 2016, ACE will become the Single Window—the primary system through which the trade community will report imports and exports and the government will determine admissibility. Through ACE, processes will be streamlined for industry and government and paper will be greatly reduced; following the implementation of ACE, all forms can be submitted electronically. Interactions between CBP, members of the trade community, and Partner Government Agencies will be automated to enable near real-time decision making, reducing costs for business and government. Federal agencies will now have earlier, automated visibility to shipment data, expediting their import or export assessments at the border and speeding the flow of legitimate trade while also improving security, health, and safety of cargo. ACE also promotes improved data quality which further supports risk management and contributes to streamlined processing.

Within CBP, we are constantly scanning the trade and business environment, leveraging numerous information sources, and engaging the technology and trade communities to stay abreast of developments and innovations that could potentially enhance the fulfillment of CBP's trade mission. Recently, CBP engaged with innovators in Silicon Valley to flag priority areas where we see potential the technology enablers to have a positive impact for not only for CBP but also for other customs agencies and the trade community.

U.S. HARMONIZED TARIFF SCHEDULE

Question. Through the inter-agency consultation process in developing the joint strategic plan, please describe any activities CBP will conduct with the United States International Trade Commission (USITC) in order to ensure the U.S. Harmonized Tariff Schedule keeps pace with technological innovation and avoid import/customs delays for new technology products?

Answer. CBP currently works closely with the United States International Trade Commission (ITC) on amendments to the Harmonized System (HS), as part of one delegation to the World Customs Organization Harmonized System Committee Review Subcommittee (RSC). CBP will continue to solicit from the trade community, as well as from subject matter experts within CBP, areas of the HS that require updating, and work with ITC to propose necessary amendments to the HS. CBP has proposed to increase the frequency of its meetings between the offices within CBP and ITC that are responsible for updates to the HS and the U.S. Harmonized Tariff Schedule (HTSUS), in order to be more proactive in this area. ITC has published a notice of investigation, "WCO Sixth Review Cycle: Request for Proposals to Amend the International Harmonized System for Implementation in 2022," on November 9, 2015, soliciting comments from the trade for amendments to the 2022 HS 80 Fed. Reg. 69248. On June 18, 2015, CBP published a general notice, "Notice of Opportunity and Procedures To Request Assistance on Tariff Classification and Customs Valuation Treatment by Other Customs Administrations Affecting United States Exports," 80 Fed. Reg. 34924. CBP will post both notices on the public website as a reminder to the trade of these opportunities to request assistance. CBP is planning a joint ITC and CBP presentation to the trade on the 2017 HTSUS amendments that are expected to take effect on January 1, 2017.

CONSULTATION AND COORDINATION WITH PRIVATE SECTOR

Question. What plans does CBP have to engage the private sector to improve consultation and coordination, as called for in section 105(b)(10)?

Answer. CBP will fully engage with our Commercial Customs Operational Advisory Council (COAC) groups and Trade Support Network working groups to improve consultation and coordination. We will engage with each sub-working group as needed to ensure that all levels of the private sector are aware and coordination is taking place at all levels. Other working groups that are created will be notified and engaged.

SINGLE WINDOW PARTICIPATION

Question. Through the International Trade Data System (ITDS) and the Automated Commercial Environment (ACE) the U.S. Government is creating a "Single Window" to ensure the admissibility of goods into the United States. Through ACE, CBP has announced that manual processes will be streamlined and automated, paper will be eliminated, and importers will be able to more easily and efficiently comply with U.S. laws and regulations.

What agencies will be participating in the single window?

Answer. CBP and 47 other federal agencies are working together to implement the Single Window through ACE:

DEPARTMENT OF AGRICULTURE AMS | Agricultural Marketing Service APHIS | Animal and Plant Health Inspection Service FAS | Foreign Agricultural Service FSIS | Food Safety and Inspection Service GIPSA | Grain Inspection, Packers and Stockyards Administration	**DEPARTMENT OF JUSTICE** ATF | Bureau of Alcohol, Tobacco, Firearms and Explosives DEA | Drug Enforcement Administration
DEPARTMENT OF DEFENSE USACE | Army Corps of Engineers DCMA | Defense Contracts Management Agency	**DEPARTMENT OF LABOR** BLS | Bureau of Labor Statistics
DEPARTMENT OF COMMERCE BIS | Bureau of Industry and Security U.S. Census Bureau FTZB | Foreign Trade Zones Board E&C | Enforcement and Compliance OTEXA | Office of Textiles and Apparel NMFS | National Marine Fisheries Service	**DEPARTMENT OF STATE** A/LM | Bureau of Administration, Office of Logistics Management DDTC | Directorate of Defense Trade Controls OES | Bureau of Oceans and International Environmental and Scientific Affairs OFM | Office of Foreign Missions
DEPARTMENT OF TRANSPORTATION BTS | Bureau of Transportation Statistics FAA | Federal Aviation Administration FHA | Federal Highway Administration FMCSA | Federal Motor Carrier Safety Administration MARAD | Maritime Administration NHTSA | National Highway Traffic Safety Administration PHMSA | Pipeline Hazardous Materials Safety Administration	**DEPARTMENT OF ENERGY** OFE | Office of Fossil Energy EIA | Energy Information Administration OGC | Office of General Counsel
DEPARTMENT OF TREASURY IRS | Internal Revenue Service OFAC | Office of Federal Assets Control TTB | Alcohol and Tobacco Tax and Trade Bureau FinCEN | Financial Crimes Enforcement Network	**DEPARTMENT OF HEALTH AND HUMAN SERVICES** CDC | Centers for Disease Control and Prevention FDA | Food and Drug Administration
DEPARTMENT OF HOMELAND SECURITY USCG | United States Coast Guard CBP | U.S. Customs and Border Protection TSA | Transportation Security Administration	**INDEPENDENT AGENCIES** CPSC | Consumer Product Safety Commission EPA | Environmental Protection Agency FCC | Federal Communications Commission FMC | Federal Maritime Commission ITC | International Trade Commission NRC | Nuclear Regulatory Commission USAID | U.S. Agency for International Development USTR | Office of the United States Trade Representative
DEPARTMENT OF THE INTERIOR FWS | Fish and Wildlife Service	

AUTOMATED COMMERICIAL ENVIRONMENT (ACE) MISUSE

Question. Can you describe how CBP will ensure that the agencies participating in ACE will not utilize ACE as a tool to inject additional regulatory and informa-

tional requirements, which may be decreasing efficiencies in the import and customs processes and increase burdens on importers?

Answer. ACE will only provide each Partner Government Agency (PGA) the data that it is legally authorized to access, according to its MOU with CBP. The Border Interagency Executive Council (BIEC) Change Control Board (CCB) will be responsible for approving and prioritizing any PGA requests for enhancements or new requirements once core ACE development is complete. All changes to information collections in ACE—including additional requirements—continue to be subject to approval by the Office of Management and Budget under the Paperwork Reduction Act and will be subject to public notice and comment procedures before implementation.

Additionally, by collecting all information required by nearly 50 government agencies in one system—ACE, CBP and its partner government agencies will reduce duplicative information collections from the public by making sure that information given for a data field for one agency will automatically populate data fields for other agencies that are asking for the exact same information. This is not something that was previously possible when information collections for entry and export were spread across numerous systems and will save the reporting public time.

QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

SWIFT AND EFFICIENT IMPLEMENTATION

Question. The Trade Facilitation and Trade Enforcement Act provides important tools to promote effective enforcement of intellectual property rights at our borders, including information sharing between law enforcement and right holders. Importantly, this law affirms the authority of U.S. Customs and Border Protection (CBP) to seek assistance from intellectual property owners in carrying out its intellectual property enforcement mission. Historically, right holders have provided invaluable assistance to CBP in determining whether the goods before them were genuine or counterfeit. However, in recent years, the U.S. Treasury Department and CBP have taken a more restrictive view of what information can be shared with right holders. I understand that in the past, this restrictive view has hampered right holders' ability to provide the needed expertise to identify whether a good is genuine or counterfeit, and has made it difficult for right holders' own intellectual property enforcement efforts.

The Trade Facilitation and Trade Enforcement Act now specifically requires that where a right holder can assist CBP in determining whether a suspected good is counterfeit, CBP must "provide to the person information that appears on the merchandise and its packaging and labels, including unredacted images of the merchandise and its packaging and labels."

What is CBP doing to ensure that the new customs law provisions—especially the information sharing provisions—are being implemented swiftly and effectively and in a manner that will facilitate the timely sharing of vital information such as unredacted photos and samples with right holders?

Answer. The initiative to disclose information appearing on merchandise or its retail packaging was originally proposed by CBP and the administration in 2010 when it submitted the 19 U.S.C. § 1628a legislative proposal to Congress. Thus, rather than taking a restrictive view of disclosure, CBP has long sought statutory authority to disclose confidential information to rights' holders that is otherwise protected by the 18 U.S.C. § 1905. *See* 77 Fed. Reg. 24375, 24376 (April 24, 2012) ("The protection afforded by the Trade Secrets Act, however, must be balanced against the important and legitimate interests of government."). As noted above, pursuant to earlier, more limited, authority in the 2012 National Defense Authorization Act, CBP has been disclosing information appearing on imported merchandise, or its retail packaging, suspected of bearing counterfeit marks, since 2012. CBP is drafting a notice of proposed rulemaking to implement the provisions within section 302 of TFTEA.

ABANDONED AND DESTROYED GOODS

Question. There is no doubt that we are seeing a massive shift in how counterfeit goods are coming to our country. While large container shipments are still a problem, small shipments by post—fueled by the ease of online websites selling counterfeit goods—are rapidly increasing. In fact, a report released recently by the OECD on counterfeits strikingly found that postal shipments are the top method of ship-

ping fake goods, accounting for 62% of seizures over 2011–2013. To address this problem, in early 2015, CBP began operating a pilot program with express delivery carriers to streamline the process of abandoning and destroying imported goods detained by CBP that violate intellectual property rights. U.S. 2015 seizure statistics indicate that there have been more than 2,800 voluntary abandonments since this program's inception. While the goal of this program is a good one, I understand that under the pilot program, the importer of the goods, not the right holder whose intellectual property rights were violated, is given notice that the goods have been abandoned and destroyed. A failure to provide right holders with this information can make it harder for them to protect their brands.

How can this program ensure better information sharing between right holders and law enforcement?

Answer. During the abandonment process both the importer of record and ultimate consignee of the merchandise must voluntarily relinquish their proprietary interest in the merchandise. Unlike the detention and seizure process, where CBP has exercised authority to share information with rights holders to assist the agency in determining whether merchandise bears a counterfeit mark, in the abandonment process CBP does not mandate any action on the part of the importer or consignee, take physical possession of the merchandise or make a final determination on infringement. The merchandise is never detained or seized by CBP, but abandoned by the consignee and importer and destroyed by the express carrier. CBP has a robust outreach strategy that incorporates regional stakeholder roundtables and participation in domestic and international trade association conferences that promote effective communication and information sharing. Throughout the course of the pilot program, CBP has shared information with stakeholders at these events and other meetings about trends identified with respect to abandoned merchandise and best practices identified with regard to processing small packages.

ASYLUM SEEKERS

Question. In recent years we've heard a lot about the dramatic increase in the number of people arriving at Ports of Entry along the southern border who announce that they are seeking asylum. According to a media report in 2012: [T]housands of asylum-seekers—reportedly 200 in a single day at the Otay Mesa Port of Entry in California—are forcing the U.S. Customs and Border Protection agents to pay for hotels rooms for hundreds of immigrants while they wait for an immigration judge to decide whether they can stay in the country.

http://www.dailymail.co.uk/news/article-2390442/Surge-immigrants-seeking-asylum-Mexican-border-crossings-forced-authorities-pay-hotels-hundreds-release-thousands-U-S.html#ixzz48TR0oFMJ.

It is my understanding that the flow of asylum seekers arriving at the southern border has not diminished since 2012 and has likely only increased.

Please give the number of aliens arriving at Ports of Entry (POEs) along the southern border, in FY14, FY15, and FY16 to date, who have sought asylum, with a breakdown by the aliens' countries of origin.

Answer. Please see the below credible fear statistics showing the number of credible fear claims by country of nationality by individuals who presented themselves at U.S. Ports of Entry. USCIS asylum reports do not differentiate between the northern and southern borders, nor between the types of ports of entry (*i.e.,* land v. airport). USCIS asylum reports do not include individuals who ask for asylum at Ports of Entry and who are not placed in expedited removal with credible fear but instead are placed in removal proceedings with the Executive Office for Immigration Review.

Credible Fear POE by Nationality Report

Nationality	FY14 Receipts	FY15 Receipts	FY16 through Q2 Receipts
AFGHANISTAN	9	16	6
ALBANIA	1	13	13
ALGERIA	0	0	2

Credible Fear POE by Nationality Report—Continued

Nationality	FY14 Receipts	FY15 Receipts	FY16 through Q2 Receipts
ANGOLA	4	7	2
ARGENTINA	2	9	5
ARMENIA	33	87	98
AUSTRALIA	2	3	1
AUSTRIA	0	1	0
AZERBAIJAN	5	1	1
BAHAMAS	1	4	1
BAHRAIN	0	1	0
BANGLADESH	231	532	64
BELARUS	4	7	1
BELIZE	8	15	14
BENIN	4	7	2
BOLIVIA	8	4	4
BOSNIA-HERZEGOVINA	0	1	0
BRAZIL	31	57	167
BULGARIA	0	4	1
BURKINA FASO	3	25	28
BURMA	6	10	6
BURUNDI	1	5	6
CAMBODIA	1	1	0
CAMEROON	239	165	183
CANADA	7	11	5
CENTRAL AFRICA	0	2	1
CHAD	3	1	3
CHILE	4	2	1
CHINA, PEOPLES REPUBLIC	147	131	162
COLOMBIA	61	127	83
CONGO	8	12	14
COSTA RICA	5	1	6
COTE D'IVOIRE	4	8	16
CUBA	1	3	0
DEMOCRATIC REPUBLIC of CONGO	7	3	2

Credible Fear POE by Nationality Report—Continued

Nationality	FY14 Receipts	FY15 Receipts	FY16 through Q2 Receipts
DENMARK	0	1	0
DJIBOUTI	0	0	2
DOMINICA	12	6	6
DOMINICAN REPUBLIC	23	35	15
ECUADOR	129	65	66
EGYPT	45	37	19
EL SALVADOR	1,221	841	1,501
EQUATORIAL GUINEA	0	0	1
ERITREA	135	175	151
ETHIOPIA	125	156	54
GABON	0	1	0
GEORGIA	1	12	9
GERMANY	0	0	3
GHANA	151	473	329
GUATEMALA	796	1,002	1,252
GUINEA	17	54	75
GUINEA-BISSAU	1	3	1
GUYANA	5	2	1
HAITI	180	162	109
HONDURAS	1,017	882	1,319
HONG KONG	0	0	1
INDIA	108	132	128
INDONESIA	2	2	1
IRAN	15	19	10
IRAQ	35	61	10
IRELAND	0	0	2
ISRAEL	1	1	3
ITALY	1	0	2
JAMAICA	14	31	28
JORDAN	5	5	15
KAZAKHSTAN	1	1	0
KENYA	4	4	5

Credible Fear POE by Nationality Report—Continued

Nationality	FY14 Receipts	FY15 Receipts	FY16 through Q2 Receipts
KOSOVO	0	1	0
KUWAIT	0	4	1
KYRGYSTAN	0	1	0
LAOS	0	1	0
LEBANON	9	11	3
LIBERIA	3	3	2
LIBYA	4	0	0
LITHUANIA	1	0	0
MACEDONIA	0	1	0
MALAWI	0	0	1
MALAYSIA	1	1	1
MALI	2	3	14
MAURITANIA	0	1	2
MAURITIUS	0	0	1
MEXICO	4,251	6,467	2,843
MOLDOVA	4	4	2
MONGOLIA	4	2	1
MOROCCO	5	2	2
NEPAL	12	98	97
NETHERLANDS	1	2	0
NICARAGUA	40	39	23
NIGER	132	138	103
NIGERIA	76	73	21
NORTH KOREA	1	0	0
NORWAY	0	1	0
OMAN	1	0	0
PAKISTAN	28	157	45
PANAMA	0	2	0
PARAGUAY	1	0	2
PERU	54	53	40
PHILIPPINES	7	4	1
POLAND	2	1	2

Credible Fear POE by Nationality Report—Continued

Nationality	FY14 Receipts	FY15 Receipts	FY16 through Q2 Receipts
ROMANIA	79	55	28
RUSSIA	23	44	36
RWANDA	17	6	1
SAMOA	1	0	0
SAUDI ARABIA	4	3	1
SENEGAL	3	30	30
SIERRA LEONE	3	7	10
SERBIA and MONTENEGRO	0	0	1
SINGAPORE	1	0	1
SOMALIA	254	728	252
SOUTH AFRICA	3	2	2
SOUTH KOREA	3	1	2
SPAIN	0	1	0
SRI LANKA	22	36	15
ST. LUCIA	0	3	4
STATELESS	4	5	4
SUDAN	9	8	1
SWAZILAND	1	2	60
SYRIA	70	77	10
TAIWAN	1	1	0
TAJIKISTAN	0	3	3
THAILAND	1	0	0
THE GAMBIA	2	13	16
TOGO	5	19	16
TRINIDAD AND TOBAGO	0	3	0
TUNISIA	5	1	2
TURKEY	3	10	6
UGANDA	4	3	2
UKRAINE	15	69	39
UNITED KINGDOM	2	0	1
UNKNOWN	20	12	58
URUGUAY	2	0	0

Credible Fear POE by Nationality Report—Continued

Nationality	FY14 Receipts	FY15 Receipts	FY16 through Q2 Receipts
USSR	1	0	1
UZBEKISTAN	1	1	2
VENEZUELA	61	82	108
VIETNAM	3	2	4
YEMEN	1	4	3
ZAMBIA	1	0	0
ZIMBABWE	3	4	6
Total	**10,151**	**13,744**	**9,939**

HOTEL ROOMS FOR ASYLUM SEEKERS

Question. Does CBP pay for hotel rooms for asylum seekers while they await their date in immigration court? If so, how much has CBP spent on such accommodations for asylum seekers in FY14, FY15, and FY16 to date?

Answer. CBP does not pay for hotel rooms for asylum seekers and has not expended any funding on accommodations outside of those provided. CBP generally processes aliens either administratively or criminally and maintains short-term custody of individuals, pending transfer of custody to another agency (generally ICE ERO) or final case disposition. CBP temporarily holds individuals for the length of time necessary for CBP to complete the required casework, which may entail an interview, the collection of biographic and biometric data, records checks, determination of disposition, and release of the individual or transfer of him/her to another agency's custody. CBP has many facilities throughout the United States to support mission-critical operations, most of which include short-term hold rooms.

INFRASTRUCTURE CHANGES

Question. What infrastructure changes has CBP had to make at the POEs to accommodate this flow? I understand, for example, that at some POEs there is a dedicated line for asylum seekers in the pedestrian entryway.

Answer. CBP works within our existing infrastructure to manage the flow. However, when necessary, CBP has made infrastructure changes to POEs to accommodate increased flow of asylum seekers. When there is a high volume of asylum seekers, CBP will coordinate a dedicated line or waiting area to ensure the orderly flow of regular pedestrians through the facility.

FINANCING THE SMUGGLING OF MINORS

Question. I have read about the various Department of Homeland Security informational and media campaigns to discourage family units and Unaccompanied Alien Children from making the dangerous journey to the United States border. Clearly, none of that is working, given the high numbers of minors and family unit members who crossed the border during the first 6 months of this fiscal year. Statistics from your agency show that apprehensions of unaccompanied minors are 78% higher than the same period last year, and on par with apprehensions for the same period in Fiscal Year 2014, which was the year that brought us the record-breaking surge. Family unit apprehensions are up 131% over the same period last year and 62% over the same period in FY 2014.

According to data obtained from the Department by the Associated Press, about 80 percent of the 71,000 mostly Central American minors who crossed the U.S. border in 2014 were placed by the government with adults or sponsors who were in the country illegally. Clearly, someone is paying the smugglers to bring the unaccompanied alien children to the border. Participating in alien smuggling is a felony under section 274(a)(1) of the Immigration and Nationality Act. Some would say that in many cases these smugglers are being paid by the minors' parents and family members, currently residing in the United States.

Is your agency, or anyone else in the Department of Homeland Security, "following the money" and then prosecuting or removing the persons determined to have financed the smuggling of the minors?

Answer. As the largest investigative agency in the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is charged with protecting national security and public safety by enforcing the Nation's immigration and customs laws. Combating human smuggling is a core mission priority of ICE Homeland Security Investigations (HSI) and U.S. Customs and Border Protection (CBP). The Department has, and will continue to, target transnational criminal organizations to hold them accountable for their actions and help prevent illegal and dangerous migration.

One of ICE's tools in combatting transnational criminal organizations is to focus on financial facilitation. Seizing the funds that motivate and fuel criminal activity is a high priority for ICE. ICE HSI has identified a multitude of methods through which human smuggling organizations hide, move, and store proceeds associated with illegal activity. Human smuggling organizations have unique money laundering footprints or patterns that must be addressed specifically. These patterns include the utilization of money services businesses (MSBs) and funnel accounts to facilitate and conceal illicit payments.

Interstate funnel accounts provide efficient and hard-to-detect means for human smugglers to transfer their illicit proceeds rapidly from the interior of the United States to the U.S. States bordering Mexico. Funnel accounts are simple bank accounts that are opened in financial institutions located in southern U.S. border regions. These accounts receive regular cash deposits from remote branches that are usually located in interior States. The deposits tend to be anonymous counter deposits that are of relatively low value so they do not exceed Bank Secrecy Act reporting thresholds. Once enough deposits are made into the account and the funds are recognized by the host financial institution, a nominee for the account will withdraw the funds in relatively small increments, similarly evading Federal reporting thresholds. The withdrawn funds are then smuggled south across the border into Mexico.

MSBs are financial institutions that enable the swift and efficient movement of funds from one geographic location to another. Unlike bank customers, MSB users are not required to maintain committed, long-term financial relationships with the MSB. Because of this, MSB users often perceive that they have greater levels of financial privacy. These characteristics combine to make MSBs particularly attractive means by which human smugglers move their illicit proceeds.

Operation Coyote was ICE HSI's response to the surge in unaccompanied children and other migrants from Central America in 2014. The operation was created and designed to combat the financial aspect of human smuggling, and is focused on targeting and identifying criminal organizations that utilize funnel bank accounts to move illicit proceeds. Information and evidence collected during the course of Operation Coyote has led to the conclusion that nearly all human smugglers move unaccompanied children.

ICE and its DHS partners pursue the removal of aliens in all cases deemed appropriate and according to policy.

Question. How many, if any, such cases has CBP investigated?

Answer. Since 2012, ICE HSI has investigated 30 human smuggling or trafficking cases that involved the use of interstate funnel accounts as a means of financial facilitation. Since 2005, ICE HSI has investigated 49 human smuggling or trafficking cases that involved MSBs as a means of financial facilitation.

ENTRY/EXIT OVERSTAY REPORT

Question. In January 2016, CBP published the long-awaited "Entry/Exit Overstay Report" for fiscal year 2015. The report lists, country by country, the percentage of visitors who overstay their visas. The Department of Homeland Security had dragged its feet on publishing the report for many years. What finally made the Department publish it was a provision in the Consolidated Appropriations Act of 2016 prohibiting the release of $13,000,000 for the Office of the Secretary of Homeland Security until both the overstay report and the comprehensive plan for implementation of the biometric entry and exit data system are submitted to Congress. Significantly, the appropriations act requires that the overstay report include statistics on overstays from all nonimmigrant visa categories.

When will CBP publish a complete overstay report, with overstay statistics for all visa categories, not just for the tourist and business visitor categories?

Answer. The Department released the fiscal year (FY) 2015 Entry/Exit Overstay Report after addressing concerns it had about the quality and completeness of the data that had been collected. In the FY 2016 report, CBP plans to address additional nonimmigrant classes, including:

- Addition of the foreign student exchange visitor population to the report (F, M, and J nonimmigrant admission classes);
- Addition of other nonimmigrant admission classes (such as H, O, P, and Q nonimmigrant admission classes); and
- Addition of land related overstay populations.

This summer, CBP, ICE, and USCIS have successfully implemented data system changes that will allow reporting of these additional visa categories. CBP is now working to add historic FY 2016 data from the systems in ICE and USCIS into the Entry/Exit reporting capability. CBP anticipates being able to develop a full set of FY 2016 data on these additional visa categories.

Question. Since the overstay report does not include data on overstays in all visa categories, do you agree with me that the report fails to satisfy the requirements set forth in the FY16 omnibus appropriations act and that, therefore, the Office of Management and Budget should not release the $13 million in funding for the Secretary's office?

Answer. CBP believes this report is responsive to the requirements in the FY 2016 omnibus appropriations act, as the FY 2015 Entry/Exit Overstay Report provided country-specific overstay statistics on all visa categories that CBP data systems were technically able to report on at that time. This report covers approximately 85 percent of all nonimmigrant travelers arriving via air or sea.

BIOMETRIC ENTRY/EXIT PLAN

Question. On April 20, 2016, U.S. Customs and Border Protection published its "Comprehensive Biometric Entry/Exit Plan." The report describes the agency's strategy for implementation of a biometric exit system that would apply to all travelers departing the United States. The strategy takes into account the $1 billion in funding for biometric exit that was made available in the fiscal year 2016 Omnibus Appropriations Act.

As I understand the report, CBP will be in a position to begin implementing a biometric exit system in 2018, but only at the highest volume airports, and focusing initially on only high-risk flight departures. So when 2018 rolls around, at best we might have implemented biometric exit at a few airports, and even then, for only a few high-risk flights at that limited number of airports. Is my understanding correct?

Answer. CBP will begin deployment of biometric exit in FY 2018, starting with the largest gateway airports. CBP does not plan to limit biometric exit to only "high-risk" flights, but will deploy biometric exit in a manner that covers all departing international flights from airports that support biometric exit.

Question. Do I further understand the report correctly that the $1 billion provided by the FY 2016 Omnibus Appropriations Act is not sufficient to reach that 2018 implementation goal and that additional, up-front funding is required? If so, can you please provide me with details of the cost assessment upon which you are basing this need for additional funding?

Answer. The $1 billion provided by the FY 2016 Omnibus Appropriations Act will significantly advance CBP's deployment of biometric exit. However, not all of the $1 billion is available right away or provided to CBP in a single allotment. The $1 billion is derived from the fees paid by petitioners for H–2B and L–1A visas, and will accrue over 10 fiscal years. CBP expects the fund to provide about $86 million at the start of FY 2017, and provide an estimated $115 million at the start of FY 2018.

Fee funding for FY 2017 and FY 2018 is sufficient for CBP to begin deploying biometric exit in FY 2018. No additional "up-front funding" is required to begin work.

QUESTIONS SUBMITTED BY HON. JOHN CORNYN

DUTY DRAWBACK RULES

Question. Section 906: Drawback. As you know, Congress recently passed trade legislation which included simplification of the duty drawback rules. This culminated a long, 10-year process where industry worked closely with Customs to simplify rules that will save both the public and private sectors money by improving administration of this export promoting law. I have constituents that utilize the duty drawback program and in order to prepare for filing claims two years after the date of enactment, by 2018, they must have time to reprogram their systems. In order to do so in a timely manner, they need assurances that Customs will work with the industry to develop regulations within 12–18 months, and meet regularly with the industry to discuss your agency's view on the new law and the development of regulations.

I have heard concerns from my constituents about section 906 with respect to the new calculation of claim language. Can you provide assurance that a meeting with the industry will occur in the near future and that the new regulations can and will be completed in the next 12–18 months?

Answer. CBP has formed a working group with both government and trade representatives to address all of the new provisions laid out in section 906. Besides recent outreach efforts with the trade through teleconferences, the Automated Commercial Environment (ACE) Trade Support Network, and a recent meeting of the American Association of Exporters and Importers, the new working group is scheduled to meet this Fall specifically to address new regulations to implement section 906 of the law. CBP is still digesting all of the provisions contained in section 906 of the law, not the least of which is the requirement for CBP to develop a method to properly calculate the amount of Drawback. The trade community has indicated to CBP that this is a concern, and CBP will continue to engage industry through the new working group. CBP must significantly revise the current regulations on drawback to implement section 906 of the law. The drafting process is ongoing and involves collaboration among our legal, policy, operational and ACE programming experts. New regulations will be issued as quickly as possible.

CBP RESOURCE PLANNING AND FORECASTING

Question. As an agency engaged in critical border security and trade facilitation functions, it is vitally important that CBP allocate resources and personnel based on both current and anticipated needs.

To what extent is CBP's Workload Staffing Model, Land Port of Entry (LPOE) Construction Plan, or other agency planning or forecasting tools based on anticipated business or trade activity?

Answer. OFO's Workload Staffing Model (WSM) incorporates the WSM baseline analysis, staffing requirements related to planned facility expansions or enhancements, staffing efficiencies or requirements related to planned technology deployments, and requirements for conservatively projected growth in travel and trade volumes. For FY 2017, this projection for trade and travel volumes was 3 percent.

A key element of CBP enforcement strategy is a network of 110 land ports of entry (LPOE) encompassing 167 separate crossings along both borders. CBP utilizes a robust methodology known as a Strategic Resource Assessment (SRA) to determine those LPOE facilities most in need of capital improvements. Generally, the SRA process gathers internal and external stakeholder feedback regarding operations, volume and facility conditions at each LPOE through questionnaires, interviews and other avenues. The feedback and data collected are then put into a prioritization scoring methodology to achieve an objective ranking of the LPOEs that is then used to determine the level of investment needed to bring a location up to current mission standards. CBP completed the most recent SRA effort in FY 2015.

More specifically, the current SRA scoring methodology employs weighted scaling across four distinct criteria as shown in Table 1:

Table 1: SRA Scoring Criteria and Weights

Criterion	*Weight*
Mission and Operations	35%

Table 1: SRA Scoring Criteria and Weights—Continued

Criterion	*Weight*
Security and Life Safety	25%
Space and Site Deficiencies	25%
Personnel and Workload Growth	15%

The Mission and Operations criterion measures the facility's compatibility with specific inspection responsibilities; Security and Life measures the facility's ability to protect occupants and visitors while allowing law enforcement functions to occur; Space and Site Deficiencies references the space available and site of the LPOE related to the functional work environment; and Personnel and Workload Growth measures current personnel levels along with current and projected workload categories that will require additional personnel and space.

It is this last criterion, Personnel and Workload Growth, which addresses anticipated increases in traffic by evaluating changes in traffic volumes and patterns over the previous 3 years, and assessing regional and national patterns of growth, including regional economic assessments and traffic forecasting and trends, such as asylum seekers. This evaluation, in conjunction with inputs from the Workload Staffing Model (WSM), is used to forecast anticipated growth for a future 10-year period. This forecast is then fed back into the SRA model to determine overall LPOE infrastructure investment needs.

Question. How does CBP anticipate trends driven by private-sector decision-making?

Answer. Emerging trade and global supply chain trends are garnered from CBP's regular engagement with the Commercial Customs Operational Advisory (COAC) Committee, Trade Support Network (TSN), and key trade and travel associations.

INFORMATION SHARING WITH TRADE COMMUNITY PARTNERS

Question. If CBP could receive business forecasts from private industry, would the agency have a strategy for utilizing this data to better inform resource allocation decisions and future traffic flows?

Answer. One component of CBP's strategy for its Workload Staffing Model (WSM) is to improve its methodology for predicting and forecasting workload and volume. Receiving business forecasts from private industry could possibly be incorporated into the agency's approach for informing resource allocation decisions. CBP has had discussions with industry groups about this concept, and is currently awaiting a draft project outline from one industry group. CBP would need to thoroughly and carefully review any forecast data received from private industry prior to using it for resource allocation or resource request purposes. CBP currently must defend the validity of its own data against Department and Congressional auditors. Therefore, CBP would proceed very carefully before basing resource-related recommendations and requests on third-party data.

Question. How would CBP work with private-sector, nonprofit institutions, and international equivalent agencies, to establish and implement such an information sharing regime with trade community partners that better informs agency resource management?

Answer. CBP's Office of Trade Relations is in continuous communication with industry sectors impacted by its mission. A primary part of our outreach and communication plan includes webinars and roundtables used as methods of bi-directional education with the domestic and international trade community as well as partner and international government agencies. CBP has implemented Centers of Excellence and Expertise (CEE) to integrate management-by-account principles and allows CBP trade personnel to specialize in a key industry, by building advanced knowledge in the intricacies of particular products and processes. Communication and outreach efforts have enabled CBP to better understand the trends and needs from industry.

PROTECT CONFIDENTIAL BUSINESS INFORMATION

Question. What methods might CBP use aggregate data and protect confidential business information?

Answer. Any confidential business information submitted by the trade community to CBP is protected by the Trade Secrets Act and the Privacy Act and adheres to DHS privacy policies. There are strict guidelines and procedures put into place to guard this information from release/misuse.

Fair Information Practice Principles (FIPPs)

In 2008, DHS issued a policy declaring the eight Fair Information Practice Principles (FIPPs) as the foundation and guiding principles of the Department's privacy program. The FIPPs were formed from the foundations of the Privacy Act of 1974, and memorialized in the National Strategy for Trusted Identities in Cyberspace.

On February 12, 2013, the President signed an Executive Order on Improving Critical Infrastructure Cybersecurity (Executive Order) (learn more about the White House's ongoing cybersecurity policies). Section 5 of the Executive Order directs the DHS Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties to issue an annual report using the FIPPs to assess the Department's cyber operations under the Executive Order. As Deputy Attorney General James M. Cole explained during the public presentation of the Executive Order, the FIPPs are "time-tested and universally recognized principles that form the basis of the Privacy Act of 1974 and dozens of other Federal privacy and information protection statutes."

The Executive Order also directs the senior agency privacy and civil liberties officials of other agencies engaged in activities under the order to conduct their own assessments for inclusion in the DHS public report. In 2010, DHS issued a White Paper on Computer Network Security and Privacy Protection to provide an overview of the Department's cybersecurity responsibilities, the role of the EINSTEIN system in implementing those responsibilities, and the integrated privacy protections.

For further information, see this link: *https://www.dhs.gov/sites/default/files/publications/privacy_cyber_0.pdf.*

ANZALDUAS INTERNATIONAL BRIDGE COMMERCIAL TRAFFIC

Question. Since January 2015, the Anzalduas International Bridge has been fully permitted to facilitate international commercial traffic between the U.S. and Mexico. However, delays and inaction by U.S. Federal agencies, as well as counterparts in Mexico, have forced local governments to take unprecedented steps to initiate the first phases of commercial traffic (expected to focus on unladen or "empty" commercial vehicles headed southbound toward Mexico), including funding infrastructure improvements in Mexico and signing a historic agreement to share bridge revenue among public entities in both countries. Despite the concerted efforts of local leaders, the Anzalduas International Bridge has still, to date, been unable to conduct even limited commercial traffic.

Is your agency aware of the requirements that Mexico and its governmental agencies have imposed on the Anzalduas Bridge Board and the local governments that the Board represents?

Answer. Yes, CBP was made aware of the requirements that Mexico and its governmental agencies have imposed on the Anzalduas Bridge Board and the local governments that the Board represents.

Question. What specific and credible steps is CBP taking to assist the efforts of the Anzalduas International Bridge to initiate the first phases of commercial traffic?

Answer. CBP met with the Anzalduas Bridge Board and representatives from the U.S. Department of State, U.S. Department of Transportation, U.S. General Services Administration and the Government of Mexico on June 13, 2016, to discuss commercial expansion plans at the Anzalduas International Bridge. CBP will be working with the Anzalduas Bridge Board, as well as U.S. and Mexico partners to develop a roadmap of forward looking milestones, activities, and timelines to help facilitate and organize future commercial expansion efforts. Once that roadmap is developed CBP will have a clearer understanding of what specific and credible steps it can take in order to assist the Anzalduas Bridge Board.

The Anzalduas International Bridge is now open to southbound empty commercial vehicles. The first vehicles crossed on August 22, 2016. The Binational Bridges and Border Crossing Group and the U.S.-Mexico Joint Working Committee on Transportation Issues continues to progress toward commercial facilities at Anzalduas. (*http://www.krgv.com/story/32817469/cities-expected-to-benefit-from-anzalduas-bridge-expansion*)

BRIDGE BOARD DONATING INFRASTRUCTURE IMPROVEMENTS

Question. I understand the Bridge Board has communicated their interest in donating to the Federal Government certain infrastructure improvements to the Land Port of Entry (LPOE) to accommodate inbound commercial vehicles, with initial project phases focused on infrastructure and technology improvements necessary to process unladen or "empty" northbound commercial vehicles. In light of the substantial commitments local sponsors have already agreed to with CBP and the Government of Mexico, how would your agency work to expedite such a proposal, to ensure an opportunity to improve binational trade and commerce is not hamstrung by administrative red tape?

Answer. CBP understands that the Anzalduas Bridge Board plans to submit a formal donation proposal for consideration during the next proposal submission period which is scheduled to open in October 2016. CBP traveled to McAllen, TX on June 22, 2016 to discuss the Anzalduas Bridge Board's proposal plans and will continue to work with them to develop and submit a successful and viable proposal. Moreover, CBP is already exploring its operational, infrastructure and technology requirements for northbound empty improvements to help facilitate planning and development activities should the Anzalduas Bridge Board's proposal be approved.

LAREDO PRE-INSPECTION PILOT

Question. Last year, CBP, in cooperation with counterparts in Mexico, launched a pilot program at the Laredo International Airport to pre-inspect certain Mexico bound automotive, electronics, and aerospace component parts. This is the only operation of its kind outside of the Mexico City International Airport.

What levels of pilot program participation has your agency observed at Laredo, and how has that compared to other pre-inspection pilot sites in the United States and Mexico?

Answer. Mexico Customs is the lead government agency for the Laredo pre-inspection pilot, as this pilot involves cargo destined to Mexico. The level of company participation has been modest; eight companies that were able to pass all of Mexico Customs vetting requirements for participation. A few additional companies are going through the vetting process, but CBP is not aware of the status of those companies.

CBP and Mexico Customs are working very well together inspecting multiple shipments destined for Mexico in Laredo.

As you are aware, the only other cargo pre-inspection pilot CBP is currently conducting with Mexico Customs is at their Mesa de Otay, Mexico customs facility. Since the two locations were limited to specific vetted participants, we did not see a large increase in the number of participants. We believe there are no more than 10 participants for the Mesa de Otay pilot.

CBP and Mexico Customs are working very well together inspecting multiple shipments destined for the United States in Mesa de Otay.

Question. What benefits, in terms of reduced processing or wait times, has CBP found during the first 6-months of the Pre-Inspection Program? How is your agency working with stakeholders in both countries to ensure that the Laredo pilot is a success?

Answer. For shipments that originate from the United States destined to Mexico, CBP understands from Mexico Customs that a reduced processing time is observed once cargo arrives in Mexico. Since the cargo is inspected in the U.S., there is normally no need to conduct another inspection once it arrives in Mexico. Again, this pilot in Laredo involves Mexico Customs inspecting goods destined for Mexico.

CBP and Mexico Customs have conducted multiple stakeholder events and we understand that Mexico Customs plans to adjust their strict vetting requirements that would allow additional companies to participate.

EXPAND PRE-INSPECTION PROGRAM

Question. Is CBP considering steps to make the pre-inspection program permanent or expand it to add additional pilot sites? If so, what criteria will the agency use to determine the best ports of entry to develop and deploy an expanded pre-inspection regime?

Answer. CBP is working with Mexico Customs to evaluate the three locations that were agreed upon under the pilot. Once the pilots are concluded and the results are validated, CBP leadership will evaluate next steps.

If the decision is to expand and make the pilot permanent, CBP will develop a list of criteria to determine locations. Cost to place employees on foreign soil will definitely be one of the criteria used.

Mexico Customs will decide if this pilot works for them and then decide on the next steps. Air cargo seems to be the best approach for them.

WEST RAIL INTERNATIONAL BRIDGE

Question. Recall that last year, the United States and Mexico inaugurated the West Rail International Bridge between Brownsville and Matamoros, the first international rail bridge between the United States and Mexico in over a century. One of the key challenges to reaching this historic achievement was resolving the deployment of vehicle security screening and inspection.

How has CBP worked to build on the innovative image and information sharing partnership, entered into with Mexican Aduanas as part of the initiation of international traffic at the West Rail Bridge, to improve communication and collaboration between customs agencies in both countries?

Answer. CBP and Mexico Customs have had multiple discussions on possible future locations for image data sharing. At a rail crossing in California/Baja California, Mexico Customs does not have a rail x-ray imaging system. The idea would be to install the necessary equipment for Mexico Customs to remotely view the images. Since this is something that Mexico Customs wants, we have asked for them to fund this project. CBP is standing by to see if they can fund such technology. Future acquisitions for CBP rail inspection technology will include requirements to allow data sharing and remotely view imaging information.

Question. To what extent are current technologies at the West Rail facility and other international rail crossings fulfilling the security and trade facilitation needs of CBP?

Answer. Current rail imaging technology provides CBP with the capability to non-intrusively inspect inbound trains while transiting at all Southwest Border crossings. At the West Rail facility, CBP also has the capability to share Non-Intrusive Inspection (NII) data with our Mexican counterparts and leverage their data to examine trains prior to entry.

RAIL BRIDGE MAINTENANCE

Question. What steps are you taking to ensure equipment at rail bridge POEs like this one is not only maintained to full functional standards, but replaced when it reaches the end of its maximum useful life?

Answer. Current rail imaging technology provides CBP with the capability to non-intrusively inspect inbound trains while transiting at all Southwest Border crossings; however, the technology has been in place for an average of over 10 years. A key component of the Non-Intrusive Inspection (NII) technology recapitalization is to replace rail imaging systems with more capable technology via a new open, full procurement. The goal is to deploy an integrated solution that enables data sharing, increases the effectiveness of scanning, leverages advancements in technology and facilitates improved efficiency for both the rail industry and CBP operations.

PRESIDO-OJINAGA INTERNATIONAL RAIL BRIDGE

Question. State and local officials have worked to develop and implement a project to restore service to the arson-damaged Presido-Ojinaga International Rail Bridge. How has your agency coordinated with Texas leaders to proactively address the inspection technology and equipment requirements of a reconstructed Presidio bridge?

Answer. CBP Office of Field Operations have held initial discussions with the State of Texas regarding the Presido-Ojinaga International Rail Bridge. The State of Texas is aware of the general requirements for inspection technology and the associated facilities and for a rail inspection facility. CBP's existing Rail LPOE standard has been provided to the State of Texas with the caveat that the standard will be updated once the procurement for new rail imaging technology is completed.

Question. What best practices or lessons learned from the West Rail International Bridge experience might CBP apply to efforts to process traffic at the reinstated Presidio rail POE?

Answer. The West Rail International Bridge project spanned several years with the original design being completed many years prior to the start of construction. During the intervening years, CBPs facility design requirements were upgraded (per CBP's 3-year cyclical process). As a result, by the time construction was funded, the designs required upgrading to be in compliance with the most current standards. This increased the cost of the project.

In addition, the project experienced a delay due to uncertainty regarding the responsibility to fund the relocation of the rail x-ray system. Had this issue been resolved at the beginning of the project, the project might have been completed earlier. Going forward, funding responsibilities are to be clarified during the programming phase, prior to the start of design.

Since the construction project was a County-funded project rather than a CBP-funded project, CBP's involvement in the early stages of the project was minimal. Going forward, CBP will work with local stakeholders starting at project inception through construction to ensure stakeholder plans are in compliance with CBP's requirements so as to prevent delays and equally important, adverse impact to the LPOE operations.

CROSS BORDER TRADE ENHANCEMENT ACT

Question. As you may know, I authored a bill to provide innovative partnerships between border communities and businesses to boost staffing and improve infrastructure at our land ports of entry. The bill, S. 461, the Cross Border Trade Enhancement Act, has been amended to reflect the input of various members and stakeholders and was recently passed by HSGAC prior to the Memorial Day recess.

Texas communities have shown that they can't wait to meet the resource needs at our ports of entry, and have been leading efforts to partner with CBP to improve staffing and modernize infrastructure at our ports of entry using their own resources. What steps is your agency taking to improve administration of existing partnership programs to achieve even better results, and will you support my legislation to standup a more permanent framework that better meets the needs of your agency as well as my constituents?

Answer. CBP continues to expand and mature its capacity to explore infrastructure and staffing partnership opportunities through its Donations Acceptance and Reimbursable Programs. In June, the Donations Acceptance Program announced that three new proposals had been approved for further planning and development and has recently implemented a new process by which to accept and evaluate small scale proposals valued at $3 million or less on a year-round basis. The Reimbursable Services Program has also made significant strides towards expanding its capacity and announced 29 new selections for reimbursable services agreements on June 23rd, a number of which are located in Texas. CBP has and continues to collaborate with its stakeholders to explore new opportunities to improve the implementation and administration of its Donations Acceptance and Reimbursable Services Programs.

CBP is supportive of legislation that establishes a more permanent legislative framework, and commits to working with your office and other Members of Congress to support authorities that provide the Federal Government with full flexibility to explore, foster, and facilitate partnerships for infrastructure and staffing improvements.

BORDER WAIT TIMES

Question. Along with then-Senator Hutchison, I requested a GAO Report on CBP border wait time collection practices, responding to concerns from border communities and businesses that current agency processes were antiquated and failing to keep pace with increasing trade volumes. The final 2013 report outlined serious flaws in agency practices, including: poor wait time collection methods; a lack of progress toward automated data collection; and an overall absence of trade facilitation-related metrics for guiding agency resource allocation decisions. Since the report was issued in July 2013, CBP has struggled to fully implement the GAO's recommendation to improve and modernize data collection practices. One option for improving data on Texas border wait times that CBP has evaluated is leveraging an existing automated wait time collection system (Border Crossing Information Sys-

tem, operated by the Texas A&M Transportation Institute) toward the existing Border Wait Times online platform. CBP has discussed a maintenance and funding strategy with the Federal Highway Administration as well as TxDOT, but has thus far not committed resources.

As you may know, wait times at the Texas-Mexico border are a concern for Texas border communities, as well as binational trade and commerce. How is your agency working to improve the methods it uses to collect wait times along the Southwest Border and move toward automated, technology-based solutions, like those we have piloted in Texas?

Answer. CBP and the Federal Highway Administration (FHWA) have assessed the feasibility of replacing current manual methodologies for calculating commercial vehicle wait times with automated methods. CBP and FHWA recommended enhancements to leverage the existing automated wait time collection system—the Border Crossing Information System, operated by the Texas A&M Transportation Institute. The enhancements were completed in 2016.

In July 2016, CBP committed additional resources via an Interagency Agreement with FHWA to continue the operations and maintenance of the seven automated RFID wait time collection system in Texas through FY 2017 in order for CBP to perform final ground truth data verification on the accuracy of the data being collected.

The automated commercial vehicle wait time measurement solution is currently deployed at eight southern border crossings: seven in Texas and one in Nogales, Arizona. The RFID solution captures wait times every 10 minutes using benchmarks identified by CBP (*e.g.,* exit from toll booths or Aduana Mexico):

- Veterans Memorial Bridge (Brownsville, TX),
- World Trade Bridge (Laredo, TX),
- Pharr-Reynosa International Bridge (Pharr, TX),
- Colombia Solidarity Bridge (Laredo, TX),
- Bridge of the Americas (El Paso, TX),
- Yselta/Zaragosa Bridge (El Paso, TX),
- Camino Real International Bridge (Eagle Pass, TX), and
- Mariposa Port of Entry (Nogales, AZ).

The system will begin measuring automated wait times at the Mariposa Port of Entry in Nogales, AZ in the 4th Quarter of FY 2016. Mariposa is the first crossing location in the State of Arizona to collect automated wait times. The FHWA has also funded a new border wait time study for the New Mexico-Chihuahua, Mexico border which is expected to begin by the end of October 2016. With this recent study, FHWA has funded border wait time studies for all four southern U.S. border States. It is anticipated that the automated commercial vehicle Radio Frequency Identification (RFID) wait time measurement solution will provide CBP with accurate and reliable commercial vehicle wait time data, eliminating the need for the port to manually calculate wait times. The eight crossings outfitted with RFID wait time technology will enable CBP to capture wait times for nearly 70 percent of commercial traffic on the Southwestern Border. (The TTI website may be accessed at *http://bcis.tamu.edu/index.aspx*).

Beginning on October 24, 2016, the DHS Science and Technology (S&T) directorate will be performing an independent verification on the accuracy and reliability of the RFID solution. Pending verification, CBP will coordinate efforts to develop communication protocols to automatically update the commercial wait time data on the CBP Mobile Border Wait Time website and Border Wait Time app.

CBP is also moving forward with developing a data-driven wait time measurement solution (*i.e.,* no hardware deployment required) for measuring privately owned vehicle wait times. The data-driven solution takes advantage of travel data (*i.e.,* Floating Car Data) derived from the public sector and CBP's vehicle throughput data.

The data-driven solution will enable CBP to provide wait time and mapping data to the traveling public in near real-time, allowing the traveler to make an informed decision on when and where to cross the border. The solution is currently collecting test data at nine crossings along the northern and southern border.

Due to the complexity of the commercial vehicle environment, the data-driven solution pilot will only focus on private vehicles at this time.

CBP is committed to implementing an automated wait time solution for both commercial and privately-owned vehicles along high-volume northern and southern border crossings and will continue to work collaboratively with our border partners to identify innovative solutions to reach this goal.

QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

DRUG INTERDICTION

Question. You testified in September 2015 at a Senate Homeland Security Committee field hearing that seizures of illicit fentanyl had risen substantially in the last 3 years. Despite the increased enforcement actions, there has been a dramatic and disturbing increase in overdose deaths attributable to illicit fentanyl and other synthetic drugs. The Drug Enforcement Administration (DEA) suggests much of the illicit fentanyl and other drugs are arriving from China, either directly or through Canada and Mexico.

Why in your view has it been so hard to detect and seize these drugs before they do harm to U.S. citizens?

Answer. CBP employs a multilayered approach to border security, utilizing advanced data, trend analysis, tactical intelligence and automated targeting systems to identify high-risk cargo, conveyances, and passengers for secondary examination.

The primary challenges to intercepting synthetic narcotics, such as illicit fentanyl, include the identification of synthetic narcotic compositions, the lack of advanced targeting or analysis in international mail and the ability of laboratories to change the chemical compositions of substances once deemed to be illegal. Standard field test kits do not accurately detect fentanyl. Many fentanyl shipments are smuggled into the United States as mixtures that are difficult to identify using field equipment with personnel without the requisite scientific training. Regarding pure fentanyl, the field equipment currently in use have librairies that may identify a pure laboratory form of fentanyl but has trouble identifying street grade forms of fentanyl. It must also be emphasized that fentanyl analogues are extremely potent and must be handled very carefully, making field examination more difficult than other scheduled narcotics.

CBP has improved its effectiveness with detecting and seizing other narcotics. CBP is deploying a new field detection technology at the port of Otay Mesa, the express consignment hubs, and the International Mail Facilities (IMF). This new technology allows CBP's labs to remotely and rapidly analyze sampled narcotics to more accurately determine the substance. Within the International Mail environment, service providers are not required to provide CBP with any advanced manifest information. This lack of advanced data significantly impacts CBP's ability to identify and target high-risk packages prior to arrival. Without the pre arrival risk assessment, intercepting illicit contraband is left to Officers manually sorting for identification and manifest information.

Due to the wide range of chemical compositions, law enforcement generally has difficulty identifying synthetic narcotics. Once the chemical composition is deemed "illegal" it is placed on the scheduling list.

Question. How do you determine whether CBP is effective at interdicting illicit fentanyl and other synthetic drugs?

Answer. CBP has had successes interdicting illicit fentanyl and other illicit synthetic drugs. During fiscal year (FY) 2016 until the end of August, CBP seized 173.78 kilograms of fentanyl. This is a 152.77 percent increase in the amount seized (68.75 kilograms) during the same time frame in FY 2015. As technology improves allowing CBP to more accurately assess the contents of packages and shipments into the United States, our interdiction rates will improve. Robust cooperation from our law enforcement partners in Mexico and the Peoples Republic of China will also greatly enhance our ability to interdict illicit fentanyl and other illicit synthetic drugs.

TRADE AND GOODS RELATIONSHIP

Question. Is there any relationship between the volume of licit trade flows through U.S. ports of entry and the volume of illicit contraband goods flowing through those same ports of entry?

Answer. In general, the more trade and travel any given POE processes, the more likely that POE is to seize illicit contraband; however, beyond this generalization, CBP is not aware of any direct relationship between individuals and organizations involved in licit trade and the volume of illicit contraband seized.

CHINESE HELP

Question. On October 1, 2015, the Chinese Ministry of Public Security (MPS) Narcotics Control Bureau announced the sale and distribution of 116 chemical compounds used in the production of synthetic drugs will be regulated in China, including acetyl-fentanyl. Part of the challenge to stopping the flow of controlled substances is the ability of chemists and drug gangs to slightly manipulate the molecular structure of a chemical to circumvent the law. Despite recent efforts by the Chinese government to stop the export of fentanyl, what else do you believe the Chinese could do to help stop the large quantities of acetyl-fentanyl and other dangerous, illegal substances that are continuing to flow into our country?

Answer. Most direct shipments of acetyl-fentanyl to the United States from China arrive as air cargo or in postal shipments. Advanced information is voluntarily provided by carriers participating in the Air Cargo Advance Screening (ACAS) pilot, but only for conventional air cargo and express consignment shipments. Pre-loading advance data for postal shipments is not yet available. Because of the unique nature of the postal data supply chain, postal shipments were not included as part of the ACAS pilot. If China could provide export data on acetyl-fentanyl shipments destined to the United States by air, or information on suspected shipments, this information may be helpful to CBP air cargo targeting efforts. As most chemical manufacturers of acetyl-fentanyl in China are state-owned enterprises, it may also be possible for these companies to provide to CBP the export data for shipments of this chemical, and its various related formulations, to U.S., Central American and Mexican addresses. China's General Administration of Customs, could also provide more complete information about the results of its Container Security Initiative-requested container inspections, to improve CBP's targeting efforts.

DRUG FLOW

Question. While you were Director of the Office of National Drug Control Policy between 2009 and 2014, was the flow of illicit fentanyl and other synthetic drugs, including new psychoactive substances, a concern?

Answer. Yes, synthetic drugs such as illicit fentayl and new psychoactive substances, were a significant concern. In fact, two primary objectives of the interagency visit to China I led in September 2012 were to encourage China to address methamphetamine precursor chemicals and synthetic drugs to include new psychoactive substances. To follow up our constructive conversations in Beijing and to ensure that they fully understand our message I sent a follow up letter to China's Ministry for Public Security dated December 12, 2012. This letter specifically noted that a ". . . priority issue for the White House is the control of new psychoactive substances."

Question. What policies did you try to put in place as drug czar to limit the import of illicit fentanyl?

Answer. When I served as ONDCP Director, I worked with my interagency colleagues, in multiple forums, to encourage producing countries—primarily China—to ban production and transshipment of synthetic drugs and precursors, as well as illicit fentanyl. In 2013, ONDCP began to receive discrete reports from High Intensity Drug Trafficking Areas detailing heroin and fentanyl related overdoses. Data was inconclusive, therefore ONDCP asked DEA to coordinate data sets with the HIDTAs to better assess fentanyl use.

My staff and I also worked, in collaboration with the Department of State and the Drug Enforcement Administration, to improve the exchanges of information about effective approaches to controlling synthetic drugs with key partners, including the European Union, the United Kingdom, Sweden, Australia, and New Zealand. Many of these conversations occurred on the margins of the annual Commission on Narcotics Drugs meetings in Vienna where synthetic drugs including new psychoactive substances had become a high priority concern of many nations.

TARIFF EVASION REPORT

Question. Since 2008, the Department of Commerce (DOC) and the International Trade Commission (ITC) have enacted or extended 130 anti-dumping/countervailing

duty (AD/CVD) orders on imports of illegally subsidized Chinese products. These orders are important to some of my constituents who compete directly with Chinese manufacturers. Unfortunately, many constituents—particularly producers of steel and paper products—inform me that importers often evade AD/CVD orders by falsifying country-of-origin labels and other import documentation. Tax fraud is always problematic, but it is especially harmful in this instance because it negates the legal remedies my constituents have obtained from the ITC.

In the past, CBP has provided Congress and other stakeholders with data on CBP's actions to combat tariff evasion. I ask that you provide my office with an updated report on the actions CBP is now taking to reduce tariff evasion, specifically for Chinese products covered by: ITC Investigation Nos. 701–TA–451 and 731–TA–1126–1127; and existing AD/CVD orders for product groups ISM, ISO, and ISP.

Answer. The enforcement of AD/CVD orders is a priority for CBP. CBP takes an agency-wide approach to enforcing AD/CVD orders, utilizing nationwide assets from across the agency to enforce AD/CVD. CBP employs multiple methods such as document reviews, cargo exams, audits, targeting and analysis, and scientific testing at the port, Centers of Excellence and Expertise, and national level to target AD/CVD evasion on imports subject to AD/CVD, including document reviews, cargo exams, audits, targeting and analysis, and scientific testing. CBP works in partnership with the trade community and other government agencies, including the U.S. Department of Commerce and U.S. Immigration and Customs Enforcement/Homeland Security Investigations.

The referenced ITC investigations refer to the AD/CVD orders on thermal paper from China. CBP is working in partnership with Commerce, ICE HSI and the U.S. thermal paper industry to enforce the AD/CVD orders on thermal paper from China. CBP has been requesting single transaction bonds from importers of thermal paper, due to suspected transshipment of thermal paper from China; conducting entry summary reviews and cargo exams of thermal paper imports; auditing thermal paper importers; and working with foreign customs authorities to obtain information about shipments that have potentially been transshipped to evade AD/CVD liability. In November 2015, CBP personnel visited the facility of U.S. thermal paper producer Appvion in Dayton, Ohio, and has been regularly meeting with Appvion staff to obtain additional commodity expertise and market intelligence to enforce these AD/CVD orders on thermal paper from China.

CBP is currently taking enhanced steel enforcement measures by targeting steel imports (in product groups (Mill Products (ISM)), Other Products and Castings (ISO), and Pipe Products (ISP) to counter AD/CVD duty evasion. The enhanced steel enforcement measures include enhanced reviews of Chinese steel imports which will provide a statistically valid measure of risk of duty evasion, and provide targets for further enforcement. CBP is also requiring "live entry" for certain high risk steel shipments, which means that the importer must provide all entry documents and duties are required to be provided before cargo is released by CBP into U.S. commerce. The live entry requirements have already been implemented on certain shipments of steel plate from China, and CBP is examining other high-risk steel imports to determine if live entry is necessary. CBP is also increasing other operational measures on steel imports, including audits of steel importers.

CBP is also working with its North American partners to increase steel enforcement throughout North America. CBP, the Canada Border Services Agency (CBSA) and Mexico Servicio de Administracion Tributaria are initiating a trilateral customs dialogue at the North American Steel Trade Committee to discuss these efforts and additional collaboration in order to strengthen the North American position in the global economy. Additionally, CBP and CBSA recently developed an AD/CVD collaborative work plan on AD/CVD information sharing and cooperation, and CBP and the CBSA are collaborating on a joint steel operation. CBP is also exploring AD/CVD information sharing and potential joint trade enforcement operations with Mexico's Servicio de Administracion Tributaria to address threats to our respective economies.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, DC 20503

December 12, 2012

State Councilor Meng Jianzhu
Ministry of Public Security
No. 14 East Chang'an Street
Beijing 100741 China

Dear State Councilor Meng Jianzhu:

It was a great pleasure for me, as a White House official and Director of National Drug Control Policy, to lead an interagency delegation to the People's Republic of China September 10–14, 2012. We were very pleased with the constructive and substantive nature of our bilateral discussions and the warm hospitality with which we were received.

The United States intends to maintain regular, high-level cooperation with China on drug issues as a vital and permanent part of our bilateral relationship. In that context, the White House Office of National Drug Control Policy (ONDCP) looks forward to continuing our counternarcotics cooperation in accordance with the Memorandum of Intent we signed on September 12, 2012. To ensure that the important progress from our meetings in Beijing is maintained, I have shared our agreements and discussions on the topics below with the U.S. co-chairs of the U.S.-China Joint Liaison Group (JLG), who, as you know, have already built a good record of success on counternarcotics efforts.

- Precursor Chemical Control
  - During our meeting both sides highlighted the very productive efforts by China and the United States to combat pseudoephedrine/ephedrine-based methamphetamine production. However, the United States noted with concern that methamphetamine manufacturers have adapted and now the vast majority of methamphetamine consumed in the United States is manufactured through the phenyl-2-propanone (P2P) method using phenylacetic acid (PAA). The United States requested that China take steps to enhance scrutiny of shipments of PAA and related chemicals to Central American nations, and other states with no apparent legitimate need that might be used as conduits for illicit methamphetamine manufacturing producers.
  - The United States, China and other nations should accelerate the exchange of specific information about this new threat. The United States' Drug Enforcement Administration (DEA) office in China would be pleased to facilitate information exchange between China's Ministry of Public Security (MPS) and Western Hemisphere nations, as appropriate.
- New Psychoactive Substances
  - Another priority issue for the White House is the control of new psychoactive substances. This issue has previously been a discussion topic at the JLG counternarcotics working group, but requires added emphasis.
  - Synthetic drugs—primarily synthetic cannabinoids and synthetic cathinones—are widely used and have caused significant harm to U.S. citizens. Many of these substances are illegal controlled substances in the United States, but manufacturers continue to circumvent the legislation by producing new variants that are not yet subject to controls.
  - The United States would be interested in additional law enforcement operational exchanges on cases related to new psychoactive substances via our DEA office in Beijing. In addition, ONDCP, per our September 2012 Memorandum of Intent, would be pleased to exchange information concerning use of these substances.
- Trade-Based Money Laundering
  - During our discussions in Beijing, the U.S. side proposed, and China accepted in principle, that we increase cooperation on money laundering investigations.
  - We should build on the positive steps taken earlier this year when MPS and DEA completed a training exchange with officers from the Narcotics Control Board (NCB) regarding money laundering investigations.

- The U.S. Internal Revenue Service (IRS) delegation member proposed, and the MPS accepted in principle, an increase in bilateral law enforcement cooperation on the investigation of the transactions involving laundering of narcotic proceeds occurring in the United States and China. The IRS, assisted by Joint Interagency Task Force West (JIATF–West), hopes to share its enforcement experience with our Chinese partners in money laundering trends and methods to detect and investigate those offenses.

I thank you again for your outstanding efforts, and those of your entire team from the Ministry of Public Security, to ensure a productive and enjoyable visit by our delegation. If there are key points from our discussions that have not been included above, please let me know. I have directed my staff member, Richard Baum, who accompanied me on the trip and who works closely with your Ministry of Public Security representatives in Washington, to follow up on the issues raised on our visit. He can be reached at Rbaum@ondcp.eop.gov or by phone at 202–395–7221. Please feel free to contact me directly, or your staff may work through Mr. Baum, if ONDCP can be of assistance in any way.

I look forward to future engagements between our organizations.

Sincerely,

R. Gil Kerlikowske
Director

QUESTION SUBMITTED BY HON. TIM SCOTT

TARGETING METHODOLOGIES

Question. Effective and efficient trade enforcement is vital to upholding our free trade agreements and improving revenue collection. As you know, Customs' targeting methodology has not been disclosed with Congress in any meaningful way. To that end, I offered an amendment to the Trade Facilitation and Trade Enforcement Act of 2015 that required CBP to include in their strategic plan a description of the actual targeting methodologies used in enforcement activities.

Has Customs started to implement this provision? If not, what are your plans for implementation and how far along are you in that process?

Answer. CBP and U.S. Immigration and Customs Enforcement are currently in the process of drafting the Joint Strategic Plan and intend to submit this plan in accordance with the requirements outlined in the Trade Facilitation and Trade Enforcement Act of 2015.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

TRADE ENFORCEMENT TRUST FUND

Question. Commissioner Kerlikowske, H.R. 644, the Trade Facilitation and Trade Enforcement Act of 2015, included a provision I authored to authorize a $15 million Trade Enforcement Trust Fund specifically for the purposes of enforcement and capacity building with our FTA and World Trade Organization partners. I strongly believe that if we are going to have economically meaningful trade deals and high standard commitments from our partners, then we must make sure those partners actually live up to those commitments.

The Customs and Border Protection is on the front lines in the enforcement of our trade laws, specifically anti-dumping and countervailing duty orders, when we find that countries we are doing business with are trying to bend the rules. In addition to those laws, would you please explain the role that Customs and Border Patrol plays in enforcing the free trade agreements and WTO commitments that the United States is a party too?

Answer. U.S. Customs and Border Protection (CBP) plays an integral role in the implementation and enforcement of trade agreements and trade preference programs, which provide duty-free or reduced duty access to the U.S. market for qualifying merchandise. CBP works to ensure that the benefits afforded by the free trade agreements (FTAs) accrue only to eligible importations.

CBP utilizes a layered, multi-faceted approach to detect non-compliant shipments and deter violators. This layered approach includes data analysis and targeting, verification, and enforcement. CBP conducts extensive verifications of trade agreement preference claims (for both textile and non-textile imports) to ensure that the goods qualify under the agreement. CBP also utilizes collaborative partnerships with other Federal agencies, foreign governments and the trade community to more effectively enforce trade agreements.

Question. Do you have the resources you need to enforce these laws?

Answer. CBP utilizes its existing resources to best enforce free trade agreements and trade preference programs.

Question. What enforcement actions could CBP improve if given access to more funding?

Answer. CBP continues to explore new and innovative ways and methods to enhance and strengthen its trade agreement enforcement efforts and seeks to expand the use of existing tools with the available resources.

USTR FUNDING IN COORDINATION WITH CBP

Question. Would the funding made available to the USTR through the trust fund, in coordination with agencies like CBP, help you better enforce our trade agreements and improve economic outcomes here at home?

Answer. Any funding made available to CBP through the Trust Fund could only enhance CBP's capabilities to detect non-compliance and enforce trade agreements to ensure a fair and competitive trade environment. The Trust Fund is managed by USTR per section 611 of TFTEA that directs that USTR ". . . shall, on the basis of the advice of the Trade Policy Committee and relevant subordinate bodies of the TPC, use or transfer for the use by Federal agencies represented on the TPC amounts in the Trust Fund. . . ."

QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

ILLICIT ANTIQUITIES INTERDICTED

Question. We must take a whole of government approach to curb the means and mechanisms by which terrorist groups raise revenue to conduct operations, procure weapons, and pay salaries to fighters. The President recently signed into law the "Protect and Preserve International Cultural Property Act." This bill, which I sponsored in the Senate, authorizes the President to restrict the import of cultural artifacts illicitly smuggled out of Syria since the beginning of the conflict. This will help cut off a meaningful component of the way ISIS finances its operations and send an important signal to our partners in the region that we expect them to do the same. CBP will be instrumental in successful implementation of this legislation. I request responses to the following questions:

What is the annual volume of illicit antiquities that CBP has interdicted coming into the United States from 2011 to 2015?

Answer.

Fiscal Year	**Seizures**
2011	27
2012	15
2013	18
2014	13
2015	20

ANTIQUITIES IDENTIFICATION TRAINING

Question. Do CBP officers have sufficient training in identification of antiquities and their provenance documents? If not, what additional training is required to improve CBP officers' ability to effectively interdict smuggled antiquities?

Answer. CBP officers do not receive training specific to the identification of antiquities; however, the CBP Office of International Trade (OT) Cultural Property Integrated Project Team is working with CBP's Office of Field Operations (OFO) and the Office of Chief Counsel (OCC) to develop a training program. With regard to provenance documents, OT has always recommended that the documents be sent to U.S. Immigration and Customs Enforcement (ICE) for authentication depending on

the circumstances. OCC and OT are working on a directive and other implementing documents to provide agency guidance/policy on how to establish an antiquity's provenance.

U.S. Customs and Border Protection (CBP), Office of Field Operations, ensures that CBP Officers are trained on detecting prohibited goods entering the United States as part of their basic training. New hire CBP Officers receive training on Anti-Terrorism, Other Agencies, and Introduction to Travel Documents as part of their pre-academy preparation.

During the 19-week CBP Officer Basic Training, CBP Officers also receive training to address cultural property:

- Prohibited and Restricted Merchandise; and
- Seizure Processing.

CBP Officers also receive training during basic to address the anti-terrorism mission of CBP, as well as risk based targeting:

- Anti-Terrorism Overview;
- Anti-Terrorism, Risk Targeting, and Passenger; and
- Anti-Terrorism, Risk Targeting and Trade.

Finally, CBP Officers receive document fraud detection training through the following courses during basic:

- Analyzing Documents;
- Document Analysis and Questioning Lab;
- Primary Document Examination/Primary Document Examination Practical Exercise;
- Secondary Passenger Processing; and
- Secondary Document Examination.

Upon their return from basic academy, CBP Officers are then required to complete a post-academy curriculum over the remainder of their one-probationary period. The following modules revisit what was taught at basic and certifies the CBP Officer to work in the area:

- Primary Inspections;
- Secondary Inspections; and
- Processing Seizures.

The Forensic Document Analysis Unit (FDAU) distribute mandatory training to the field (*e.g.,* Border Security Coordinators, Tactical Analysis Units) each year with the latest trends in fraudulent documents and impostor detection in addition to alert bulletins.

CBP Officers have the authority to detain any item suspected of being cultural property and collaborate with CBP Import Specialists, Immigration and Customs Enforcement, Homeland Security Special Agents, and INTERPOL to confirm legitimacy, valuation, and ownership of the item before release or seizure.

Finally, the Office of Field Operations distributes musters and policy memoranda to be disseminated during shift musters to ensure CBP Officers have the latest information on trends and threats to our Nation.

TRAINING AND TECHNICAL ASSISTANCE TO FOREIGN PARTNER COUNTRIES

Question. What training and technical assistance does CBP offer to foreign partner countries on border control and identification of illicit goods, like IED precursor chemicals, drugs, weapons, and antiquities?

Answer. CBP's Office of International Affairs offers training and technical assistance to foreign partner countries, including the International Passenger Interdiction Training and International Border Interdiction Training and the Targeting and Risk Management (Land) Training. These training efforts are geared towards assisting our foreign partners increase their capability to manage border security operations and identify illicit materials and goods, including IED precursor chemicals, drugs, weapons, and antiquities.

Question. Are there any legislative or funding barriers to CBP offering this type of training?

Answer. Because CBP does not have title 10 or title 22 authority, and title 19 does not provide funding for foreign assistance, CBP collaborates with the Department of State to develop and implement all foreign training programs.

Question. What training and technical assistance does CBP and the Trade Transparency Unit offer to foreign partner countries on identification and interdiction of trade based money laundering?

Answer. U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations Trade Transparency Unit (TTU) provides law enforcement and customs agencies around the world information, assistance, and training on Trade Based Money Laundering (TBML). The training provided by the TTU ranges from the basic introduction to the concepts of TBML to development of complex TBML investigations. Most foreign countries are unable to conduct TBML investigations because they lack access to both sides of trade transactions and are unable to analyze big data. The sharing of data and access to the ICE analytical system are two of the benefits provided in TTU partnerships. Bulk data analysis may be one of the key factors in identifying the illicit movement of antiquities and cultural artifacts. ICE has had initial discussions with the U.S. Department of State's Cultural Heritage Center on TBML, suspected illicit goods, and utilizing big data as a means to disrupt ISIS finances.

TRADE-BASED MONEY LAUNDERING

Question. What is the annual number of investigations CBP initiated concerning trade-based money laundering from 2011 to 2015?

Answer. U.S. Customs and Border Protection (CBP) and U.S. Immigration Customs Enforcement (ICE) Homeland Security Investigations (HSI) coordinate extensively on investigations involving cultural antiquities, trade-based money laundering. Specifically, between 2011 and 2015, ICE HSI initiated 1,029 trade-based money laundering cases.

ICE HSI Trade-Based Money Laundering Cases Initiated

	Fiscal Year				
	2011	2012	2013	2014	2015
Number of cases initiated	209	213	277	195	135

Question. What is the value of goods interdicted as a result of those investigations?

Answer. Illicitly trafficked artifacts and antiquities seized as part of these investigations are usually considered priceless, especially by the country that is the lawful owner. Often, antiquity experts are extremely hesitant to assign a monetary value to cultural property. As such we cannot give an estimated total value for illicitly trafficked cultural property seized during investigations.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

REFUNDING ERRONEOUSLY COLLECTED DUTIES

Question. As I mentioned at the hearing, several of my constituents have been accidentally charged higher rates of duty for imported products due to CBP error. Although they worked to rectify the problem with CBP, and CBP has admitted to them, in writing, that they were charged a higher rate of duty than they should have been, CBP has stated that they are statutorily unable to refund the excess charges. In the past, these "reliquidation" cases were addressed through the MTB process, but the new process Congress is currently debating would not provide these companies relief.

Commissioner Kerlikowske, can you please explain to the members of the committee why CBP is statutorily barred from refunding erroneously collected duties from these companies, and if the MTB process is no longer the proper avenue to correct these mistakes, what should Congress do in order to make sure that these companies receive the money rightfully owed to them?

Answer. Generally, if an importer does not file a timely protest as is required by statute (see 19 U.S.C. 1514) and more than 90 days have elapsed since the original liquidation of an entry by CBP, the agency is barred by statute from carrying out reliquidations that may result in a refund of collected duties.

Liquidation is defined as the final computation or ascertainment of duties accruing on an entry of merchandise. *See* 19 CFR § 159.1. Once liquidation occurs, the import transaction is completed and the decision made by CBP becomes final and conclusive on all parties, including the United States. *See* 19 U.S.C. § 1514(a). There are two exceptions to this rule. First, an importer may file a protest challenging a CBP decision within 180 days from the date of liquidation. Filing a protest commences the administrative review process. If not satisfied with the result of the administrative process, the importer may seek judicial review of the decision made by CBP. If a protest is not filed, however, the liquidation remains final and is no longer subject to administrative or judicial review. *See Chemsol, LLC v. United States,* 755 F.3d 1345, 1349–50 (Fed. Cir. 2014).

Even if a protest is not filed, CBP may on its own reliquidate an entry, in any respect, within 90 days from the date of liquidation. *See* 19 U.S.C. § 1501, amended by the Trade Facilitation and Trade Enforcement Act of 2015 § 911, Pub. L. No. 114–125, 130 Stat. 240 (changing the start of the 90-day voluntary reliquidation period from the date of posting of notice original liquidation to the date of original liquidation). Once this 90-day voluntary reliquidation period expires, CBP no longer has the legal authority to reliquidate an entry unless a protest is filed. Thus, if an importer does not file a protest and the entry is beyond the 90-day voluntary reliquidation period, the liquidation of an entry becomes final and CBP is statutorily barred from changing the liquidation. In order for companies with entries that are statutorily barred to receive refunds, Congress must provide CBP with express statutory authority to make the refunds.

Before 19 U.S.C. § 1520(c) was repealed by § 2105 of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108–429, CBP could reliquidate an entry or reconciliation to correct "a clerical error, mistake of fact, or other inadvertence . . . not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of [CBP] within one year after the date of liquidation."

GOODS MADE WITH FORCED LABOR

Question. I and many other members of this committee were proud to close the consumptive demand loophole in the Customs bill we passed last year and to pass my amendment to TPA to withhold "fast track" for countries on Tier 3 of the State Department's Trafficking in Persons Report. As you know, many victims of forced labor have been and continue to be victims of human trafficking. I was therefore surprised to see that CBP states on the forced labor section of its website that, "[t]he agency does not generally target entire product lines or industries in problematic countries or regions." Furthermore, since 2001, CBP has only issued two withhold release orders for products made with forced labor. Both of these orders were made about 6 weeks ago and target Chinese companies in the chemicals industry. But we all know that forced labor is a global problem—much more widespread than just one country or one product.

Given Congress's clear direction on this issue, does CBP leverage the work of the State Department's Trafficking in Persons Report and the Department of Labor's List of Goods Produced by Forced and Child Labor to identify countries and products with a higher likelihood of being made with forced labor?

Answer. Yes, CBP employs a risk-based approach to all enforcement issues, including forced labor, to identify countries and products with the highest likelihood of being made with forced labor. While CBP leverages the source information provided to support the Department of Labor lists and State Department reports and values the strong relationships we have with the Department of Labor and the Department of State to work together to combat forced labor, CBP has a different evidentiary burden to meet in making a determination under 19 U.S.C. § 1307. CBP has issued four withhold release orders in FY 2016 and continues to enforce the entire list of active withhold release orders and findings posted on its website.

Question. Does CBP have the proper resources—both at home and abroad—to identify and interdict products made with forced labor?

Answer. Since the passage of the Act, CBP has reallocated or detailed existing staff to create a team within the Trade Enforcement Task Force that includes one program manager, two additional personnel, and contract support, to work full time on this issue. Additionally, auditors from Regulatory Audit and attorneys from Reg-

ulations and Rulings have been assigned to forced labor allegation cases to review and, where appropriate, prepare withhold release orders. To the extent possible, CBP leverages its overseas offices and partners with the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) to support forced labor enforcement; however, U.S. authority is limited outside the United States and forced labor and forced child labor often occurs in countries where cooperation with U.S. authorities is limited. CBP's trade enforcement resources address a myriad of critical trade topics as directed by the Act, and CBP acknowledges that additional resources to support its trade enforcement missions would facilitate improved identification and interdiction of forced labor products.

BODY-WORN AND DASHBOARD CAMERAS

Question. Would you please update the committee on what progress has been made, and when the public can expect widespread CBP deployment of body-worn and dashboard cameras?

Answer. U.S. Customs and Border Protection (CBP) has been actively seeking to expand our camera technology to enhance officer and agent safety, transparency and accountability through the use of both body-worn cameras and vehicle-mounted cameras. Earlier this year, in April 2016, CBP issued a Request for Information (RFI) on body-worn camera and vehicle-mounted camera systems, which yielded responses from 29 vendors. Based on the results of this market research, CBP issued a Request for Quote (RFQ) on September 13. We solicited quotes for 108 body-worn cameras and 12 vehicle-mounted cameras, and CBP awarded 4 delivery orders. These cameras will be used at select air, sea and land ports, checkpoint locations, and CBP training academies.

Multiple awards will enable CBP to evaluate several commercially available camera systems in varied operational environments and, ultimately, determine the right mix of camera systems. The purchase will also help to define reasonable cost estimates for processing and storing audio and video files.

To further this initiative, on October 11, 2016, CBP hosted a Body-Worn Camera and Vehicle Mounted Cameras Industry Expo at CBP's Advanced Training Center, which included 45 leading camera and software providers. CBP law enforcement, policy, information technology, training, and procurement personnel interacted with a room full of vendors to learn about innovative camera technologies as well as video processing and storage options. Vendors demonstrated camera systems and answered questions about their products.

All cameras, not just body-worn, are as important to officer and agent safety as they are to the safety of the public we serve. CBP operates in a diverse border environment. Agents patrol the border in desert heat, on the water, and in below freezing temperatures. These drastically different environments present a challenge in finding the right camera solutions. CBP was the first Federal agency to conduct a feasibility study on body-worn cameras. From the study, we learned that there isn't a "one-size-fits-all" solution. Nonetheless, we have many different factors to consider during this next phase. Because cameras are already used in much of CBP's day-to-day operations, a full-scale deployment of body-worn cameras on every CBP officer and agent is neither necessary nor cost effective. For example, a body-worn camera may not be needed at a port of entry where there is already an abundance of cameras in place. As with any large-scale modernization project, we must deploy the technology carefully and in a fiscally responsible way.

Question. Your statement also included a January deadline for "[a]n assessment of existing fixed camera capabilities with recommendations for enhancements, to include funding estimates." Is that assessment complete and can you share it?

Answer. CBP is expanding the overall use of cameras to include body-worn and vehicle-mounted cameras. The working group designated by CBP operationally reviewed where cameras do and do not exist to determine where to deploy additional cameras purchased. A formal report was not produced although these workgroup reviews may guide future camera deployments.

CBP INTEGRITY ADVISORY PANEL

Question. I appreciate the work performed by dedicated external law-enforcement professionals on the CBP Integrity Advisory Panel, co-chaired by NYPD Commissioner Bratton and former DEA Administrator Tandy. You are rightly committed to instituting best law enforcement practices of oversight and accountability at CBP.

The panel's recommendations in its two reports are extensive: can you comment on CBP's approach to implementing them and provide the committee with periodic reports on DHS's and CBP's progress?

Answer. CBP welcomed and worked very closely with the Integrity Advisory Panel. CBP realizes how important integrity is within our workforce and to our stakeholders and the general public. The IAP's recommendations often were confirmatory of work that was begun by CBP and also directed new efforts. CBP established a mechanism to track and review goals through a multi-component process.

Many of the recommendations in the IAP reports are completed or are well underway. Several recommendations need outside Agency assistance or require further consideration. CBP is willing to provide briefings to the committee on CBP's IAP implementation progress and will reach out to your staff to coordinate.

Question. One Panel finding I was particularly struck by is that "[t]he CBP discipline system is broken." What reforms are you putting in place to remedy that situation and to reform CBP's complaints system?

Answer. In 2015, CBP created a Complaints and Disciplinary Steering Committee to improve the way the agency responds to complaints and communicates with the public. It has also addressed this matter through the Integrity Advisory Panel and the Pivotal Report. These concerted efforts have conducted inventories of all formal and informal case handling systems, as well as existing systems and processes, to identify leading practices. Other significant comprehensive initiatives completed or underway include:

- Staffing complaint intake centers with Spanish-speaking personnel;
- Instituting a centralized electronic complaint management system;
- Creating an online complaint form with DHS/Office of the Inspector General points for receipt of complaints;
- Formalizing a 24-hour complaint intake program with Spanish language capability;
- Establishing specific timeframes and processes for furnishing confirmation of complaint receipt and providing appropriate status updates;
- Preparing a performance dashboard that will support complaint reporting capabilities at the Sector Chief and Port Director levels;
- Developing guidance that will allow the CBP Office of Professional Responsibility (OPR) to serve in a consultative role to mission support and other organizational components;
- Providing regular reports on complaint case resolution similar to the Federal Bureau of Investigation, Office of Professional Responsibility reports;
- Maintaining complainants informed of the complaint status through a closure letter;
- Delegating to supervisors the effective resolution of complaints with less serious offenses;
- Regular reporting on the resolution of complaint cases; and
- An assessment of the effects on the workload and staffing (mission) of the response requirements in cases of use of force incidents.

Question. When can we expect tangible changes and how will you measure their effectiveness?

Answer. Since 2015, the CDSC has met frequently to improve the complaints management and disciplinary process within CBP. The CDSC is actively working to complete over two dozen recommended actions for improvement or implementation (some are listed under 9a above). One significant milestone that has already been completed is the implementation of a centralized complaint management system to be used by all CBP components. This centralization of complaints information through a single electronic management information system will be critical to ensure appropriate oversight at the CBP organizational level. The CDSC is also working on instituting quantitative metrics for determining workload-based hiring factors.

Question. Is Secretary Johnson also actively considering actions in response to the reports?

Answer. As Secretary Johnson was instrumental in establishing the Integrity Advisory Panel (IAP) under the rubric of the Homeland Security Advisory Council, he has been kept informed on the Panel's recommendations and CBP's response to said recommendations. The Secretary was briefed both after the IAP's Interim report release in June 2015 and the Panel's final report released in March 2016. The Sec-

retary concurs and supports CBP's response and implementation of the IAP's recommendations.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

Across the world, trade cheats are looking for any way they can to break our trade laws and rip off American jobs. Customs and Border Protection is often our number-one defense against them. It is tasked with spotting the illegally dumped steel and solar technology, the counterfeit chainsaws and computer chips, before jobs are lost or economic damage is done.

Earlier this year, the Finance Committee spearheaded the first big package of customs legislation in decades as part of the Trade Enforcement Act. Back when the last overhaul was passed, our customs agency was fighting a very different foe. It was much more difficult for foreign companies to evade duties by concealing their identities. Now the Internet makes it easier to move quickly and stay hidden in the shadows. Blocking counterfeit products from creeping into our market used to mean stopping the right shipping container. Now counterfeit products are often tougher to trace; they can be spread out in individual boxes shipped straight to the doorsteps of American homes. Since the last customs overhaul, China shifted its unfair trade practices into overdrive. And in many cases, the old schemes to get past our trade laws and rip off American jobs have taken on a new spin.

So in the wake of the Trade Enforcement Act becoming law, this committee has an important role to play in ensuring that CBP is meeting the mark on its trade mission. That mission remains as critical as ever, even with CBP now under the Department of Homeland Security. It's all about focusing like a laser on enforcing our trade laws, protecting American workers, and defending our economy.

The early signals are, this focus is producing real results. For example, our new legislation closed an egregious, old loophole in U.S. trade laws that allowed for certain products made by slave or child labor to be imported to this country. What the loophole said—that economics trumped human rights—is wrong and un-American. I was very glad to see that CBP has already taken action to stop the imports of soda ash and several other industrial products from two Chinese companies alleged to be using forced labor.

CBP has a lot of other tools to fight against the trade cheats, and our new customs legislation added even more to the kit. I'll be especially interested today in hearing about CBPs plans to implement the ENFORCE Act, which gives CBP 6 months to put in place procedures to ensure that American workers and firms aren't injured by foreign products that are evading our laws.

Another of CBP's most important roles is fighting unfair competition and job loss by cracking down on duty evasion and bringing in revenue for taxpayers. CBP is also responsible for keeping illegally harvested timber out of our market and for protecting consumers from unsafe products. It is absolutely vital in the fight against trade cheats that all of those enforcement tools are fully implemented, including those that were created and strengthened in the Trade Enforcement Act. I look forward to discussing today how CBP will do its part to implement those policies as quickly and as effectively as possible.

Thank you again, Mr. Chairman, for convening this hearing. And thank you, Commissioner Kerlikowske, for being here today.

COMMUNICATIONS

AMERICAN COUNCIL OF LIFE INSURERS (ACLI)
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Hearing Statement of the Honorable Dirk Kempthorne
President and Chief Executive Officer

The American Council of Life Insurers (ACLI) is pleased to submit this statement for the record for today's hearing titled "Debt versus Equity: Corporate Integration Considerations." We thank Chairman Orrin Hatch and Ranking Member Ron Wyden for holding this hearing. ACLI would like to take this opportunity to respectfully comment on life insurer investments.

ACLI is a Washington, DC-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums.

On behalf of the U.S. life insurance industry, we share the goal of encouraging economic growth through a competitive tax system. The nature of the life insurance business is very different from that of a manufacturer or retailer in that it involves the satisfaction of long duration promises. Life insurers receive premiums in exchange for a contractual promise to pay insurance or annuity benefits. These premiums are invested in assets that match our expected liability obligations and duration and that are subject to the state financial regulatory frameworks that influence and can constrain life insurers' investment options. Life insurers utilize those premiums as well as investment returns on the premiums to pay policyholder benefits as they arise, often many decades in the future. The protections and guarantees our products provide for consumers are not available from any other financial services companies.

The life insurance industry has priced its products and made guarantees to its policyholders based on receiving 100 percent of its investment income. The industry utilizes these resource as they are earned by its investment portfolios in order to fulfill the future obligations and promises under its insurance and annuity contracts. A 35 percent, nonrefundable withholding tax on gross investment income would amount to a de facto gross income tax with a substantial retroactive effect on existing business. Specifically, earnings from current investments would fall far short of providing sufficient income each year to pay contractual obligations on inforce business. Therefore, a withholding tax on investment income would have a crippling effect on the life insurance industry and ultimately on consumers' ability to purchase valuable coverage.

The ACLI appreciates the opportunity to comment and point out the unique features of our products that make them so critical to the financial security of all Americans. ACLI and its member companies look forward to working with Senate Finance Committee Chairman Hatch and his staff to address the industry's concerns on these very important issues.

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Submitted by Michael C. Mullen, Executive Director

Express Association of America (EAA) members are DHL, Federal Express, TNT and UPS, the four largest express delivery service providers in the world, providing fast and reliable service to the U.S. and more than 200 other countries and territories. These four EAA member companies have estimated annual revenues in excess of $200 billion, employ more than 1.1million people, utilize more than 1,700 aircraft, and deliver more than 30 million packages each day.

The Express Association of America (EAA) strongly supported the passage of the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015 and applauded the bipartisan Congressional effort to enact this important legislation. This statement will address measures EAA believes are necessary to achieve effective implementation of TFTEA and ensure both the private sector and the Government realize the full benefits of the bill. EAA encourages Congress to ensure these recommendations are part of the oversight process going forward, as the bill is implemented.

Raising the de minimis level, under which most shipments are not subject to collection of tariffs, taxes or formal customs procedures, to $800 (TFTEA Section 901) will have major benefits for the U.S. economy, particularly for small and medium-size companies that handle proportionately greater numbers of low value shipments. U.S. Customs and Border Protection (CBP) should be commended for implementing this provision by the mandated deadline of March 10th this year. To realize the full benefits of this measure Congress should ensure that:

- All U.S. Government agencies with jurisdiction over goods crossing the border—especially those with hold authority—take steps to facilitate the movement of goods and target efforts on the highest risk by minimizing the number of low value shipment "exceptions" which would not receive de minimis treatment among the products they regulate.
- The U.S. Trade Representative actively adheres to the Section 901 language encouraging other countries to adopt commercially meaningful de minimis levels as part of our trade negotiations with them. The ongoing Trans-Atlantic Trade and Investment Partnership negotiations represent the first opportunity to take this step.

The TFTEA measures aimed at improving Partnership Programs (Section 101) will significantly upgrade the benefits of the Customs-Trade Partnership Against Terrorism (C–TPAT), if implemented in a robust way. In providing oversight of this section of the bill, Congress should ensure that:

- CBP consults closely with the private sector to ensure the trusted partnership program is providing commercially significant and measurable benefits to the trade, including:
  - Pre-clearance of goods;
  - A lower rate of shipment detentions for program members;
  - Tier 3 C–TPAT membership for non-importers; and
  - Reduced bond requirements.
- The CBP Commissioner is consulting actively, as the bill prescribes, with other federal agencies to establish a single, U.S. Government-wide trusted partnership program that provides immediate release of goods that do not pose a security or compliance risk.

In providing the authorized funding for the construction of the Automated Commercial Environment (ACE) system (Section 106), TFTEA ensures the United States will have the modern, effective tool we need to keep our businesses competitive globally and to stimulate exports. By the end of 2016, ACE will be the single system on which the entire trade of the United States, inbound and outbound, depends for timely clearance actions at the border. Even the slightest disruption in normal ACE operations will cause backups, storage charges, and logistics and transportation costs that will quickly run into billions of dollars. It is therefore mandatory that Congressional oversight ensure ACE maintenance is fully funded and that Congress consider providing a fully redundant second system that can be brought on line immediately to guarantee uninterrupted ACE availability. As an interim measure, the

current Automated Commercial System (ACS) provides an effective backup capability for ACE and retaining this system after it is replaced by ACE is advisable.

TFTEA confirms in law (Section 107) the goal established by the President's Executive Order on the International Trade Data System (ITDS), that all U.S. Government agencies will use ACE and the ITDS functionality for processing data on cross-border trade shipments. In implementing this measure, Congress should ensure that:

- All agencies use a common approach to risk management that relies on weighted algorithms and automated targeting as the basis for a unified decision on a government-wide release of goods. This common approach should incorporate the government-wide trusted trader program mentioned above.
- All agencies are available to conduct border clearance operations at the same time, including weekends and holidays. Global commerce is now a 24/7 operation, and to ensure the competitiveness of U.S. businesses, the U.S. border clearance operation must adopt a similar approach.

TFTEA (Section 108) requires CBP to consult with Congress before entering into negotiations on, and before finalizing, any agreements on mutual recognition of trusted partner programs with other nations, and also requires the partnership programs of the other nation be compatible with U.S. programs. Reports required by Congress on this subject should include:

- A detailed description of how the benefits of mutual recognition agreements are aligned between the U.S. and partnering nations and how they are commercially meaningful;
- Ensuring that the application and validation processes to become a member of each nation's trusted partner program are fully aligned and mutually recognized.

TFTEA codifies in law (Section 110) the very successful procedures and policies that have been developed for the Centers of Excellence and Expertise (CEE). In providing oversight in this area, Congress should ensure that CBP:

- Provides uniform implementation at each port of entry of the United States of policies and regulations relating to imports and exports;
- Formalizes an account-based approach to the importation of merchandise into the United States;
- Ensures CEE account managers coordinate with other government agencies on all related border issues for their account, to support the single U.S. Government-wide release process under the ITDS.

TFTEA ensures (Section 904) that goods being returned to the United States after being exported are not subject to payment of duties twice based on the original location of the goods' manufacture. This provision has removed an obstacle that was preventing many small U.S. eCommerce businesses from developing export markets for their innovative products. In implementing this provision, Congress should ensure a simple, automated process exists by which a company can verify the goods were exported from the United States without needing to provide cumbersome paperwork.

TFTEA includes several provisions for improving the ability to identify and track entities importing goods into the United States, including:

- Section 114, establishing an importer of record (IOR) program, an IOR database and a streamlined process of assigning IOR numbers to importers;
- Section 115, establishing an importer risk assessment program that would adjust bond amounts for new importers based on risk; and
- Section 116, on Customs broker identification of importers, which will establish standards for customs brokers to collect information on the identity of importers. Changes are under consideration to Customs Form 5106 that will assist in meeting this requirement for brokers to collect more information on the identity of importers.

In implementing each of these sections, EAA recommends that Congress ensure that CBP consults closely with the trade community to ensure:

- Any new procedures produce clear improvements in trade facilitation and do not impose unreasonable requirements for information on parties that do not possess it;

- The provisions of these sections apply only to larger commercial importers, and a de minimis level is established to ensure individual consumers are not subject to the definition of a new importer as envisioned by these measures, which would have a debilitating impact on e-Commerce.

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