

ENFORCING AMERICA'S TRADE LAWS IN THE FACE OF CUSTOMS FRAUD AND DUTY EVASION

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE,
CUSTOMS, AND GLOBAL COMPETITIVENESS

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

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AND DUTY EVASION**

THURSDAY, MAY 5, 2011

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
CUSTOMS, AND GLOBAL COMPETITIVENESS,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:07 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the subcommittee) presiding.

Present: Senators Rockefeller and Thune.

Also present: Democratic staff: Jayme White, Staff Director; Republican staff: Paul Poteet, Staff Director.

**OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR
FROM OREGON, CHAIRMAN, SUBCOMMITTEE ON INTER-
NATIONAL TRADE, CUSTOMS, AND GLOBAL COMPETITIVE-
NESS, COMMITTEE ON FINANCE**

Senator WYDEN. The committee will come to order.

As the Senate Subcommittee on International Trade, Customs, and Global Competitiveness, it is our job to promote trade laws and policies that give our businesses and our workers the best opportunity to compete globally. It is also this subcommittee's job to ensure that those laws and policies are being properly implemented and enforced.

For almost a century, Democratic and Republican administrations have promoted and protected America's antidumping and countervailing duty laws. These laws recognize the reality that foreign competitors do not always play by the rules. Some employ unfair and unscrupulous trade practices that put our businesses at a serious disadvantage.

So, when it comes to ensuring that American businesses and workers have a level playing field to compete, antidumping laws and countervailing duty statutes are our first line of defense. But it is not just enough to pass laws. They have to be enforced. Duties are not going to work unless they are actually assessed and collected.

Today we are going to hear from Senators of both political parties and companies from across the land that the antidumping and countervailing duties that protect our businesses and our workers

from grievous economic harm are being evaded, they are being flouted by foreign suppliers and dishonest importers.

For more than a year, this subcommittee has engaged with industry workers and relevant government agencies to determine the magnitude and scope of the problem of the evasion of the anti-dumping and countervailing duty orders and how the executive branch responds to those issues.

In one effort, staff created a fictitious import company called AvisOne Traders, Inc. With little more than a Gmail account, staff were able to identify numerous Chinese suppliers so brazen in their willingness to avoid U.S. antidumping laws that they sent e-mails detailing how they would falsify documents or transship products through third-party countries in order to get around our U.S. laws.

Many of these suppliers actually post online advertisements boasting of their ability to help U.S. importers avoid paying anti-dumping duties. All of this is taking place under the very sleepy eyes of the U.S. Customs and Border Protection Agency.

Our staff also learned that it often takes this agency nearly a year to ask its sister agencies for investigatory help when it is needed, and, when the agency does refer a case to an outside agency, they often do not follow up to ensure that it actually gets handled. It generally takes years for the government to conclude an investigation into evasion and reassess the appropriate duties that should have been collected.

Of course, while the agencies are dragging their feet to enforce our trade laws, this country's domestic manufacturers get hammered—hammered—by foreign trade cheats. It is not like the cheaters are waiting around to get caught and pay their fines. With our government dawdling, they can disappear long before the so-called government watchdogs arrive.

Now, there are two principal American government agencies that are supposed to be the cops on this beat. In my view, one of them, the Customs and Border Protection Agency, treats allegations of duty evasion like junk mail. The other, Immigration and Customs Enforcement, has been more visible on the issue of alleged illegal movie downloads than taking steps to protect tens of thousands of manufacturing jobs that are threatened by unfair practices.

Today, the witnesses are going to describe the relief they won from unfair trade practices and how that relief was undermined by duty evasion and a disinterested and disengaged government. They are going to describe what pretty much amounts to bureaucratic water torture.

These firms start getting clobbered by dumped imports, so they prove to the International Trade Commission that they are being harmed, and they prove to the Department of Commerce that dumping is occurring. They do all this to finally get some relief from the unfair imports, only to find that it is essentially meaningless because the same corrupt suppliers are driving what amounts to a Mack truck through the enforcement loopholes of our Federal Government.

Last year, I was pleased to join with Senator Snowe to introduce the ENFORCE Act that would discipline the government to quickly

begin and conclude investigations into evasions of the antidumping and countervailing duty orders.

As many in this room are aware, many of my colleagues and I are working to build off of and improve that proposal so that it effectively helps to combat and deter evasion and circumvention of the antidumping and countervailing duties without frustrating legitimate trade. We are shortly going to be in a position to move a bill through the Senate and get it to the President's desk for a signature. This is a critical issue to address.

This administration needs to credibly assure the Congress that it is doing all it can to enforce the trade laws at a time when the President is asking the Congress to consider the merits of three free trade agreements and Russia's accession to the World Trade Organization. That is not going to happen if the view is that the Chinese and other suppliers are going to launder their merchandise through our free trade partners to avoid duties, particularly those in place to remedy dumping and government subsidies.

I am very pleased to have so many colleagues here today, and I want to recognize all of them beginning with a new member of the Senate Finance Committee, our new ranking member on this subcommittee. Senator Thune and I have teamed up on a whole host of economic issues over the years and are already moving forward with a Digital Goods bill. Senator Thune, it is going to be great to work with you here, and I welcome whatever remarks you would like to make. I will then turn to Senator Rockefeller—Chairman Rockefeller—and then we have three of our colleagues.

So, Senator Thune, for whatever remarks you would like to make.

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

**OPENING STATEMENT OF HON. JOHN THUNE,
A U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman. I do appreciate your leadership on this and many other issues, and I have really enjoyed working with you and look forward to the things that we can do in the area of trade on this committee. Thank you for holding this important hearing today. I want to thank all of our witnesses for taking the time to testify today.

It is unfortunate that trade can sometimes become a divisive issue. We have certainly seen that in the past. However, I believe we should all be able to agree on the principle that U.S. trade laws should be enforced as effectively as possible, regardless of how we view broader trade issues. Today's hearing is an opportunity to examine our antidumping and countervailing duty laws, an area where many U.S. producers, shippers, and importers believe that the law is not being enforced as well as it should be.

In my State of South Dakota, for example, we have seen firsthand the impact of our inability to fully enforce the existing antidumping duty on Chinese honey. While imports of dumped Chinese honey initially declined after the antidumping order was put in place, unscrupulous Chinese producers have since found ways around the antidumping duties. These producers have increasingly transshipped their honey through third countries, such as Malaysia

and Indonesia. We have also seen Chinese honey mislabeled as honey blends, so as to avoid the antidumping duties.

Unfortunately for U.S. producers, honey is only one example of the problem. I know that Chairman Wyden and a number of other Senators are concerned about steel products evading antidumping duties. In my State of South Dakota, furniture producers have been harmed by circumvention of existing antidumping duties on Chinese bedroom furniture. I believe we must do more to enforce the laws on the books so as to stop the flow of dumped products, and I look forward to the opportunity to discuss these issues today in greater detail.

At the same time, we strive to make enforcement of our trade laws more robust. We also must be mindful of the burdens that are often placed on the vast majority of U.S. importers who are not engaged in any fraudulent activity. We need to remember that we live in an increasingly global economy and that any new burdens on the flow of goods across our borders, even if well-intentioned, can harm our economy and drive commerce and trade to other nations.

America's retailers in particular are large importers and have much at stake in this debate. They have voiced concerns in the past about certain proposed changes to our antidumping and countervailing duty laws and have suggested new approaches, such as moving from the current retrospective system to a prospective system, more in line with our trading partners.

I am pleased that we are going to hear the perspective of America's retailers today as well. Enforcement of our trade remedy laws is important for another reason: to generate and maintain public support for international trade.

While I believe the factual case behind our three pending trade agreements is very compelling—and I was pleased to see the administration yesterday finally commit to moving all three—it is not enough to quote dry numbers and statistics if we want to rebuild public support for trade.

We must also convince Americans that the global trading system is fundamentally fair. We need Americans to know that, while our businesses play by the rules, they should expect foreign businesses to do the same. When foreign producers evade our laws and harm U.S. producers, confidence in global trade is undermined here at home.

As Congress considers the Colombia, Panama, and South Korea free trade agreements in the coming weeks and months, broad-based public support for trade will be even more important. I hope that the discussion today will inform our debate and generate new ideas and approaches to ensure that America's trade laws are enforced in a manner that is fair to producers and to importers, encourages the movement of legitimate trade, and broadens support for the upcoming trade agreements.

Mr. Chairman, I thank you again for holding this hearing today and look forward to hearing from our witnesses.

Senator WYDEN. Senator Thune, thank you.

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

Senator WYDEN. I think this will be the first of a whole host of issues we tackle in a bipartisan way, and I am glad you are here.

Demonstrating the importance of this issue, we are joined by Chairman Rockefeller. Mr. Chairman, did you want to put a statement in the record or make some remarks, or whatever is your pleasure?

Senator ROCKEFELLER. I will do what you suggested. I am flabbergasted by "honey" going to "honey blend," and then all of a sudden they can get around our trade rules. I mean, that is what we are here about, and the enforcement part. Thank you, Mr. Chairman.

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

Senator WYDEN. Thank you, Mr. Chairman.

We have three colleagues here today, all of whom have spent a lot of time on these issues. Let me just give a brief introduction.

Senator Brown and I serve on the President's Export Council. He has long been a champion of working-class folks, particularly on this trade issue. Senator Brown, we are very glad you are here.

Senator McCaskill, you blew the whistle on some of these outrageous practices a long, long time ago, and I am really pleased that you are here, and that you are joined by your colleague, Senator Blunt, who has been tackling manufacturing for a long time, both as a member of the Commerce Committee in the House where I also served, which deals a lot with these issues, and as a member of the House leadership. So to have all three of you here today is especially appreciated.

We will make all of your prepared remarks a part of the record in their entirety. Why don't you just proceed as you wish? We will start with you, Senator Brown.

**STATEMENT OF HON. SHERROD BROWN,
A U.S. SENATOR FROM OHIO**

Senator BROWN. Thank you very much, Mr. Chairman. Senator Thune, thank you. Senator Rockefeller, thank you for your interest in this. While we have different views often on these trade agreements, all of us agree that we should be enforcing our trade laws.

We were going to be joined by Senator Portman today, my colleague from Ohio, but he had to go home. However, he has already joined us on a couple of letters to the administration on enforcing some of these trade laws, and I know his comments will ring pretty similar to, I think, Senator Blunt's and Senator McCaskill's and mine.

I first want to applaud you for examining the issue of duty evasion. For a State like Ohio where manufacturers compete in energy-intensive and trade-exposed industries, from steel to solar, Customs enforcement is a critical complement to the enforcement of our trade laws. But when duties on unfairly subsidized or dumped products are evaded, it is not just cheating, it is getting caught and then ignoring the penalty, as I think your e-mail with the Chinese exporters showed.

I figure it like this. If a persistent reckless driver, instead of paying his speeding tickets and slowing down, simply buys a radar detector, the problem is not solved, and the danger still exists. In

many ways, that is what our manufacturers face when foreign companies create schemes to avoid antidumping and countervailing duty laws. They do not pay the ticket, they just find a way to keep evading the law.

Like my colleagues on the panel, I have testified before the International Trade Commission; Senator Rockefeller has, too, nearly a dozen times over the past 4 years. I have stood before the ITC on behalf of Ohio manufacturers who produce all sorts of everyday products that Americans use, from the tires people buy to drive compact cars and earth-moving tractors, or the steel used in pipes and vehicles and energy products, or even paper products like the thermal paper receipts are printed on, which is why Ohioans ask for their receipts.

There are at least 20 industries with ties to Ohio that have received affirmative decisions in antidumping or countervailing duty investigations at the ITC since 2006. We know that our AD and CVD laws work. They level the playing field. They allow employers to retain and create jobs. Without strong trade enforcement, Ohio communities like Youngstown, Warren, and Lorraine, all cities with steel pipe manufacturers, to Finley, OH, where they manufacture tires, to West Carrollton, and Hamilton in southwest Ohio, which manufactures all kinds of paper products, including coated paper, these companies would be without recourse when they are pitted against unfairly subsidized imports.

Too many Chinese importers are able to under-sell us by significant margins, which is only possible because of Chinese government subsidies to their producers, to their exporters, and by harmful dumping practices. When these duties are so easily evaded, they become meaningless. I think in the second panel you will hear more about that.

According to a report issued by your subcommittee, foreign companies that face trade duties and are direct competitors to Ohio manufacturers of steel nails, light-walled pipe, tooled paintbrushes, diamond saw blades, and oil-country tubular goods, all have proven they will go to any lengths to avoid paying duty, including by shipping the products through a third country. You will hear the second panelist's story of China sending oil-country tubular steel pipes through Turkey, as an example, and evading our Customs.

So I applaud you for taking on this issue. I support your efforts and believe a legislative approach is warranted to ensure that there is consistent enforcement of our trade remedy laws. I want to note that this hearing is particularly timely, as our trade enforcement laws are under attack at the World Trade Organization.

This spring, a WTO appellate body, as you know, Mr. Chairman, reversed a prior WTO ruling that upheld the use of our trade remedy laws against China. Right now, the Chinese government is said to be planning a \$1.5-trillion, 5-year investment in seven strategic manufacturing industries. In some sense, we ain't seen nothin' yet.

At a time when we need to enforce trade remedy laws to fight this clearly unfair Chinese subsidy, the appellate body overreached and threatens to dilute the power of our own laws. To make sure that does not happen, several Senators, including Chairman Wyden, Senators Portman and McCaskill, joined Senator Snowe and me in writing a letter to Ambassador Kirk, urging the adminis-

tration to take all steps necessary to rectify this ruling. These steps include pushing negotiations in the Doha Round to ensuring that our countervailing duty law remains fully applicable to China.

I thank you for allowing us to testify.

Senator WYDEN. Thank you, Senator Brown, for an excellent statement, and also your graciousness with respect to Senator Portman. He did call just as we were coming in, saying he had a family matter and had to jump on a plane to Ohio. But it is great to have the two of you teaming up and being outspoken advocates on this issue, and I thank you.

Senator McCaskill, welcome.

**STATEMENT OF HON. CLAIRE McCASKILL,
A U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. Thank you, Mr. Chairman. I want to thank you for the opportunity to testify today, and to the other members of the committee, and all of your leadership on this issue. I want to give a particular recognition to your staff and the investigation that they did. So often around here, all of us rush to the cameras and take credit, and we do not pause and recognize the people who sit in the chairs behind us on the dais who do very hard work.

I think the investigation that this committee did should be embarrassing to the United States of America, because it is obvious that we have put laws on the books that we are making no effort to enforce, which basically says that we do not have the respect for our laws that we teach kids in middle schools around America.

I also want to thank my colleague, Senator Blunt, who is here. Obviously I want to thank Karl Glassman from Leggett and Platt who is here, a great Missouri company that has been harmed by the problems that we are talking about today.

This is important in Missouri. You know, if we sat around and tried to add up all the money that our government is spending trying to create jobs, look at the incentives that every locality is trying to offer companies to locate in their community, look at the money States are spending to try to attract manufacturing to their States.

Look at the amount of time we spend in these halls talking about job creation and how much we care about it. And then we allow—we allow, we are complicit in allowing—our Federal Government to ignore laws that are doing more harm in my State in terms of job creation than many other things that we spend more time on.

If you look at Leggett and Platt, if you look at Mid-Continental Nail, if you look at M&B Metal Products in Missouri, they have all suffered from the problem that we are discussing today. M&B Metal Products had to close the plant in western Missouri because of the failure to enforce these provisions. These duties are not imposed lightly.

I mean, I am trying to figure out, why do we even have the ITC? Why do we not save the money? If these companies are going to spend the time and effort and go through the very rigorous process of getting these duties imposed, and then we are going to pretend like they do not mean anything, it seems to me that that is another waste of money. If we are going to impose these duties, then it is time that our government decides that it is important that we enforce them.

We are seeing more evidence of duty evasion, widespread evasion. I am not convinced that Customs and Border Protection is committed to enforcing these laws. I think they have been ignored and not taken seriously for so long, that it is part of the culture. Many companies that have brought specific complaints to Customs and Border Protection say that Customs has not followed up on those complaints. Many have complaints of evasion that were made years ago, and Customs only began tracking this problem in 2008. It is good they pay more attention now, but their track record still leaves much to be desired.

I have asked Customs to provide me with a list of all the allegations it has received since 2008 and what it has done to respond to these allegations. According to that data, Customs has never initiated an investigation into duty evasion on its own. It only responds to tips. So what Customs has not done is the very basic work that your committee staff did, Mr. Chairman. As your committee found out, they are actually advertising duty evasion on their websites. This is not difficult to determine that this problem is ongoing.

The data shows Customs takes an average of 4 months to close an investigation. In many cases, closing a case means referring it to its own field office or Immigration and Customs Enforcement for further action. It can take 9 months just for Customs to refer an allegation to its own field office. I am hopeful, Mr. Chairman, that this committee can ask Customs, why does it take so long for Customs to refer an allegation to Customs? This should not be a difficult process.

Another problem is Immigration and Customs Enforcement. They are in charge of prosecuting criminal allegations. I have asked ICE to tell me how many allegations they have received. ICE has said it cannot provide that data, so we cannot judge how seriously it is taking this problem. ICE has told my staff that one of the biggest problems it faces is fly-by-night import companies that disappear before its attorneys can prosecute.

With all due respect, Mr. Chairman, we have tremendous law enforcement capabilities in this country. I have been honored and blessed to have the opportunity to participate in law enforcement activities in this country. I am confident that we have the ability to criminally go after these people and that it will deter future actions like we are obviously aware are occurring on a daily basis in this country. Missouri jobs are at stake here, Missouri companies that have invested their own money trying to do the job the government should be doing. They should not have to go into their own pocket to try to enforce the law.

I appreciate the work this committee is doing, and I stand ready and able to help in any way I can to solve this problem on behalf of jobs in this country and jobs in the State I love dearly.

Thank you, Mr. Chairman.

Senator WYDEN. Senator McCaskill, thank you for a very powerful statement. You brought this to us early on, laying out some of the problems Missouri companies were having, and you have obviously done a lot of homework since then in terms of gathering your own facts. So we are going to be calling on you often as we put together a bipartisan coalition on this, and I thank you for it.

Senator Blunt, you have also picked up a lot of expertise over the years on these business issues. We welcome your comments in any fashion you would like.

**STATEMENT OF HON. ROY BLUNT,
A U.S. SENATOR FROM MISSOURI**

Senator BLUNT. Thank you, Mr. Chairman. I am glad to be here with you and Chairman Rockefeller, and the ranking member, Mr. Thune.

I believe in trade. I think we have the most competitive workforce in the world. We have the most competitive businesses in the world. But in the trade environment, and in some of the trade agreements you are going to be talking about in this committee, we quickly start talking about the importance of compliance, and the WTO, and all the enforcement organizations, and we have to insist that those enforcements are meaningful.

I want to talk a little bit about some of the things my colleague, Senator McCaskill, talked about in terms of the companies involved. We have these Missouri companies and Missouri jobs that are out there doing everything they can to compete, not only here, but internationally, and then to find out they are competing here with people who are not following the rules.

In fact, both of the two companies that I want to mention today—and Senator McCaskill has mentioned them as well—already have orders against, in both cases, China, which is in violation of the trade agreement. So this is not talking about whether that process works or whether there is a remedy there—though sometimes that remedy takes longer than you would want it to—this is talking about our own enforcement of these issues.

I know 2 years ago I had representatives from Customs and Border Protection and the Department of Commerce in my office in the Rayburn Building, when I was a member of the House, to talk about these challenges faced by companies. I had been contacted by companies like Leggett and Platt, whose home office is in Carthage, MO, but they are in 274 other locations in the United States, and they are losing more than \$60 million a year because of transshipment of inner spring mattresses from China.

Now, there is already a finding that China is in violation and a penalty for anything they would ship in here directly. Of course, what you see is China trying to get around that, and unfortunately, successfully often, managing to get around that, by shipping those somewhere else. Karl Glassman is here, as Senator McCaskill mentioned, and he will be able to talk about this in detail.

But the frustration of the investment in trying to play by the rules here and all over the world, only to see others actively and successfully avoid it, is frustrating for big companies like Leggett and Platt, and it is frustrating for family-owned companies like Mid Continent Nail in Poplar Bluff, MO. And I did say nails. That is the nails you build things with. We do make those in this country, and we make them very competitively, but not if others are in violation of antidumping orders. There has been such an order on Chinese imports, Chinese nails, since August of 2008. This family-owned company, the estimate is, has lost approximately \$50 million

due to transshipment of Chinese nails from a variety of other places in Asia.

I am certainly hopeful that the good efforts of your subcommittee, Mr. Chairman, will continue to work to bring a solution to this challenge. I appreciate the hard work you have already put into this. I know your staff, my staff, and the staff of everybody in this room at this moment, are talking about what we can do to bring a bill to the floor that will create the right kind of oversight, the right kind of pressure to see that the international framework that we ask American businesses and American workers to work in is truly enforced.

I think this problem is solvable. I am becoming more convinced, however, that the Congress is going to have to be directly involved in prescribing what that solution is, and I look forward to staying very engaged in this topic, and to the good work that you and Senator Thune are going to be leading as we try to see that hardworking Americans and hardworking American business owners and companies are allowed to compete on a level playing field. We all talk about doing everything we can to achieve it, but you cannot achieve it unless the enforcement agencies enforce it. Thanks for having this hearing.

Senator WYDEN. Senator Blunt, thank you for an excellent statement. I am also glad that you mentioned the Department of Commerce. Of course, Senator Rockefeller has a great interest in that area; as well, the International Trade Administration plays a key role in this. I am going to let my colleagues ask any questions. I just want to note, after Senator Blunt's fine statement, we have had three witnesses, we now have in this room three Republicans and three Democrats. We are now in a position, it seems to me—wait a second. We have four Democrats.

Senator McCASKILL. I like your math. [Laughter.]

Senator WYDEN. Pardon me?

Senator McCASKILL. It is four and two.

Senator WYDEN. Four and two. I got my math a little off. Close enough for government work this afternoon. We have four Democrats, we have two Republicans. But Senator Portman—and this is why I was thinking about this—has been a strong supporter of this cause as well. So for the most part, we are perfectly positioned for a bipartisan effort now. Senator Snowe has been with us in this. We can go forward on this. As Senator Blunt correctly said, we can get this solved. That is going to be the key.

I want to recognize my colleagues for any questions. Senator Rockefeller?

Senator ROCKEFELLER. I do, actually—because I think you all said, and you are all practical, grounded, know-your-State people. You are not being cerebral about this, you are caring about jobs and people, and you know what you are talking about. You are all trustworthy, hardworking, great Senators.

I do not know. I think I have testified 50 times before the International Trade Commission. I do not know that anything has ever happened. They never ask any questions. They all sit there. And I respect them, and it is a great job, I guess, to have.

But Senator Blunt, I just resonate with what you say. Their job—and right now nothing can be more important than what they

are doing at any level of enforcement that we are talking about than enforcing these rules and getting mean and nasty about it. That seems to be our national characteristic, that we talk but we do not do. It is just like, sometimes if you have an organization or something and somebody does something wrong, you fire that person. We never get around to that in trade enforcement. It is a huge part of our economy which is missing because we are so lax on it. I do not understand why it is that that is the case.

I sort of relate to what you say. Actually, you are a Republican and I am a Democrat, and I am meant to be saying that and you are not meant to be saying that. But you are saying that. We have to get the government to lay down the law and figure out a way to make the people whose job it is to do this, do it. Actually, that is the end of what I had to say.

Senator WYDEN. Well said, Chairman Rockefeller.

To further ensure that the numbers are going to be impressive to both Democrats and Republicans, Senator Portman has just asked that his statement be made a part of the record, and it very much tracks what we have heard earlier.

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

Senator WYDEN. So, unless you all have anything to add further, we will—

Senator BROWN. Can I make one comment about Senator Rockefeller's comments?

Senator WYDEN. Of course.

Senator BROWN. I was listening to Senator Thune at the beginning. One of the reasons we do not have a consensus on trade in this country is because every one of these trade agreements is contentious. In spite of almost every newspaper in the country and every Harvard economist saying we should pass every trade agreement that any administration, either party, asks us, the public still is ambivalent at best, and opposed perhaps to so many of these trade agreements when they come down and they are debated.

A big part of that is that we do not enforce our trade laws, and people see that these trade agreements do not work if we do not enforce the trade law. While in the end I may not agree with Senator Thune on final passage of some of these laws, I think by doing this legislation we will begin to build a much greater consensus in the public if we actually do what we say we will do.

Senator WYDEN. We will excuse you all. Thank you.

Our next panel this afternoon will be Robert Mahoney, president of Tubular Products Group, Northwest Pipe, in Portland; Richard Adey, owner of Adey Honey Farms of Bruce, SD; Roger Schagrin, chairman of the Government Affairs Committee in Annapolis; Karl Glassman, executive vice president and chief operating officer of Leggett and Platt in Carthage, MO; and Marguerite Trossevin with the Retail Industry Leaders Association.

All right. Mr. Mahoney, welcome. Portland, OR, out in force today, and we thank you for it. We will make your prepared remarks a part of the hearing record in their entirety. Why don't you go ahead and summarize your views? Take 5 minutes or so, if you can.

STATEMENT OF ROBERT L. MAHONEY, PRESIDENT, TUBULAR PRODUCTS GROUP, NORTHWEST PIPE COMPANY, PORTLAND, OR

Mr. MAHONEY. Thank you very much. Good afternoon, Chairman Wyden and members of the committee. My name is Bob Mahoney, and I am the president of the Tubular Products Group of Northwest Pipe Company.

I am proud to have graduated from the U.S. Military Academy at West Point and serve as a captain in the Army prior to receiving an MBA from the University of Virginia. I have been with Northwest Pipe for the past 19 years.

Northwest Pipe Company operates 6 plants in the United States, producing water transmission pipe in California, Colorado, Oregon, Texas, Utah, and West Virginia. We also operate 3 plants producing steel tubular products in Kansas, Louisiana, and Texas.

Northwest Pipe has been involved in four recent sets of trade cases involving imports of pipe and tube products from China that are produced by our Tubular Products Division. These cases were filed during the period 2007 through 2009, and involved circular welded pipe, light-walled rectangular tubing, API line pipe, and oil-country tubular goods, or OCTG.

In all four cases, the Department of Commerce found that imports from China were both subsidized and dumped, and the U.S. International Trade Commission determined that these imports from China either injured the U.S. industry or threatened U.S. industry with injury.

Our response to this trade relief has been to invest heavily in each of our three facilities, resulting in a doubling of our total Tubular Products Group capacity and the hiring of 150 new employees since 2009. These investments and expansions at these facilities have allowed our company to become a supplier of OCTG and line pipe to many of the new shale drilling areas for oil and gas in the United States.

Unfortunately, our company and other members of the pipe and tube industry that participated in these cases have seen numerous examples of fraudulent circumvention of the intended relief. This includes reports of Chinese pipe that is merely threaded in Vietnam and then mislabeled as Vietnamese products. This continues despite current Customs rulings that state simply that threading and coupling pipe does not change the country of origin.

In addition, our industry has received reports about light-walled rectangular tubing from China imported in bundles and placed inside containers that contain granite countertops. Neither the Chinese tubing nor the 250-percent dumping duties are being declared to U.S. Customs.

Clearly, the worst and most egregious example of Customs fraud came at an industry event that I attended in Houston last month, where an importer of OCTG from Asian countries was also a guest speaker. In front of a crowd of approximately 300 participants involved in the energy tubular industry, this gentleman described how, when visiting an OCTG mill in Indonesia, he personally saw workers in the plant painting over "Made in China" and the Chinese mill API markings and putting "Made in Indonesia" and the Indonesian company's API license number. This statement at that

conference was then published in the *American Metal Market*, which is a widely read publication in the steel industry.

Senator Wyden and members of the committee, I have three comments about this type of fraud. First, the speaker would not identify the name of the Indonesia OCTG mill engaged in this practice to myself or Mr. Schagrin, who also attended the conference. I understand that Mr. Schagrin gave the contact information for this gentleman, as well as the *AMM* article, to officials at the U.S. Customs and Border Protection so that they could obtain, directly, information about this fraud.

Second, it is in some ways indicative to me of the widespread acceptance and acknowledgment of the transshipment fraud that is occurring with Chinese products that someone would not think twice about sharing information on these practices in public before a large audience.

Third, not only does this type of Customs fraud cost Northwest Pipe and other producers in the domestic industry money and our employees and other workers in the domestic industry jobs and work in the mills, there are also serious safety issues.

The failure of oil well casing or tubing in a well can cause an explosion with injuries to workers on the rig and environmental damage. If an exploration company which depends on mill test reports of the mill that is producing OCTG is actually obtaining falsified mill test reports, the safety and dependability of that product is called into question.

As a business executive who is responsible for running a division of a publicly traded company and one who proposed a significant investment to our board of directors for our new Louisiana plant, our leadership team and board of directors were depending on the CBP to enforce the Nation's trade laws and collect the appropriate duties. When that relief is fraudulently and purposefully circumvented, then the predicate for our business investment decisions is unsupported.

Senator Wyden, I have had the opportunity to review the ENFORCE Act of 2010 that you and Senator Snowe introduced in August of 2010. As an Oregonian, I am proud to have you represent our State in the Senate and thank you for taking a leadership role on an issue that is so critical to our company, our workers, and industry. I urge you to continue to work with your colleagues in Congress to enact this legislation.

Senator Wyden, our industry has been working on this issue for some time, and I know that others on the panel today will also tell their story about why we must ensure that these laws are enforced and that there is an end to widespread, blatant, and egregious Customs fraud.

Simply put, our company, like many others in this sector, must know that when these allegations of fraud are brought to the CBP they are acted upon in a vigilant and expeditious manner. Thank you for inviting me to appear before the committee today.

Senator WYDEN. Mr. Mahoney, thank you very much. You made the long trip, and I very much appreciate what you had to say and your efforts to work with our subcommittee.

[The prepared statement of Mr. Mahoney appears in the appendix.]

Senator WYDEN. I think we ought to have Senator Thune introduce our next witness.

Senator THUNE. Thank you, Mr. Chairman. I want to welcome a guest to our committee today. Richard Adee is the owner and operator of Adee Honey Farms, which was founded way back in 1957. I think he must have started it when he was about 10 years old. But they are a honey production and crop pollination farm, and they have, throughout the United States, facilities in Nebraska, California, Texas, and Mississippi, in addition to their operation headquartered in South Dakota.

But Mr. Adee's company is one of the largest beekeeping operations in the United States, with more than 75,000 bee colonies. He has been very active in policy and research issues on behalf of the beekeeping industry. He is currently chairman of the Legislative Committee of the American Honey Producers Association, and has also served, I might add, as president of that organization for 15 years. In addition, he has had a longstanding relationship with the scientists and program leaders at USDA's Agricultural Research Service in the Bee Research Labs and frequently consults with them on issues relating to honeybee health.

So his is the quintessential family business. He personifies the qualities of entrepreneurship and hard work and has built this company to what it is today. I am very honored to have him represent, not only our State of South Dakota, but the honey industry here today. I would add that he makes South Dakota a sweeter place to live.

So Richard, welcome. Good to have you here.

Senator WYDEN. Mr. Adee, please proceed.

**STATEMENT OF RICHARD ADEE, OWNER, ADEE HONEY FARMS,
AND CHAIRMAN, AMERICAN HONEY PRODUCERS ASSOCIATE
LEGISLATIVE COMMITTEE, BRUCE, SD**

Mr. ADEE. Chairman Wyden, Ranking Member Thune, and members of the committee, we applaud you for holding this timely hearing on enforcing America's trade laws.

My name is Richard Adee, president of Adee Honey Farms, past president of the American Honey Producers Association, and current chairman of the Association's Washington Legislative Committee. I am testifying today on behalf of the association and its members.

Protecting American beekeepers, the domestic honey industry, and the billions of dollars in agricultural output that rely on pollination services has been, and should remain, a national priority. For the honey industry, our challenges continue to mount each year.

As I speak here today, our industry faces hardships as a result of severe duty evasion and Customs fraud. Dubbed "honey laundering," some have gone as far as calling this the largest food fraud in U.S. history. A prominent Toronto newspaper recently ran the following headline. It said, "A Growing Multi-Million Dollar Laundering Scheme Designed to Keep the Endless Supply of Cheap and Often Contaminated Chinese Honey Moving into North America is Putting the Domestic Industry on the Verge of Crisis."

Importantly, this trade problem affects all segments of the industry, including honey producers, large pollination-dependent crops, packers, importers, and consumers alike. Producers struggle under the impact of increasingly divergent market prices, one price for legitimate honey and another rock-bottom price for transshipped honey.

Pollination crops suffered because less honey production means less managed bee colonies to pollinate nearly \$20 billion in U.S. farm output. This includes crops as diverse as almonds, apples, oranges, melons, blueberries, broccoli, tangerines, cranberries, strawberries, vegetables, alfalfa, soybeans, sunflowers, and cotton. In fact, honeybees pollinate about one-third of the human diet. Honest packers and importers also suffer as they face the decision to either: (1) lose market share to their colluding competitors; or (2) participate directly in these illicit and illegal trade schemes.

Finally, consumers face the risk that illicit, often adulterated honey is entering uninspected into the food supply. In past cases, Chinese honey has been found to contain antibiotics and heavy metals. The European Union has even banned Chinese honey as a result.

Ten years ago, prior to the 2001 antidumping order, China shipped nearly 60 million pounds of honey annually to the United States. While China now ships very little honey directly to the United States, the volume of honey entering transshipped through other countries has more than made up for it. Most notably, record levels of honey were imported into the United States from Malaysia, Indonesia, India, and Taiwan in 2010.

Together, these countries exported more than 60 million pounds. However, none of these countries has commercial beekeeping operations capable of producing anywhere near 60 million pounds. In fact, according to our research and admissions of the Malaysian government, that country has only 25 beekeepers with the capacity to export a mere 45,000 pounds annually.

ICE and CBP and the Department of Justice have succeeded in prosecuting numerous honey launderers in such places as Chicago and Seattle. They have also managed to pressure Malaysia and Indonesia into slowing transshipments in the first quarter of 2011. However, just as one hole is patched, another springs open. For example, imports from Vietnam have surged more than 1,000 percent since the same time last year. Similarly, there are reports of more than 100 containers of honey that have been shipped in 1 day from regions within India that produce a mere 20 containers in an entire year.

As I like to say, it is comparable to a chop shop operation. You can catch as many car thieves as possible, but as long as the chop shop goes undisturbed they will simply find another thief, and just as many cars will go through the shop and as much economic harm will be done. Therefore, while we continue to support the targeted enforcement of foreign producers and importers, we also strongly urge shining a bright light on the demand side of the equation.

Without certain packer and importer collusion, there is no market for transshipped honey, and, without a market for transshipped honey, domestic producers and companies that believe in fair play

can flourish. We are prepared with data and information to assist in further investigations and prosecutions.

In addition, we strongly urge this committee to revisit the New Shipper Bonding Privilege, a one-time lucrative loophole for Chinese producers and exporters willing to break the law until Congress closed the loophole in 2006. Unfortunately, the fix was only temporary and expired in 2009. Market data suggest that certain shippers may be laying the foundation to again exploit this loophole to the detriment of the domestic honey market.

By slowing the demand for transshipped and other illicit honey, closing the new shipper loophole, providing more tools for our officials at CBP, Customs, and ICE, and by better ensuring communications with industry stakeholders and between agencies, this committee can help to minimize the risk of adulterated honey being sold as pure honey in the U.S. food chain, restore the integrity of U.S. trade law, collect substantial antidumping duties for the U.S. Treasury, and preserve the domestic honey industry, as well as the agricultural sectors and the agricultural sector jobs that rely on it. I thank you and look forward to any questions you may have.

Senator WYDEN. Thank you very much, Mr. Adee. That was very helpful. All I could think about as you were speaking is, you are certainly pollinating us with good ideas, and we thank you for it.

We have Mr. Schagrin, chairman of the Government Affairs Committee, Committee to Support U.S. Trade Laws. Welcome.

STATEMENT OF ROGER SCHAGRIN, CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE, COMMITTEE TO SUPPORT U.S. TRADE LAWS, ANNAPOLIS, MD

Mr. SCHAGRIN. Thank you, Mr. Chairman, Senator Thune. Since you will accept my rather long testimony and all the charts for the record, I would just like to summarize that testimony and hit the main points.

I have been practicing international trade and Customs law since graduating from UVA Law School 30 years ago. I have had my own law firm for the past 27 years. As you mentioned, my colleagues in town have chosen to make me chairman of the Government Affairs Committee of the Committee to Support U.S. Trade Laws, which is a very broad-based, ad hoc committee of trade associations, manufacturers, agricultural interests, and unions.

I also serve as the general counsel of a group called the Committee on Pipe and Tube Imports, which has over 40 U.S. producer members in 29 States, including two in the great State of Oregon.

I have been personally responsible for obtaining 21 different antidumping and countervailing duty orders against imports from China across a wide variety of industries, and in many of these cases I represent unions as well as the producers in these product areas.

I have been visiting Customs ports for 27 years. I have probably made over 100 port visits, and I am very well-acquainted with Customs import specialists and agents in both CBP and ICE. I will say that CBP import specialists and agents at the ports are among the hardest-working government servants that I have met in my career. However, they face an onslaught of fraud. They need more re-

sources, more leadership, more incentives, and they actually need a system to work with them.

Now let me summarize the problem. The Chinese built up state-supported industries with massive over-capacity, enough to supply not only the Chinese market, the U.S. market, but sometimes entire world markets. Through currency manipulation and government subsidies, China achieved an over \$275-billion trade surplus with the United States last year in 2010.

In the past decade, about 80 percent of all new U.S. antidumping and countervailing duty orders are against imports from just China, so you can tell that they are the preponderance of the problem. The United States is not alone. In many product areas in which I work, I work with industries and counsel in other countries such as Canada, Mexico, the E.U., India, Australia, Brazil, and Argentina that have imposed antidumping duties against these same imports from China.

The response of the Chinese has not been to reduce capacity, to curb exports, but instead has been an active government-sustained effort to evade duties and maintain employment. Duty evasion is endemic with our orders against China. As your staff found in that wonderful November 8, 2010 report on duty evasion, about three out of every four Chinese companies contacted were willing to shift country of origin to avoid duties in the United States.

There is, in fact, a whole new freight industry in China whose sole purpose is to evade duties by changing country of origin. Now, we brought this to the attention of CBP about 3 years ago, hoping that they would work with the government of China to shut down these operations that are engaged in criminal activities. Instead of seeing any of them shut down, we have actually seen a proliferation. Where there was just a few, now there are dozens of companies in China engaged in these activities.

The main problem is, we take evidence on evasion to CBP both in the ports and headquarters on a regular basis. While the responses are cordial and serious, there is never any feedback, and we see the problems, as already described today, continue to multiply and increase so we are losing ground, not gaining ground, in enforcement.

The answers are clear, Mr. Chairman. We must have a legislative fix to this problem. We must have timelines in which CBP must have a system in which petitions on duty evasion are acted upon and resolved within a certain amount of time. We must have access to Customs data under administrative protective orders so we can use the expertise we have gained in representing these U.S. industries and agricultural segments in order to help Customs in the same way we currently use that expertise under administrative protective orders with the DOC in their investigations.

To finalize, I can tell you on behalf of all the attorneys who represent domestic industries, agricultural concerns, and unions in obtaining these orders against imports, we are ready to work with CBP, with ICE, with your committee, with your professional staff, with the retail groups, with whomever it takes to hammer out acceptable solutions. We cannot let the perfect be the enemy of the good.

We do not want to harm, as Senator Thune said, businesses of legitimate, honest importers in any way. But lawlessness—and that is exactly what is occurring every day, every hour, every minute in U.S. ports—at U.S. ports must be stopped and must be stopped now. I urge this committee to get on with your agenda, to work with us, to fashion legislation, get it introduced, passed, and signed by the President.

Thank you very much.

Senator WYDEN. Well said. It is compelling to hear you say in particular that you do not want to harm the legitimate importers. You have certainly a strong role to play with folks who face serious problems, but to have you say specifically and bluntly that you do not want to do anything to harm reasonable importers is an important message, and we thank you.

[The prepared statement of Mr. Schagrin appears in the appendix.]

Senator WYDEN. Mr. Glassman?

STATEMENT OF KARL GLASSMAN, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, LEGGETT AND PLATT, INCORPORATED, CARTHAGE, MO

Mr. GLASSMAN. Good afternoon, Chairman Wyden, Ranking Member Thune, and distinguished members of this committee. Thank you for holding this hearing on a topic that is critical to our business, to U.S. manufacturing, and to the integrity of our trade laws.

I am the chief operating officer of Leggett and Platt, a diversified global manufacturer headquartered in Carthage, MO. We operate in 18 countries and manufacture a wide variety of engineered components and products. Last August when Senators Wyden and Snowe introduced the ENFORCE Act to address the growing problem of the illegal evasion of our trade laws, Senator Wyden described trade cheats as “importers that are increasingly and brazenly employing a variety of schemes to evade AD/CVD orders.” I want to tell you about our experience with trade cheats.

Since 1883, Leggett has produced mattress inner springs. Although we now manufacture many other products, inner springs are the heart of our business. Chinese inner springs first came into the United States in the early 2000s. We manufacture inner springs in China. We know that it is not cost-effective to produce or ship inner springs from China to the United States. Nevertheless, more and more Chinese inner springs continue to come in at prices below our cost of production.

By December 2007, our U.S. inner spring operations had deteriorated to the point that we filed an antidumping case. As a result of this case, inner springs from China are now subject to antidumping duties ranging from 164 percent to 234 percent. Unfortunately, even before the final antidumping order was issued, we had evidence that Chinese inner springs were being shipped to the U.S. through third countries for the purpose of evading these duties.

For example, low-priced inner springs from Hong Kong skyrocketed overnight. Before July 2008, no inner springs were shipped from Hong Kong. Yet, by September 2008, over 35 container loads per month, easily worth \$1.5 million, were being

shipped here. This made no sense to us, so we hired a private investigator to examine the manufacturing facilities listed on the bills of lading. We found no evidence of legitimate inner springs production in Hong Kong.

Since the antidumping duty order went into effect, we have seen a huge influx of inner springs from Taiwan and Malaysia. Again, these are places where there was no prior production of inner springs. We have evidence that over 1 million inner springs are illegally evading our antidumping order every year. This represents over \$60 million annually in antidumping duties lost to the U.S. Treasury on our products alone. If these 1 million inner springs were produced in the U.S., it would require over 60 full-time employees earning more than \$2.5 million in wages and benefits per year. This illegal behavior affects jobs and facilities in 21 States.

We regularly provided Customs with specific evidence of duty evasion. Since October 2008, we have met with or sent information to Customs on 21 separate occasions. Despite our best efforts, these inner springs continue to be imported into the United States with faults and fraudulent documentation.

This is not an isolated problem. In September of 2009, we and four other affected industries formed a coalition to address this problem. Today our coalition is comprised of 11 industries, each with duty orders that are being illegally evaded. The Treasury loses over \$400 million each year in unpaid duties to the evasion of orders in just eight of these industries.

Coalition members have met with Customs, ICE, Commerce, the USTR, this committee's staff, House Ways and Means, and the offices of over 100 Senators and Representatives. We must find a solution. The problem with duty evasion is not about trade philosophy, it is about effective law enforcement. We are committed to working with all stakeholders to come up with sensible, pragmatic, yet above all, effective legislation that ensures we receive the benefit of the trade remedy we have worked so hard for and that our laws are enforced.

Under the status quo, the trade cheats are winning. They openly treat our laws with disdain. There can be no global rules-based trade without effective enforcement. We support and encourage this committee to move forward with legislation to fix this problem. Mr. Chairman, Ranking Member, and members of the subcommittee, thank you for the opportunity to address you today. I look forward to your questions.

Senator WYDEN. A powerful case against business as usual, Mr. Glassman, and I thank you for it.

[The prepared statement of Mr. Glassman appears in the appendix.]

Senator WYDEN. Ms. Trossevin, welcome. You are going to be speaking on behalf of the Retail Industry Leaders Association, and we want to work closely with you.

STATEMENT OF MARGUERITE E. TROSSEVIN, JOCHUM, SHORE, AND TROSSEVIN, ON BEHALF OF THE RETAIL INDUSTRY LEADERS ASSOCIATION, ALEXANDRIA, VA

Ms. TROSSEVIN. Thank you, Chairman Wyden, Ranking Member Thune, and members of the subcommittee. I am pleased to appear

before you today on behalf of the Retail Industry Leaders Association. RILA's members include more than 200 retailers, manufacturers, service suppliers, with aggregate sales of more than \$1.5 trillion annually. With more than 100,000 stores, manufacturing facilities, and distribution centers across the United States and abroad, RILA members play a critical role in the manufacture and distribution of goods throughout the United States and abroad, creating well-paying jobs for millions of Americans.

By way of introduction, I am Marguerite Trossevin of the law firm of Jochum, Shore, and Trossevin, and international trade counsel to RILA. I have more than 25 years of experience in antidumping and countervailing duty law, including more than 13 years at the Department of Commerce, where I was Deputy Chief Counsel for Import Administration, the agency responsible for administering the U.S. antidumping and countervailing duty laws.

RILA members depend on global supply chains and firmly support free and fair trade. We share the chairman's view, as I believe do most American businesses, that fraudulent evasion of the law is costly and harmful to the U.S. economy. RILA members do not want to compete with bad actors, nor do they want to do business with them. Unfortunately, it is inevitable that there will be some who try to circumvent the law. The question then becomes, does more need to be done to address the problem and, if so, what?

In approaching this issue, RILA respectfully suggests that the chairman and members of the subcommittee keep the following principles in mind. First, the overwhelming majority of importers does play by the rules. Members of RILA and other importers spend millions of dollars to ensure compliance with U.S. law and participate in trusted importer programs such as C-TPAT and Importer Self-Assessment, and they do work closely with Customs to identify transactions of concern from a commercial or security standpoint. It is important to recognize these efforts and ensure that legislation does not stifle, disrupt, or overburden this legitimate trade.

Second, the current lines of authority between Commerce and Customs should be preserved. Commerce and Customs each have unique capabilities and expertise and well-defined responsibilities in enforcing antidumping and countervailing duty orders.

Specifically, Commerce has exclusive authority to determine what AD/CVD rates and what products fall within the scope of an AD/CVD order. Thus, in any dispute over whether a product should be subject to duties, Commerce has the final say. For example, Commerce has the authority to address situations in which exporters circumvent an AD/CVD order by making minor changes in the product or shipping the parts and components to another country for final assembly or minor processing.

Commerce therefore has the authority to ensure that the disciplines of an AD/CVD order are properly applied, and having that authority rest with one agency promotes consistent, efficient, and effective enforcement. Meanwhile, CBP has the expertise and authority needed to address fraudulent evasion of duties such as falsely declaring the country of origin of goods transshipped through a third country or intentionally misclassifying imports subject to AD/CVD orders.

Customs already uses this broad authority to impose civil and criminal penalties in such cases, and they can, and do, work cooperatively with Commerce on enforcement. Blurring these lines of authority would create unnecessary inefficiency and confusion that would undermine rather than enhance effective enforcement.

Third, in order to resolve a problem, it is necessary to clearly define it in the first instance. Certain issues, such as the proper Customs classification of goods or the interpretation of the scope of an AD/CVD order, can be complex issues on which reasonable minds can differ.

Commerce and Customs already have procedures in place for resolving these issues and, as we understand it, they are not the concern being addressed here today. Rather, the problem being addressed is fraudulent evasion of AD/CVD duties which by definition, as you have heard here today, entails an intentional scheme.

Therefore, importers should not be exposed to substantial penalties without regard to intent. Those who make a good-faith effort to properly declare the classification, country of origin, and duties applicable to their imports are not currently exposed to penalties, such as retroactive duty assessment, nor should they be.

Finally, in seeking to catch bad actors, Congress should not create innocent victims or disrupt legitimate trade. Any legislation considered should therefore be balanced, not overly broad, have clear and reasonable standards, and ensure full procedural due process.

Moreover, as Congress explores ways to improve enforcement of our AD/CVD laws, we urge you to give careful consideration to the potential benefits of a prospective duty assessment system. Our current retrospective system is highly unpredictable, costing legitimate U.S. businesses millions of dollars in unanticipated rate increases.

Both the GAO and Treasury have identified it as a significant factor in Customs' inability to collect hundreds of millions of dollars in AD/CVD duties each and every year. We believe Congress can, and should, develop a prospective duty assessment system that provides both an effective remedy against unfair trade and greater predictability in the global supply chains that are so critical to U.S. manufacturers, processors, distributors, and retailers.

On behalf of RILA and its members, I thank you for the opportunity to appear here today and would be happy to answer any questions.

Senator WYDEN. Thank you. And it is our intent to work very closely with you and to follow up on your suggestions.

[The prepared statement of Ms. Trossevin appears in the appendix.]

Senator WYDEN. Let me start with you, Mr. Glassman and Mr. Schagrin. You know, you all brought these concerns to Customs. You have been armed with information. You, Mr. Glassman, just sort of rattled off this eye-popping statistic, that in your judgment something like \$60 million is being lost to taxpayers in this country just with your company alone. So we are talking about very substantial losses to taxpayers. We are talking about significant job consequences as a result of all this.

So let us just start. When you, Mr. Glassman, and you, Mr. Schagrin, bring this to the attention of the Customs agency, how do they respond to you? What do they do when you tell them about this?

Mr. GLASSMAN. Mr. Chairman, in our particular case, they take the data and are basically non-responsive. We believe that they are certainly dedicated, hardworking civil servants, but the data goes into a black hole. We see no ultimate responsiveness. We see no resolution of the fraud that is perpetrated on our employees every day.

Senator WYDEN. Mr. Schagrin?

Mr. SCHAGRIN. Mr. Chairman, I would echo Mr. Glassman's remarks. We are probably filing information under the e-Allegation system with Customs on the average of about once a week. We are probably meeting with Customs officials in headquarters in Washington on the order of once a month or once every other month, meeting with Customs' Import Specialists and Agents at ports every 2 or 3 months. The response is always the same: thank you for the information; we will try to act upon it. On every attempt to follow up with CBP, the answer is always, due to the Trade Secrets Act and the fact that import information and Customs filings are confidential, they cannot give us any response. So once again, for all these industries, the proof is in the pudding.

What do we do? We go to all of our clients and we say, what is happening now? All we see, even after making these reports to CBP, is that the amount of duty evasion keeps increasing. If we get Customs in L.A. and Long Beach to do the investigation of a certain importer, the next thing we know is that containers are arriving in San Francisco instead of L.A. or Long Beach. So there is some port shopping. Well, gee, they are looking at us in this port, let us go to another port and then put it on a truck.

We have even had the International Trade Commission make public information they would normally treat as confidential, where they are finding in the context of their investigations that there is a massive amount of misclassification of products in order to evade the suspension or liquidation of duties on entries. In a recent case, they said publicly over \$60 million of imports, subject to duties ranging from 100 to 200 percent, were misclassified during the period when that investigation was pending.

So it is always the same response for these industries, whether their factories are operating or they are not recalling employees. The proof is always in the pudding, and we just see duty evasion continuing to proliferate without it being stopped by CBP. It is extremely frustrating.

Senator WYDEN. To have companies produce significant information documenting this level of loss and to have essentially no response at all demonstrates a broken system. That is what really concerns me. I think one other question for you, Mr. Glassman, Mr. Mahoney, Mr. Adey. What else can be done to document the number of jobs that are affected by these issues relating to antidumping and countervailing duties? I assume that you have to say significant numbers of jobs are in jeopardy when the government just sort of goes through the motions, as you all have described, in en-

forcing the trade laws. But what else can you tell us this afternoon to further document job loss?

Mr. GLASSMAN. Mr. Chairman, in our particular case we believe there are approximately 2,500 jobs that are protected in U.S. inner spring manufacturing by the duty orders. They would be in the manufacturing, sales, and distribution of those products. Prior to the orders being issued, we were closing facilities, we were laying off people, we were changing our processes. As a result of the orders, we expected that we could reengage U.S. manufacturing. We thought that we could reopen facilities. As my testimony spoke to, we believe that those million—and that was a conservative number—inner springs are costing 60 employees jobs every day.

Senator WYDEN. Mr. Adee and Mr. Mahoney, do you want to add anything else on this jobs issue?

Mr. ADEE. Yes, I would. About 25 years ago, this country had 4 million colonies of bees. Today we only have 2 million colonies of bees. That really hurts our pollination efforts. It takes about one employee per thousand colonies, so a net loss of 2 million colonies means we lost probably about 2,000 jobs just in the beekeeping operation.

In the honey producing part of it, a little over 10 years ago the U.S. market was filled by 60 percent domestic honey, 40 percent imports. And we do need some imports, but we need legitimate imports. Today, it is a real reversal. We have 35 percent of the market that is filled with domestic honey and 65 percent with imports, so it really has cut into our jobs here in the United States in the honey business.

Senator WYDEN. Mr. Mahoney?

Mr. MAHONEY. Mr. Chairman, there is no doubt, I know in my bones, that it is a knife to our throat. But I really have to do some research to give you a factual answer, so I would like to follow up after the hearing.

Senator WYDEN. Fair enough.

I had one last question, but I want to recognize my friend and colleague for his questions, and I want to come back and have a little bit of a discussion with you, Mr. Schagrin, and you, Ms. Trossevin, about how we are going to get some common ground to get this bill passed and signed by the President to help some companies.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

Again, thank you for this excellent testimony. It is very insightful, and I think it provides us a lot of good ammunition as we deliberate things that we might be able to do to help provide solutions to this issue.

But I wanted to again thank you, Mr. Adee, Richard, for being here, and I will start my questions by asking you to elaborate on the impact of dumped Chinese honey on your business operation in South Dakota and the impact on honey producers across the country if our government is unable to effectively stop the flow of Chinese honey currently circumventing our trade laws.

Do you believe, for example, that CBP and ICE are doing everything within their power to crack down on Chinese honey that is

being transshipped through countries such as Malaysia, Indonesia, and India?

Mr. ADEE. Yes. First off, I would like to say we were first exposed to some real difficulties with the imports under the New Shipper Bonding Privilege that was given to importers. They call themselves new shippers, and that way they can avoid paying cash duties. They could bond those duties until Commerce found out whether they were a new shipper or an old shipper.

In most cases, they found they were an old shipper with a new hat. Then they called for the duties which were supposed to be covered by a bond, and the new shipper invariably disappeared, and the bonding companies did not pay the bond. In 2004, 2005, and 2006, we could not sell honey at the cost of producing it, so we just stacked it in a warehouse. Fortunately we had a good bank, and in those 3 years we piled up 22,000 drums of honey. After the Congress closed the bonding loophole, then we were able to move that honey and at least recover our cost of production.

As I see it in the future, if we have these problems unresolved with these imports, why, it is going to have a severe impact on the honey market and on pollination. In several of our commodities, almonds in particular, where they use a million colonies of bees to produce almonds, blueberries, those commodities, you cannot produce them without honeybees.

Already, because of the shortage of honeybees, the price has gone up for almond pollination. The growers are continually worried about having enough bees to do the job for them. So I see, if we do not address this problem and we let this honey come in unabated, the illicit honey, why, I can see this industry is going to be in severe, severe trouble. That impact will not only be on the growers and the beekeepers, but the consumer, because we will have higher-priced food, we will have less quality food, and we will even probably have to go to other countries to get some of the foods we like. Every third bite we eat comes from a bee-pollinated plant.

Senator THUNE. I appreciate the great explanation of the impact, if things do not change, that it will have on the industry.

Let me ask you that second question. That is, do you think that the CBP and ICE are doing everything within their power to crack down on Chinese honey that is being transshipped through some of these countries like Malaysia, India, and Indonesia?

Mr. ADEE. I think they have targeted several companies, and also targeted individuals. They prosecuted some of them. We know there is a gentleman up in Seattle serving a little jail time, there was such a heavy fine. But as I said in my testimony, you catch one of those guys, you catch the guy stealing cars and put him away, the chop shop just goes to another guy who steals cars. I think we have to go after the colluding packers. We get the colluding packers and stop the demand for this circumvented transshipped honey, blended honey, well, when there is no demand, it will stop the process. So I appreciate what they are doing, but I hope they can do more.

Senator THUNE. Good. Thank you.

Let me direct this question, if I might, to any of the panelists who cares to respond to it. All of us want to see our trade laws effectively enforced, but we also are conscious of the impact that

international trade has on our economic growth. As such, I would like, if you could, to sort of give me your opinion as to how we ensure an appropriate balance between enforcing the AD/CVD laws and expediting the movement of legitimate trade into and out of the country. Mr. Schagrín maybe, and then Ms. Trossevin, that would be a good one, maybe, for you to take a whack at too.

Mr. SCHAGRIN. Well, yes, Senator Thune. Of course, among all the clients we represent, these are not only import-sensitive industries, but, because they are very competitive, they are major exporters as well, and so we are very much supportive of the appropriate flow of goods from both an import and export perspective.

In fact, we find, in many of our export markets, that we are competing against, once again, not only unfairly traded imports from China, but often unfairly traded imports that are once again evading duties assessed in other countries against the Chinese in some of these export markets.

However, in order to be a major exporter, you have to still be in business. In a lot of these areas, the competition from China is so massive and overwhelming that, without the duty relief—and this is in my testimony—the last U.S. producer of indigo, which colors our blue jeans, went out of business while Customs was investigating massive transshipment of indigo from China, resulting in no more U.S. industry, and so the order was sunset. So we have to get effective enforcement.

I think having worked with Ms. Trossevin when she was at the Department of Commerce—she talked about Commerce's role in stopping circumvention, where products undergo a minor alteration in a third country before they come to the U.S. Commerce does an excellent job at that. They have rules prescribed in the 1988 Trade Act which call for a filing of petitions, initiation of petitions, statutory timelines for finishing those, and then giving the results and telling Customs about the duty assessment after that circumvention.

We need something similar at Customs for the other issue that we are mostly addressing today, which is transshipment, because Commerce has said they have no role to play in transshipment. We have asked them, will you investigate transshipment and disguising country of origin the way you address circumvention, and they have said, no, that is not covered by the 1988 Act.

So this shifting of product—and I think Ms. Trossevin said this in her testimony—is within the realm of Customs and Border Protection. They have to say that this honey going through Malaysia or India, or pipe going through Vietnam or Malaysia or Turkey, that it is really Chinese and is just having a disguised country of origin.

Customs has to say that is subject to the AD/CVD duties because it is of Chinese origin, but they do not have any timelines for it. So we really need a system which I think—if Ms. Trossevin is happy with the way the circumvention system works at Commerce where she used to be employed, then I would think retailers would be happy to have a similar type of system on transshipment over at the CBP.

Senator THUNE. All right.

Ms. TROSSEVIN. Thank you. I do believe that the circumvention system at the Commerce Department works very well. It is important to understand, though, a couple of things about the nature of that process. First of all, what that inquiry is really looking at is whether those products really should legitimately be brought within the scope of an order, so it is really treated or dealt with under Commerce's normal authority to do scope rulings.

I will also note, in terms of your question about balance, when Commerce does a formal scope inquiry, the results of that inquiry do not apply retroactively prior to the date of initiation of the inquiry. That sort of recognizes the idea that importers do not necessarily have any way of knowing that certain goods that they may be buying that were assembled in Thailand or wherever would be deemed to be circumventing an order, so they are not going to be subject to duties for things that they purchased prior to being on notice that that might be an issue.

I think that one of the things we face as a problem in terms of the Customs fraud case is that it is a little bit different animal, because here you really are talking about intentional schemes, criminal activity—well, at least something that often rises to the level of criminal activity. So, I think it does produce a couple of different types of challenges that have to be looked at in terms of striking that balance.

Again, because the fraud and evasion are serious crimes or serious infractions of the law, they carry serious consequences, very serious consequences. I think it is very important again to recognize that, if you have an importer who is not part of that scheme, that they should not be suffering those types of consequences.

The other thing is, I think we have heard a lot of people today who do praise U.S. law enforcement. We have great law enforcement, and I personally put Customs in that category. But law enforcement is a tough business, and I think we have to take care, before we jump to the conclusion that, just because crime continues, that does not mean law enforcement is not doing everything they can. We have great men in blue, and we have great Customs officers at the border, but there is going to still be crime. Whether they are doing their job full out 24/7, there is always going to be crime. It is a painstaking process to investigate criminals.

I think Customs in particular faces challenges, because so much of what happens that is critical to these schemes happens outside the U.S. jurisdiction. You cannot underestimate the difficulties of reaching extraterritorially in cases of Customs fraud.

So, from my perspective, it is a really important problem, but I think focusing on some of the challenges of enforcement, not just the process—I think transparency is important, I think a domestic producer or whoever brings an allegation to Customs has a right to understand or hear what happened to that in some reasonable period of time.

But I think you also need to look at the challenges Customs is facing and really focus a lot on giving them the tools they need to do a better job. You can always improve, there is no question, but do a better job. Improve Customs cooperation agreements with other countries. Negotiate more agreements. Work on those issues in our trade agreements. That will give Customs the tools they

need to deal with a lot of these bad actors who are not within their jurisdiction here. It is much easier for them to deal with the people who are physically here in the United States, and I think they generally do a really good job of that.

Senator THUNE. Thank you.

Mr. Chairman, thanks.

Senator WYDEN. Ms. Trossevin, we are going to work very closely with you and Mr. Schagrin in particular, but I am concerned about your last statement that there are these consequences, and the system is really working. I mean, by our calculation, Customs is collecting only 1 percent of the duties and penalties they assess to evasion of the antidumping laws. That does not strike me as sort of a pillar of effectiveness in terms of getting this right, and that is why we are having the hearing, because those are the kinds of consequences that companies and taxpayers are bringing to us.

So let me see if I can walk you and Mr. Schagrin through some areas that hopefully we can have some agreement on, because we would like to work closely with you and would like to find some common ground, and get this legislation passed.

So, really three areas that I would hope that we could get you all to say, we have to get going, these are areas we can work together on. Mr. Schagrin, do you agree that legitimate allegations of evasion ought to be quickly pursued and investigated?

Mr. SCHAGRIN. Yes, Mr. Chairman, I would. I would just differ a little bit with Ms. Trossevin's comparison of CBP to law enforcement, because, if law enforcement was as unsuccessful in stopping crime as CBP is, then every member of this Congress would get mugged every day when they walk out. It is a totally different level, so we do need responsible, timely information. I agree completely with you, Mr. Chairman.

Senator WYDEN. Let us see if we can find some common ground in three areas, and you all are going to get to camp out with our staffs and all the interested Senators. Now that we have documented there are lots of Democrats and lots of Republicans, let us just see if we can get this panel out the door with some common ground for moving ahead.

You, Ms. Trossevin. Do you agree that legitimate allegations of evasion ought to be quickly pursued and investigated?

Ms. TROSSEVIN. RILA members definitely agree that legitimate allegations should be pursued and investigated. The only thing I would take care about is, when you talk about quickly, to be sure that what you are talking about really are reasonable timelines.

Senator WYDEN. That will be the next question.

Ms. TROSSEVIN. Well, all right.

Senator WYDEN. Can I say you have said "quickly"?

Ms. TROSSEVIN. Pursuing fraud is an important thing, and we would always support pursuing legitimate allegations of fraud.

Senator WYDEN. That is helpful.

For both of you: should Congress hold Customs accountable to concluding investigations in a reasonable period of time? Mr. Schagrin, Ms. Trossevin?

Mr. SCHAGRIN. Yes, Congress should.

Senator WYDEN. Ms. Trossevin?

Ms. TROSSEVIN. I do believe that good government does require accountability, so I think a reasonable period of time. I think it is important, obviously, to have Customs involved in that conversation. I would note that an AD/CVD investigation, for example, takes about 12 to 18 months, and a circumvention proceeding takes at least a year or so typically as well. So that is perhaps something to look at. But then Customs, as I said, faces some other challenges. So, reasonable, yes.

Senator WYDEN. I am going to put you down for “accountable” and “reasonable.”

Ms. TROSSEVIN. All right.

Senator WYDEN. Probably sounds like a law firm: Accountable and Reasonable, Attorneys at Law.

One last point. With respect to an investigation into evasion, for the two of you, would it be helpful to provide notification to the public so that importers can then check into their supply chain, the domestic producers can offer their assistance, people see the administration as responsive? Would it be helpful, when CBP initiates an investigation, that there is notice to the public? Mr. Schagrin?

Mr. SCHAGRIN. Yes, Mr. Chairman, I believe it would be helpful for CBP to give that kind of notice to the import and domestic community.

Senator WYDEN. Ms. Trossevin?

Ms. TROSSEVIN. We believe that notification to the importing community is helpful. I do not know whether doing it at the time of initiation of investigation would be the time, but we have often promoted the idea of giving more public access to importers to various lists of people who have been found to violate the law, yes.

Senator WYDEN. I would hope that we could do it right at the get-go, because I have lots of importers too, as you know. Oregon is a very trade-sensitive area. That just means that importers can start jump-starting the process, getting to their supply chain, and all the issues that you all deal with all the time. So I am going to operate under the assumption that we have at least the two of you willing to talk to us about those three areas. Now we have to get into the details. The entire panel has been very helpful. If any of our witnesses has a last word, we can do it. Also, Senator Thune.

Senator THUNE. Could I just ask one last question—

Senator WYDEN. Sure.

Senator THUNE [continuing]. Because it was referenced earlier. I would be interested in knowing the views of the panel with regard to this issue of prospective assessment, because the GAO has repeatedly recommended that Congress consider switching to that prospective assessment system. I am wondering if you think that would effectively address the problem of uncollected duties.

Mr. GLASSMAN. Senator Thune, if I can offer an opinion. Our perspective is that all a prospective system does is facilitate evasion and eventual fraud. There is no accountability. There is no ability to go back and true up with those importers. It is very simple to get a zero duty rate, to live under that rate. And, as was the point of the earlier testimony, the importers of record changed frequently. These are people who are trying to evade the laws of this

country. To not be able to retrospectively force a true-up of those duties is illogical and ill-founded.

Senator THUNE. All right.

Ms. Trossevin?

Ms. TROSSEVIN. Well, I hope I could offer Mr. Glassman some good news, because the type of prospective system that RILA and a coalition of other importers and domestic manufacturers have been advocating is what we call a prospective normal value system. It would do exactly the opposite, do exactly what Mr. Glassman wants. We are not talking about a system where you give somebody an ad valorem rate, and then you go and say, thank you very much, go home, and we will see you in 5 years.

What we are talking about is a system where Commerce does what it does every time and conducts an investigation or review, which is to determine what the normal value or the fair value of the good is. What you do, in a prospective normal value system, Customs uses that fair value and compares the entered value to that every time the goods cross the border.

If that import is below fair value, those duties are collected immediately on the spot. There is no opportunity to disappear before somebody comes back 3 years later. You pay, cash on the barrel head. So, if you are an exporter, and you go in and you get a review, and Commerce says your normal value, your fair value, is \$10 because that is what you have been bringing in, if you suddenly drop it to \$2, we are not going to find that out 3 years later or come after you 4 years later. If you drop it to \$2, the very day you drop it to \$2, you bring those goods in, you are going to pay \$8 cash to Customs right then.

I think that collecting up front and also eliminating these huge retroactive rate increases that a lot of times face legitimate American businesses and put them out of work, that also reduces the incentive to evasion. That retrospective element, that unpredictability, is one of the incentives for people to evade the AD/CVD orders. You greatly reduce that incentive, I think, in a prospective system.

Mr. GLASSMAN. Senator Thune, I would offer, that is a perfect world scenario. What happens to transshippers? They are lost in the process. That is the issue. That is the issue that this subcommittee is dealing with, illegal evasion of duties through transshipment.

Mr. SCHAGRIN. Senator Thune, first, I think it is just critical for this committee not to fall into the trap of conflating the issue of duty evasion with the type of antidumping system we have. In Europe, they do have a prospective system versus our retrospective. They have as many problems with duty evasion as we do. Duty evasion will occur regardless of the type of system because these folks are not even telling CBP that these goods are country of origin China and that duties should be assessed.

So this issue of prospective or retrospective is a very, very big issue, but has, I can assure you, absolutely nothing to do with the issue of duty evasion or the collection of the appropriate amount of duties. I was very troubled to hear Ms. Trossevin say that the possibility that duties might be increased under our retrospective system incentivized people for duty evasion. There is no possible

justifiable incentive for breaking the law. If you do not like a system, you try to have the laws changed; you do not evade the system. So, that is very, very troublesome.

I would like our retrospective system, which has been in effect since 1930, to be the system which gives you the most precise entry-by-entry assessment of the amount of dumping of that entry. But there are other systems in the world. It probably merits study. It would be a massive overhaul of our trade law, so it is nothing that could be treated lightly.

But I would greatly encourage the Senate Finance Committee to not in any way slow your efforts to solve the massive problem of duty evasion by considering this massive overhaul of our trade law system, and instead to focus now on duty evasion and leave these other issues for another time in the future and for further study.

Senator WYDEN. A good one to wrap this panel up on. I can tell you, Mr. Schagrin, there is not going to be anything that is going to slow the efforts to try to come up with a solution here. To have you and the other businesses talking about this kind of job loss, talking about this kind of revenue loss to the taxpayers of the country, is just unacceptable.

So what I need all of you to do—and particularly you, Mr. Schagrin, and you, Ms. Trossevin—is to get with our committee staff in the next week or so. Is that acceptable to you, Ms. Trossevin, so we can get you all working on the details and working with interested Senators? And you, Mr. Schagrin. Can we get you all together with the staff and interested Senators so we can do what was just raised at the end of this, and that is to move quickly? We have a problem here, and doing business as usual is not acceptable. So can we get started in the next week, Ms. Trossevin?

Ms. TROSSEVIN. We will certainly do everything we can to help out in that area.

Senator WYDEN. Very good. Mr. Schagrin?

Mr. SCHAGRIN. You have my complete commitment, Mr. Chairman.

Senator WYDEN. Very good.

Mr. SCHAGRIN. Anything it takes.

Senator WYDEN. Thank you to all of you. We will excuse you at this time.

Our next panel will be Mr. Allen Gina, Assistant Commissioner of International Trade; Mr. J. Scott Ballman; and Mr. Ronald Lorentzen. Mr. Gina is Assistant Commissioner of International Trade at Customs. Mr. Ballman is Deputy Assistant Director of Homeland Security, U.S. Immigration and Customs Enforcement. And Mr. Lorentzen is Deputy Assistant Secretary for Import Administration.

We welcome all of you this afternoon. We are going to make your prepared remarks a part of the hearing record in their entirety and then we will have some time for questions.

Mr. Gina?

**STATEMENT OF ALLEN GINA, ASSISTANT COMMISSIONER OF
INTERNATIONAL TRADE, CUSTOMS AND BORDER PROTECTION,
WASHINGTON, DC**

Mr. GINA. Good afternoon, sir. Chairman Wyden, Ranking Member Thune, it is an honor to appear before you today to discuss U.S. Customs and Border Protection's responsibility to prevent and detect the evasion of antidumping and countervailing duties on imported goods.

As stated, my name is Al Gina. I am the Assistant Commissioner for the Office of International Trade. While new to the position, I have been with CBP and the legacy Customs Service for 29 years.

The detection of antidumping and countervailing duty evasion is a significant challenge, and, while we have had some successes, we realize that CBP needs to improve on our strategies to identify those who employ various methods to circumvent enforcement of those orders.

To address this threat, we use a layered approach by taking actions before and after goods enter the United States. Before goods arrive, CBP works with U.S. industry and foreign customs agencies to share information and assess risk of incoming shipments. Based on information received and risk assessments, we may sample goods to determine country of origin at time of entry. After entry, we perform verifications and audits to further assess risk and determine if additional corrective enforcement actions should be taken.

To track the valuable information about the potential evasion that the private sector shares with us, we did establish CBP's e-Allegations online referral system in June of 2008. We take each claim seriously, and we have researched 4,000 commercial allegations, of which nearly 10 percent are antidumping and countervailing duty-related. We understand that U.S. industry wants more insight into CBP's enforcement efforts, and to that end we would like to work with Congress to review its trade secrets statute to find ways that will allow us to release information to petitioners and therefore make our process more transparent.

Your study, Senator Wyden, showed that there are many producers and middlemen ready to collude in using multiple techniques, often together in complex schemes, to evade antidumping and countervailing duties. As noted, those tactics do include illegal transshipment, under-valuation, failure to declare, failure to manifest, misclassification, and other techniques such as employing shell companies as primary means of avoiding payment, or the use of foreign businesses outside the reach of CBP authorities.

To combat these schemes, CBP works with the private sector and ICE by initiating enforcement operations. In the last 2 years, 10 antidumping and countervailing duty-focused operations have been conducted, resulting in successful cases on steel wire hangers, citric acid, honey, furniture, tissue paper, lumber, catfish, and frozen shrimp.

CBP recognizes, as stated by Commissioner Bersin, that new methods of detection and deterrence are needed in this area of concern, and we look forward to continuing our work with the Department of Commerce, ICE, GAO, industry, and this committee to identify the most productive ways to deter dumping evasion.

I would like to highlight some of the approaches we are considering. As stated earlier, CBP needs to find ways in which we can enhance our information sharing with the private industry. Based on lessons learned with previous enhanced bonding requirements targeted at antidumping and countervailing duty risks, we will increase the use of single transaction bonds as a condition of release of goods when we suspect a risk to revenue. We will pursue regulatory and statutory changes to address the risk of non-payment or evasion posed by non-resident importers of record.

To trace the origin of goods imported using false documents, we need better information and verification of production capabilities and potential transshipment countries. We are discussing with our colleagues how to secure new authority to conduct site visits in cooperation with host countries. We are working also with the Department of Commerce on the exchange of information that will help us verify the legitimacy of goods and, as mentioned previously, to tighten the new shipper requirements which we pose as a potential risk.

We are in discussion with the Department of Justice to develop a task force to concentrate resources on the most complex criminal and civil cases, just as we have done with ICE and others on intellectual property rights. Mr. Chairman, thank you again for this opportunity to testify. I look forward to working with each of you and the rest of your committee to address these issues, and I would be happy to answer your questions. Thank you.

Senator WYDEN. Thank you, Mr. Gina.

[The prepared statement of Mr. Gina appears in the appendix.]

Senator WYDEN. Mr. Ballman?

STATEMENT OF J. SCOTT BALLMAN, DEPUTY ASSISTANT DIRECTOR, HOMELAND SECURITY INVESTIGATIONS, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Mr. BALLMAN. Thank you, Chairman Wyden, Ranking Member Thune, and distinguished members of the subcommittee. On behalf of Secretary Napolitano and Assistant Secretary Morton, it is my privilege to testify before you today to discuss the efforts of U.S. Immigration and Customs Enforcement, Homeland Security Investigations to combat illegal trade practices and investigate commercial fraud activities, including the evasion of antidumping and countervailing duties.

As members of the subcommittee know, globalization provides boundless opportunities for commerce, but with these opportunities come new potential threats to national security. The Department of Homeland Security is committed to ensuring the security of America's borders against threats while fostering and facilitating the movement of legitimate trade across our borders that is critical to our economy.

ICE has a long history of engagement in commercial fraud enforcement, particularly antidumping and countervailing duties, dating back to our past as legacy U.S. Customs Service investigators. ICE works in close cooperation with relevant interagency partners, the private sector, and international counterparts to investigate a broad spectrum of crimes related to commercial fraud.

ICE targets and investigates goods entering the United States illegally through our ports and seizes these goods for forfeiture. ICE recognizes that we must partner with the private sector to obtain the necessary information to halt this illegal, fraudulent trade practice. It also is essential that we continue to work with all relevant Federal agencies to confront this challenge.

ICE has therefore built strong relationships with our interagency partners and international counterparts. The ICE HSI commercial fraud priorities are: (1) protect the health and safety of consumers, government workers, and our war fighters from hazardous, tainted, substandard, and counterfeit imported products; (2) protect U.S. businesses from unfair trade practices; and (3) protect the revenue of the Federal Government.

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

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

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

After demonstrating a loss of revenue that exceeds the threshold for prosecution, ICE will utilize Mutual Legal Assistance Treaties to obtain shipping records and other documents from foreign countries in order to prove that an individual or company evaded dumping duties through transshipment, under-valuation, over-valuation, or mis-description. This process normally involves coordination between several U.S. and foreign government agencies.

Since 2006, ICE has initiated 391 cases based on allegations of fraud regarding antidumping and countervailing duty orders which, to date, have resulted in 28 criminal arrests, 86 indictments, and 39 convictions.

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

I would now like to provide a few examples of significant dumping investigations. In February of 2008, ICE's Special Agent in Charge office in Chicago and the Food and Drug Administration, Office of Criminal Investigation, began investigating Alfred L. Wolff, Inc., for the transshipment of Chinese honey to evade paying 221-percent antidumping duties.

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

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

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

On April 10, 2007, ICE SAC Atlanta agents executed Federal search warrants at two Goshen business locations and at the residence of Goshen's owner, Seng Ng, which resulted in the seizure of 27 boxes of documents and 8 computers. Subsequent analysis of the seized documents and computers identified evidence substantiating that Goshen knowingly and willfully submitted fraudulent documents to CBP on at least 185 separate importations of Chinese wooden bedroom furniture.

On May 13, 2009, Ng plead guilty to 18 U.S.C. 542, Entry of Goods by Means of False Statements or Invoices. On July 27, 2009, Ng was sentenced to 14 months in prison and ordered to forfeit \$5,993,433.70 to the United States in restitution.

ICE SAC San Diego investigated Arturo Huizar-Velazquez, a citizen of Mexico, for circumventing antidumping duties on Chinese metal hangers. The metal hangers were shipped from China through the port of Long Beach, CA to Mexico, where they were relabeled as a product of Mexico and then imported into the United States.

On March 9, 2010, a shipment of wire hangers from China destined for Huizar-Velazquez in Mexico was examined at the Port of Long Beach and marked with invisible ink. On March 17, the shipment was presented for export into Mexico at the Otay Mesa port of entry. On March 19, the March shipment was represented for entry into the United States. On March 20, the shipment was examined, the invisible ink was observed, and it was noted that the majority of the cartons were the same as seen on March 9 in Long Beach. Additionally, all the cartons in the shipment were now

stamped "Made in Mexico," which was not the case during the export to Mexico.

Huizar-Velazquez and his employee, Jesus De La Torre-Escobar, were arrested and charged in a 55-count indictment for entry of goods falsely classified, smuggling of goods, money laundering, and structuring of currency. The indictment included a forfeiture provision for \$5 million. De La Torre-Escobar plead guilty to one count of conspiracy and Huizar-Velazquez plead guilty to conspiracy, entry of goods by false statements, wire fraud, and money laundering. Both individuals are scheduled to be sentenced on May 16 of this year.

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

To act as a more effective deterrent factor and protect U.S. business interests—

Senator WYDEN. Mr. Ballman, we are going to have to break you off pretty soon. You are over the time.

Mr. BALLMAN. I am almost finished.

Senator WYDEN. That would be great.

Mr. BALLMAN. All right. I am almost finished.

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

Thank you once again. I would be happy to answer any questions.

Senator WYDEN. Thank you very much. We will have questions in a moment.

[The prepared statement of Mr. Ballman appears in the appendix.]

Senator WYDEN. Mr. Lorentzen?

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

Mr. LORENTZEN. Thank you, Chairman Wyden and Ranking Member Thune, for inviting me to discuss the evasion of U.S. antidumping and countervailing duty orders. This is an increasingly troubling phenomenon, and I appreciate your convening this hearing, your interest in the problem, and providing me the opportunity to discuss my agency's efforts to address the challenges.

As the Deputy Assistant Secretary for Import Administration, it is my responsibility to administer the antidumping and countervailing duty laws which are designed to counter unfair trade practices that cause injury to American industrial manufacturers and agricultural producers.

In the late 1980s, Congress gave Commerce certain authority to deal with potential circumvention of these duties. Moreover, as a matter of our daily business, we work closely with our partners at

CBP and ICE to try to counter and thwart various duty evasion schemes. Commerce conducts AD/CVD investigations and reviews to determine whether imported merchandise is dumped or sold at less than normal value, or if it is subsidized by foreign governments.

If our investigation finds that imports have been dumped or unfairly subsidized, and, if the International Trade Commission finds that the domestic industry has been injured as a result of the unfairly traded imports, we issue an antidumping or countervailing duty order.

When that happens, we instruct CBP to require importers to pay cash deposits whenever they import merchandise subject to that order. Thereafter, on an annual basis and upon request by an interested party, we will conduct an administrative review of the entries from the past year to determine the actual level of dumping or subsidization during that period.

Our role in identifying and counteracting circumvention is addressed in section 781 of the Tariff Act of 1930, as amended. Pursuant to those provisions, Commerce may conduct circumvention inquiries when it is alleged that minor alterations have been made to subject merchandise, it is alleged that merchandise subject to an order is completed or assembled in the United States or other foreign countries from parts and components imported from the countries subject to the order, and Commerce can also find under these provisions that later-developed merchandise may be included within the scope of an existing order.

If it is determined that an order is being circumvented, Commerce may, after consulting ITC, direct CBP to suspend liquidations of the entries and require a cash deposit of estimated duties on all unliquidated merchandise determined to be circumventing the order.

Today we are currently investigating seven allegations of circumvention involving such products as wire hangers, laminated woven sacks, small-diameter graphite electrodes, glycine, tissue paper, and cut-to-length carbon steel plate, all concerning orders on Chinese merchandise, as well as ferro-vanadium from Russia. A more detailed description of these inquiries is outlined in my written testimony.

In addition to the authority specifically prescribed to us by the statute, we work in close cooperation with DHS and the Department of Justice to assist them in enforcing the Customs laws and ensuring that our border measures are as effective as possible.

In 2006, we established a Customs unit that reports directly to our Deputy Assistant Secretary for AD/CVD Operations. This staff meets regularly with personnel from CBP and ICE to discuss enforcement issues, share information, and coordinate our interaction to address potential fraud and evasion.

In February of last year, the AD/CVD portion of CBP's new commercial trade tracking system, the Automated Commercial Environment, or ACE, went live for entries of merchandise subject to AD and CVD orders. ACE allows us to maintain much more efficient communication with CBP and the implementation and application of the duty rates. For example, ACE permits the application

of AD/CVD rates on a per-unit basis as an alternative to the typical ad valorem rates.

The application of a per-unit duty is important to counter situations where companies regularly understate the value of their imported merchandise. We have since opted to apply per-unit rates in several antidumping cases, including crawfish, honey, activated carbon, and garlic from China, as well as fish fillets from Vietnam.

In the course of our proceedings, particularly our annual reviews, our staff occasionally comes across information indicating the possible evasion of AD/CVD duties, and Commerce has also encountered situations in which foreign manufacturers have presented us with false documents during the course of an AD/CVD case. In response to such behavior, we recently amended our regulation governing the certification of factual information submitted to Commerce in an AD/CVD proceeding.

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

When we uncover information that indicates possible evasion of the laws, we have the statutory authority to provide that information to DHS. Once a fraud or evasion investigation involving an antidumping or CVD case is initiated by ICE, Commerce is frequently asked by either CBP or ICE agents, or the U.S. Attorney conducting the investigation, to provide assistance.

For example, during separate fraud investigations of steel wire hangers and honey from China, our analysts assisted the U.S. Attorney in these cases by providing extensive information and explanation about the results and nature of our own investigative processes. Cooperation among Commerce, DHS, and Justice has resulted in a number of indictments, convictions, and prison sentences for the evaders of AD/CVD orders.

My written testimony details several examples of cooperation among our agencies that has been critical to the enforcement of the law and responsible for the administration of due punishment to those who attempt to evade our orders.

Commerce is committed to the strict enforcement of unfair trade laws, and we will continue to work closely with our partner agencies to combat evasion. I thank you for providing me the opportunity to speak to you today, and I am happy to answer any questions.

Senator WYDEN. Mr. Lorentzen, thank you.

[The prepared statement of Mr. Lorentzen appears in the appendix.]

Senator WYDEN. Senator Thune, I think, has the more challenging schedule at this point, and I am going to let him start with his questions.

Senator THUNE. Thank you, Mr. Chairman. Again, I appreciate very much your gracious effort here to allow me to get these questions in before I have to catch a flight, and I appreciate your leadership on this issue. I think this has been very enlightening, and

I think will be very helpful as we move forward with, as I said earlier, some proposed solutions.

I want to just, if I could, get at a couple of issues here. I want to direct these, at least initially, to Mr. Gina from Customs and Border Protection. I am interested in knowing what efforts Customs has been making to engage foreign governments that engage in transshipment of Chinese honey to prevent further Customs fraud and circumvention, and secondly, what efforts are being made with the Chinese government and Chinese officials to prevent Chinese producers and exporters from engaging in the transshipment of honey and other merchandise. So, what are we doing to prevent the Malaysias and the Indias and the Indonesias from allowing this to happen, and secondly, what are we doing with regard to the Chinese officials?

Mr. GINA. Yes. Well, we have approximately 70 Customs Mutual Assistance Agreements, so when appropriate we attempt to utilize those as far as receiving information and the possible welcoming of teams to do verifications. As we have found—and I think it would be very honest and candid—with our Customs–Trade Partnership Against Terrorism attempt to do validations in China, it has been very challenging to get the country clearance from the Chinese government to enter in.

We have also engaged CBP, which represents the U.S. Government at the World Customs Organization. It has 177 country members, and we have raised through that forum some of these challenges concerning transshipment. The World Customs Organization has put out a compendium. They are a non-standard setting organization, but they put out a compendium offering recommendations.

I think as debated this morning—just a note as to whether you can police the system and whether the system allows for policing. One of the challenges that gets raised in the World Customs Organization is that we are the only country in the world with a retrospective system. We have tried through those mechanisms, and we have also, in one last area, reached out to the U.S. Trade Representative to possibly see if it would be feasible to have trade agreements that would allow for us to have jump teams that can go in to check on production capacity, and that was done. The example where that was successful was in the textile environment. Thank you.

Senator THUNE. It strikes me that that is kind of your job, to be the police force, right? I guess what I hear you saying is that in order to really put pressure on some of these foreign governments, and particularly in this case with honey with China, that you need more authority to do that. Is that what I heard you saying?

Mr. GINA. I would think that would be a fair assessment, sir. I think most of the challenges we have, most of the duties that go uncollected, are on individuals outside of, at least, Customs' authority. A lot of it is on foreign importers, because our statutes and requirements just allow for having a mailing address to be construed as an importer, so, when subsequent action needs to be taken, there is nobody here in the United States in order to actually go against legally.

Senator THUNE. I would think that what you suggested—and this is something we should do, too, Mr. Chairman, I would think, engaging USTR in this. I assume that they have been, on some level.

Mr. GINA. Yes.

Senator THUNE. But certainly it sounds like that needs to be stepped up as part of the response.

How do you decide what specific merchandise or what policy interests are given priority in enforcement?

Mr. GINA. Well, as stated earlier, from two perspectives. One, in doing an analysis, I think it was alluded to, 85 percent of all of the concerns, especially in uncollected duties, are from 5 particular commodities, and they all come from China. It is crawfish, fresh garlic, honey, mushrooms, and wooden bedroom furniture. Of the uncollected duties over the last 5 years, which amount to approximately \$1 billion, those five from that country account for about \$878 million.

We also do get the e-Allegations that we receive from the private industry. I will admit that we need to do better and work through the privacy laws and disclosure laws to see how we can provide information to the trade. As indicated, since the system was established, we have gotten 337 allegations that were relative to anti-dumping and countervailing duties.

Senator THUNE. Let me ask, if I might, Mr. Lorentzen, in the existing AD order on Chinese honey, anything less than 50 percent honey is not subject to duty. As Mr. Adey's testimony indicated, one major scheme has been mislabeling drums of honey as blends to evade the duty. Does the Department of Commerce have the authority to revise its order to better prevent that?

Mr. LORENTZEN. Well, I believe that that would be a question of evasion of the duty as opposed to—you have correctly described the scope of the order. I personally met on a number of occasions with folks from the domestic honey industry to describe what their options are under our anti-circumvention law, and then to the best of my ability to describe what I understood their alternatives would be with respect to transshipment or evasion questions where they could seek recourse with our friends at DHS.

Senator THUNE. If the 50-percent provision cannot be eliminated, does the Department have the authority to impose a duty at least on the percentage of honey that is included in the "blend?"

Mr. LORENTZEN. Well, the way our orders are structured, the written description of the product is what holds. That written description of the product is then used by a Customs specialist to determine what is dutiable. So we set the scope of the order at the outset of the case. It is not something that we can change later in time, unless there is an anti-circumvention issue.

Senator THUNE. Is there a way of knowing whether a drum of blended honey is actually a blend or pure honey labeled as a blend?

Mr. LORENTZEN. That is not a question that I am technically able to answer. Sorry.

Senator THUNE. All right.

One last question. I guess this is for Mr. Gina, maybe. That is, would a national standard of identity and field test assist in determining whether a product is pure honey or blended honey?

Mr. GINA. In answer to the question, can it be determined, yes. We have a laboratory and scientific services, and we have mobile labs, as well as stationary labs. It would have to be done through forensics by a chemist. So it can be done. The challenge is always to target certain shipments rather than impose that type of requirement on every single importation.

So there would be, hopefully, some type of indication that detaining a particular shipment would be warranted, and detaining it in enough time in order for the laboratory to do the testing. That, I guess, as mentioned in earlier panels, is that appropriate balance of ensuring that whatever is required for some does not get imposed on legitimate importers as well.

Senator THUNE. All right. Thank you. I appreciate, again, your testimony. Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Thune. We are going to work very closely on it.

I just want this panel to understand, what I am most troubled by is the complete lack of urgency that I am seeing in your presentation. I mean, what we have heard from the witnesses today, what we picked up in our investigation, is that the investigations are too slow. We are not protecting taxpayer revenue because we are not in a position where you can ensure that duties can be collected quickly, and we are not protecting American jobs at a time of high unemployment.

So I am going to walk you now through some questions that deal with these issues. I mean, you made the point, Mr. Gina, with respect to these five commodities, when Customs has authority to collect duties in cash where you suspect evasion and you all do not use that authority—I know there are questions about due process and the like—but that is what we have to get corrected. We have to stay at this until we fix the system that in my view is broken.

So let me just go through some questions and try to elicit your answers so that we can use that as a foundation for some reforms. The first is, we heard from Mr. Glassman, we are talking about substantial sums of money, I mean, even at one company. My first question to you is, if the Congress takes legislative and other steps to reduce the evasion of antidumping and countervailing duties, would you not agree that the result could well be we could make a difference in cutting the deficit?

Mr. GINA. The quick answer is yes, sir. I think it would make a substantial difference in how we collected money. I would note that, relative to the amounts of money that get collected—if I may introduce, it is approximately \$310 million per year requested of us for cash deposits. That is relative to the \$3.2 billion that we collect in duty. Of the import value for antidumping and countervailing duty, it is approximately, per year, \$5.4 billion relative to the \$1.9 trillion of imported merchandise.

Senator WYDEN. Let us talk about, of the duties assessed or identified, how much Customs has actually collected. My understanding is, for fiscal year 2010, collection rates from penalties assessed are about 1.5 percent. Is that right?

Mr. GINA. I would have to check on the exact percentage, but I would agree with you, sir, that it is extremely low.

Senator WYDEN. Well, you go do some checking.

Mr. GINA. All right.

Senator WYDEN. Because we got that from your agency. So you do not know, for example, what your agency is furnishing the staff?

Mr. GINA. Well, I would have to get back to you on this as part of the official record with the exact percentage. But I would share with you, sir, as I mentioned during my testimony, most of the people whom we are trying to collect those unpaid duties from are either outside of our reach or importers that are located in foreign locations.

Senator WYDEN. Well, your staff told us that the collection rates from penalties assessed are about 1.5 percent. So, if you want to contradict them, you get back to us, and we will be interested in that.

On this issue with respect to how long it takes to develop a criminal fraud case, is it fair to say—and this would be for you, Mr. Gina, and you, Mr. Ballman—that several years might be a common amount of time on a criminal case?

Mr. GINA. From our perspective, the time that we contribute to it, I would say several years would be appropriate, sir.

Senator WYDEN. Did you want to add anything to that, Mr. Ballman?

Mr. BALLMAN. Senator, one of those cases that I mentioned was the San Diego case. That one was the best case you could ever see. I mean, we did not have to go to a foreign government to obtain documents. The merchandise passed through the United States. We were able to mark it when it came back, and that case took over a year. So, yes, they do take—

Senator WYDEN. Given the fact we all agree that it takes more time to bring a criminal case, why not just move more quickly and assess the duties on the civil side and protect the taxpayer? Mr. Gina?

Mr. GINA. Well, I would welcome working with this committee on how to do that. I think what we have demonstrated and what Commissioner Bersin has challenged us with is doing exactly as you say, Senator, but also doing it within the rules, regulations, and the laws that allow us to do it.

Senator WYDEN. Here is my understanding of what Mr. Bersin thinks of all this that you all think works so well. It is my understanding that at a September 22, 2010 meeting, an important meeting of manufacturers—National Association of Manufacturers Customs and Border Coalition—the Commissioner was asked about antidumping and countervailing duty enforcement issues, and he described the current state of enforcement as incomprehensible and disgraceful. He said the problem is not a lack of resources, but the structure of the enforcement scheme. Are you aware of that, Mr. Gina?

Mr. GINA. I am, sir.

Senator WYDEN. You are aware that that is how the Commissioner characterized it?

Mr. GINA. I am aware that, if that was the Commissioner's quote, that I was aware that he made that statement.

Senator WYDEN. All right. Well, what has, then, been done to change the enforcement scheme to make it better, given the fact that the Commissioner says it is disgraceful? I mean, you all have

come and you have given your testimony. I have told you, I do not see any urgency with any of you about changing it. Now Mr. Gina—and essentially he is aware that Mr. Bersin says everything is disgraceful, but we are sort of going to go along about our business and kind of read each other some anecdotes and the like. So what has been done to change this enforcement scheme that Commissioner Bersin says is a disgrace?

Mr. GINA. Well, I think if I go back to what I alluded to in my oral statement, sir, we are trying to re-look at how we can apply bonds. I think, as you may be aware, sir, we attempted to use continuous bonds and were overruled by the World Trade Organization and the Court of International Trade, so we are trying to be more creative in our application of single-entry bonds. We are trying to address the issues relative to loopholes that may be presented by non-resident importers.

I think we stated—and I admit that we need to work with the trade and possibly try to figure out how we can be more robust in our information sharing. The attempt, as I mentioned, whether through the USTR or other means, to do site visits, as we had applied in textiles, our dialogue with our colleague agencies over the new shipper rule, and attempting, as we had done with IPR, to elevate to a task force the issues relative to antidumping and countervailing duty—

Senator WYDEN. I have to tell you, when somebody comes and tells me, just as you did just now, that you are interested in elevating something to a task force after these companies have said again and again and again that they come to you and they have to get some action, when somebody from the Federal Government, from an agency, says that they are really going to get serious about it, they are going to go after it now, why, they are going to elevate it to a task force, that does not sound to me like a whole lot is going to change.

Now, I have heard from numerous industries that the current e-Allegation system does not work because the domestic industry never receives any information back from Customs about the actions that are being taken. Do you agree that that is a problem that needs to be fixed?

Mr. GINA. I think there is room for tremendous transparency that can be built into the system. I think we, as indicated, take every allegation seriously. Since 2008, there have been 337. I think we do have information showing the disposition of what we did. We are trying to work through to ensure that we can reveal that information, but also stay true to the privacy laws and any appropriate statutes.

So of the ones that were taken—I know there was reference earlier—we do not close out an allegation by merely sending it to our field office. When it is sent to our field office, it is closed out after they take any appropriate action, such as requesting additional information through a CF-28 or any other steps that they take. If needed, I could supply that as part of the record, the matrix of the various actions taken on those 300 and something allegations, sir.

Senator WYDEN. Now, another concern of industry is that the agency fails to publicize even successful convictions, so a lot of deterrent effect is lost as a consequence. Do you agree with that?

Mr. GINA. Yes, I do.

Senator WYDEN. Is there anything going to be done to change that? Do you have any plans to do it? I mean, even in areas where you say you agree, I am not clear anything is going to be done to change it. So what is going to happen there that is going to be different?

Mr. GINA. Well, we have gone to our counsel and asked them, what can we do within the legalities of the laws in ensuring that we publicize those cases that are absolutely closed that would not compromise any type of investigation, and we will be taking steps forward to do that, sir.

Senator WYDEN. When is that going to start?

Mr. GINA. I would imagine it could be done within a month or two, sir.

Senator WYDEN. So in a month or two, that actually sounds like something might happen. In a month or two, you are going to start a new effort to publicize a successful conviction so we might start ending up with a little bit of a deterrent effect. This is on the level. We are not going to have another task force?

Mr. GINA. It is on the level, sir.

Senator WYDEN. All right.

Now, you say in your testimony our most valuable partner in antidumping and countervailing duty enforcement is U.S. industry. Given that statement, would Customs support giving the domestic industry the ability to file petitions alleging specific instances of duty evasion and circumvention, and then of course require an investigation into those practices if it was warranted?

Mr. GINA. Not having a legal background, sir, I would think it would be fair for me to respond to that and say, if it would help the process and make us more effective, I agree. I would only add that due process would have to be ensured. Having been in Customs and legacy Customs Service for 29 years, I know there are numerous instances of poison pen allegations, people just making allegations against their competitors, which would cause Customs to perform examinations, slow down shipments, or anything that could possibly do harm to legitimate competition. So I would just make a statement that due process would have to be ensured in any type of system.

Senator WYDEN. Now, you state in your testimony that only a small minority of shipments are non-compliant with the antidumping and countervailing duty laws, and at the same time the subcommittee has heard again and again from all sorts of industries that the orders are being evaded and not enforced. What are you basing your statement on that we are talking only about a small minority here?

Mr. GINA. The statement was based on, sir, we receive orders and then compare the subsequent collection of the duties. We have found statistically that 60 percent of the ultimate duty is what was assessed initially, 26 percent is where the U.S. Government provides a refund. It is that 14 percent where there is a significant increase to the amount of duty and/or revenue that needs to be collected. So, while I think we would say 14 percent is the small universe, but, as alluded to earlier, I think the significant amount of

duty that is collected is such that it leads to a large number of monies and duties that do not get collected.

Senator WYDEN. Why don't you let us see that information? I am going to have to unpack it.

Mr. GINA. All right.

Senator WYDEN. Let me come back to the comment I made earlier. Customs is only collecting 1 percent of the duties and penalties that are assessed for evasion, and that is not good enough. So, I want to look at that analysis that you have just mentioned.

Let me turn to you now, if I could, Mr. Ballman. Over the last 12 months, ICE has purposely seized about 100 domain names and accidentally seized tens of thousands more. Over the last 12 months, how many seizures has ICE made of merchandise that was entered into the United States in ways meant to evade the anti-dumping and countervailing duty orders?

Mr. BALLMAN. Senator, I would have to defer to CBP, which has people in the ports. They are the ones who usually do the seizures on the merchandise as it is imported.

Senator WYDEN. Is ICE challenged for resources to enforce the trade laws?

Mr. BALLMAN. We have, of course, 26 Special Agent in Charge offices, many satellite offices, as well as over 70 offices overseas. So we have people working commercial fraud in each one of those offices. Of course, in the overseas offices, they have to take care of all of our responsibilities, so their time is limited to what can be spent on commercial fraud. But we do have resources that are dedicated to this.

Senator WYDEN. Has the International Trade Commission made a similar determination into whether the domain names that ICE seized caused specific injury to any of the movie studios?

Mr. BALLMAN. Not that I am aware of.

Senator WYDEN. You see, what concerns me is that we have companies here, American workers, proven harmed, taxpayers clearly being injured, and yet we are seeing an effort to look at possible harm to the movie sector. It just seems to me we are missing how important it is to get this right and to make sure that we are enforcing the laws with respect to our workers and our businesses. That is what I am going to continue to ask you about.

Now, as you know, for several months I have raised concerns about ICE's efforts to seize website domain names that allegedly facilitate the distribution of content that infringes on copyrights. I emphasize "allegedly" because these website operators have not had their day in court. ICE is seizing websites that many Internet experts say are operating legally.

Now, I got the strong impression that ICE dedicates more resources towards seizing personal property over alleged wrongdoing than toward enforcing the trade laws that are proven necessary to spare domestic industry and tens of thousands of American workers from harm.

So again, I want to come back to the question of priorities, and how are you all working together, you and CBP, to coordinate enforcement activities. Because we have to get this right. If American manufacturers look out and they are seeing these slow investigations, and—as we heard earlier—agencies that do not get back to

them at all, and yet the government is responsive to the movie industry, I do not think that is going to demonstrate, at a time of high unemployment in the country, that we are getting the job done on enforcement. So what can be done here between what you all do and what CBP does to coordinate enforcement activities so we can make a difference for these manufacturers?

Mr. BALLMAN. Part of your question: we have only seized 120 domain names at the IPR center. Those were done after either downloading content or making multiple purchases and receiving both the downloaded and the other products and having confirmed that they were either pirated or that they are counterfeit items. So far, of the 120, 66 have already gone through the forfeiture process through the courts and have been forfeited to the government.

CBP and ICE work hand in hand in commercial fraud. We have to. CBP is the first line at the ports. We work together through what we call the CER process, which is Commercial Enforcement and Response, where we have our agents, their import specialists, their officers, their port directors, their auditors, meet on a monthly basis in the port to go over all allegations that they have toward commercial fraud.

In addition to that, we also have a headquarters CER process where, at the headquarters level, ICE meets with CBP, and we go over what is going on in the field, because we might have a bigger picture of what is going on. So, if something may have been declined for investigation or other activity out in the field, we see that it is a pattern of activity, and we can act on it. So, we work very closely with CBP.

Senator WYDEN. What troubles me again is the question of priorities. I mean, we have had these American industries, these important American industries from all over the country, saying nobody pays any attention to them. Yet ICE is working very closely with the movie studios, hand in glove, as they move towards seizing websites for copyright infringement. Are you telling me that you spend as much time on basic American industries that have been telling me today that they are not getting the time of day from you all, are you telling me you are spending as much time and giving as much of a priority to them as you are to the movie studios?

Mr. BALLMAN. Yes. As I stated in my testimony, we have done 391 cases since 2006. We take allegations very seriously. We go through these allegations, and, if they meet prosecutorial thresholds, we open an investigation and go forward with them.

Senator WYDEN. I can only tell you that the companies that I talk to say, across the board, that what we heard this afternoon—that they bring cases to you all, your two agencies in particular, and basically get no response—is light-years removed from the kind of efforts I see with movie studios, and press conferences about those kinds of operations. I just do not think the case you are making here today that these are priority issues bears up, and that is why we are having so many companies from across the country express their unhappiness.

Let me turn to you now, Mr. Lorentzen. You mentioned the Department of Commerce is currently investigating seven allegations of circumvention. The sixth involved products from China. Circumvention certainly seems to be a problem that we are experi-

encing with them, and what we are looking at here does not even include the myriad number of evasion techniques that our investigators find.

My sense is that China looks like the big challenge in the room. What more ought to be done to ensure that products from China do not continually circumvent and evade our trade laws? This is a question designed to see if part of this requires a more China-centric solution to try to get around. What is your sense about that?

Mr. LORENTZEN. Well, I think, first of all that, as has become evident from the discussion today, the issue of circumvention is related to, but somewhat different from, the collection of issues having to do with evasion. As I indicated, we have six of seven of our ongoing cases that involve goods from China. I am a little bit reluctant to suggest that there ought to be a change that makes it China-focused, for the main reason that today it is China, tomorrow it may be Vietnam, it may be other countries, and we need to make sure that our tools are equally and effectively applicable across the board.

So certainly, if there are specific issues relating to our commercial relations with China that are relevant to our anti-circumvention inquiries and are permissible for us to take account of, we will do that. As I indicated earlier, we try to share information as much as we can with our colleagues from DHS within the context of our own investigations.

So China is one of our largest trading partners. Perhaps upwards of 35 to 40 percent of our caseload involves China, so it is an important concern today. But, if we were to envisage sort of statutory changes, I would want to make sure that they were equally applicable to all of our trading partners.

Senator WYDEN. How does the enforcement mission that we are talking about here today relate to some of the other important aspects of our trade agenda, particularly, say, the export initiative?

Mr. LORENTZEN. The National Export Initiative that the President announced, the Commerce Department was one of the agencies that developed some of the initial ideas for that. Early on, Secretary Locke was quite clear with me and with others in our agency that an important pillar of that initiative is to ensure that we have effective enforcement of our trade agreements and our trade laws.

Last year, he sat down with me, and we went through a number of issues relating to our own administrative practice, and we put forward some proposals for regulatory and administrative change in order to tighten enforcement of the law. So in my mind, in order to be competitive globally, American industries need to be assured that they can compete on fair terms, and that is why enforcement of the laws and the agreements is an important component of the National Export Initiative.

Senator WYDEN. Now, Mr. Lorentzen—and let me get you into this too, Mr. Gina—sometimes companies apply for the New Shipper status, the New Shipper category from the Department of Commerce. They get a favorable countervailing duty or antidumping margin, and then they go out and ship massively at an unfair price. That is what we are being told happens.

Do you all have an effort, between you at Commerce and you, Mr. Gina, to come up with a way to tackle this kind of issue? I mean, it would seem to me that you ought to be sharing information and doing something to stop this kind of activity. But describe what goes on between the two of you on this issue of New Shipper status that we end up getting fleeced on too.

Mr. LORENTZEN. Well, I would say, speaking for my part, when we get requests for a New Shipper rate, we devote a lot of time and attention to, first of all, ascertaining whether or not it is a bona fide new shipper. We devote a lot of—

Senator WYDEN. Does Customs send you that information?

Mr. LORENTZEN. Well, this would be information about the foreign exporters as opposed to the importer.

Senator WYDEN. All right. It is in your ballpark.

Mr. LORENTZEN. But the importer concerned that is involved in the transaction would also be on the domestic side. So I think, within the confines of our respective statutory authority, we share as much information as we can. It may well be that certain of the information that is subject to criminal proceedings, our colleagues at DHS would not be, at present, able to share that information. But I will defer to them to answer that question.

Senator WYDEN. Mr. Gina?

Mr. GINA. As alluded to, the information that we have with regard to importers, we do share with our colleagues from the Department of Commerce. I think the real challenge is, is the person who is presenting himself as a new shipper, is he falsifying that information? So, for example, if they are really Al Gina Imports and we have, in CBP, all of that history on their imports, but when they are presenting themselves as a new shipper, if they are presenting themselves as John Doe Importers, we need to work better on how we close that disconnect and that gap that exists.

Senator WYDEN. Well, where I am going with this line of questioning is, both of you have been concerned about a host of these kinds of issues, the treatment of confidential business information, trade secrets, materials under prospective orders. Would Customs find it useful to have greater access to Commerce information during an investigation, again, to kind of speed things up in this area?

Mr. GINA. Well, I think, as noted, Customs is not an investigatory agency. Our investigative arm is ICE. So in answering that question within those parameters, if the information is part of the investigation, if it can help us perform our role in this process better, we would welcome that opportunity.

Senator WYDEN. Have you done an analysis of your authority to share information with partner agencies? Is that done?

Mr. GINA. I would have to check.

Senator WYDEN. But should you not know the answer to these questions? I mean, that is a pretty simple question: have you done an analysis about whether you have the authority to share information with partner agencies?

Mr. GINA. I will have to check, sir. As I mentioned in my statement, I am new to this current position, even though I have been with CBP 29 years. That is no excuse, but, if I gave you an answer that was not factual—

Senator WYDEN. Fair enough.

Mr. GINA [continuing]. I think I would be at a loss of integrity.

Mr. LORENTZEN. Mr. Chairman, if I could say——

Senator WYDEN. Sure.

Mr. LORENTZEN. For our part, there is no statutory bar to us sharing information that we have with Customs. We share as extensively as we can. So I think we have an interest, and we have felt it is reciprocal, to exchange information experiences on the maximum level.

Senator WYDEN. I will tell you, we have been at it, what, close to three hours at this point. I was concerned when I came with respect to what this process was doing to our country, both from the standpoints of credibility in the area of global commerce—I mean, we have major trade agreements coming up, three major trade agreements.

I do not know how you go to the American people and credibly say that you want to go forward with new trade agreements when people are going to look at this transcript and they are going to say—they are going to look at the transcript of this hearing, folks who want to follow up on this, and they are going to say, the laws on the books are not being followed. They are only collecting 1.5 percent of what they ought to be collecting. We have investigations that are too slow, taxpayers' interests are getting short shrift. When we have this tremendous unemployment rate, we are seeing businesses saying they are losing employment in their sectors as a result of these kinds of abusive trade practices.

I have seen virtually no urgency with respect to what is going to be done. In some areas, such as the ones that you and I talked about with respect to our industries, Mr. Ballman, I just wish you would give to the cause of basic manufacturing in this country the same visibility, the same priority that you give with respect to the movie studios and what is going on with respect to alleged copy-right violations.

So, I will let you all add anything further, but I want to assure you and assure your agencies I am going to stay at this until it changes, because there is a big gap between what you have said is going on and Commissioner Bersin saying that this enforcement situation is a disgrace.

I do not hear that kind of comment from somebody who heads an agency very often, but you sure do not get that kind of message from the three of you, A, or B, that much is going to be done to correct it. So, if you all would like to add anything, we will let you have the last word. Otherwise, the subcommittee will be adjourned. Do any of you want to add anything else? Mr. Lorentzen?

Mr. LORENTZEN. Let me just say, as I indicated at the beginning of my testimony, we agreed that this was a problem when we looked——

Senator WYDEN. I am sorry, Mr. Lorentzen. Excuse me. I just was trying to make sure Senators could get their statements in the record. Go ahead. I am sorry.

Mr. LORENTZEN. All right. I just wanted to indicate that at the beginning of my remarks I agreed that this was a serious problem, and I welcomed this hearing and consideration that you are giving to the problem.

I come from a part of Ohio that Senator Brown referred to in terms of the northeastern part of the State, what is commonly referred to as the Rust Bowl now. My dad grew up in industry. Thirty years ago when I started at the Commerce Department, my first case was on *Steel Wire Nails from Korea*. So, I have lived through these problems. Speaking personally, I am here to tell you that Import Administration and the Commerce Department will work closely with you and with this committee to ensure that we have the most effective enforcement tools that we need.

Senator WYDEN. Well, I thank you. With those Ohio roots, I hope you will get to the same kind of approaches that Senator Brown is advocating with respect to enforcing our trade laws.

Mr. Ballman?

Mr. BALLMAN. Yes, Senator. I just want to say that ICE is interested in protecting U.S. businesses, all U.S. businesses. We need to publicize more what we are doing with the antidumping cases so that everybody knows what is going on, just not what is going on with the movie industry, because we are doing the investigations, we are able to get indictments and put people in jail.

Senator WYDEN. Mr. Gina?

Mr. GINA. I would just like to thank you for the opportunity to be here, sir. I would like to just, on behalf of my colleagues at CBP, note that they do take it very seriously. My colleagues put their lives in harm's way each and every day to protect the national security of the United States, and I would welcome the opportunity to work with you, the private industry, and others to correct this situation.

Senator WYDEN. With that, the subcommittee is adjourned.
[Whereupon, at 4:48 p.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF

AMERICAN HONEY PRODUCERS ASSOCIATION

HEARING ON

**“Enforcing America’s Trade Laws in the Face of Customs Fraud and Duty
Evasion”**

Committee on Finance

Subcommittee on International Trade, Customs, and Global Competitiveness

United States Senate

Wednesday, May 5, 2011, 2:00 pm

Chairman Wyden, Ranking Member Thune and members of the Committee, we applaud you for holding this timely hearing on enforcing America's trade laws. We in the honey industry are encouraged by the steps that you have taken to raise the profile of America's trade enforcement deficiencies. Protecting American beekeepers, the domestic honey industry and the billions of dollars in agricultural crop output that relies on pollination services should remain a national priority. I am Richard Adee, President of Adee Honey Farms, past President of the American Honey Producers Association (AHPA) and current Chairman of the Association's Washington Legislative Committee. I am testifying today on behalf of the association and its members, but I am also mindful that other agricultural industries such as mushrooms, catfish, crawfish, garlic and shrimp have suffered the effects of similar trade schemes over the past decade.

For beekeepers, honest honey packers, and honest importers, our challenges continue to mount each year. As I speak to you today, our industry faces severe hardship. Despite efforts to combat duty evasion and fraud in the honey trade, complex schemes continue to disadvantage the American honey producer, endanger pollinated crops and threaten the health and safety of consumers. As most aptly stated in a recent article in Toronto's "The Globe and Mail", this is the largest food fraud in U.S. history, a "growing multimillion-dollar laundering scheme designed to keep the endless supply of cheap and often contaminated Chinese honey moving into North America is putting the domestic industry on the verge of crisis".

Importantly, it affects all segments of the industry, dependent crops and consumers alike. Producers struggle under the impact of increasingly divergent market prices – one price for legitimate honey and another rock bottom price for transshipped honey, directly resulting in rapidly diminishing market share for American producers.

U.S. agriculture suffers as a result since less domestic honey production means less managed bee colonies to pollinate crops. Honeybee pollination is critical in the production of more than 90 food, fiber, and seed crops and directly results in approximately \$20 billion in U.S. farm output, including such diverse crops as almonds, apples, oranges, melons, blueberries, broccoli, tangerines, cranberries, strawberries, vegetables, alfalfa, soybeans, sunflower, and cotton, among others. In fact, honeybees pollinate about one-third of the human diet. With less managed colonies to pollinate these crops, farmers are paying higher prices, producing lower crop yields and facing a looming potential for disaster in our agricultural economy. After all, importing honey might be easy, but importing quality managed bee colonies is a whole other story.

Honest packers, dealers and importers also suffer as they are forced to lose market share to their colluding competitors or else participate in these illicit trade schemes. In many instances, we are witnessing a march to monopoly where packers are conceding their loss and selling operations to larger, more nimble competitors who wish to appear blinded to the source of their honey.

Finally, consumers face substantial risk due to illicit, often adulterated, food products entering uninspected and unsuspected into the food supply. In past cases, Chinese honey has

been found to contain antibiotics and heavy metals. The European Union has even outlawed Chinese honey as a result.

In addition to these trade-related market distortions, beekeepers continue to battle against the mysterious phenomenon known as Colony Collapse Disorder ("CCD"), which has ravaged bee colonies across the United States, moving from one hive to another in unpredictable patterns and killing off an average of 30% of managed bee colonies annually. In early 2007, the National Research Council at the National Academy of Sciences characterized the beekeeping industry as being in "crisis mode" – a point echoed and re-emphasized in a 2008 U.S. Department of Agriculture action plan regarding honeybee threats. Taken together, CCD, circumvention and fraud have the potential to bring the domestic honey industry and the crops that rely on pollination services to their knees.

My comments are intended to focus on the industry's trade concerns and to shed additional light on the numerous fraudulent schemes that are currently being perpetrated, so that the committee can more fully assess gaps in our current trade laws and develop informed legislation that will provide relevant federal agencies with the enforcement tools necessary to fight this very real threat to the future of the American honey industry. But before doing so, I would first like to thank officials at the U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) agencies for their ongoing efforts to investigate and bring to justice those engaged in fraud and duty evasion. Similarly, we applaud the U.S. Department of Justice for their recent and numerous successes in prosecuting criminal honey launderers.

I. U.S. Import and Market Data Demonstrate a Substantial Spike in Honey Import Fraud and Circumvention

Data shows that the United States imported a mere 1.75 million pounds of legal honey from China in 2010. This compares to ten years ago (prior to the 2001 anti-dumping order) when China was one of the two largest U.S. honey suppliers, shipping 58.7 million pounds of honey to the United States on an annual basis.

Since 2001, imports from other countries have risen to replace the import volume from China. Most notably, record levels of honey were imported into the United States from Malaysia, Indonesia, India and Taiwan in 2010. Together, these countries exported more than 60 million pounds of honey to the United States last year. Unfortunately, the honey they shipped was nothing more than Chinese honey with a different country of origin label.

In the cases of Malaysia, Indonesia, and Taiwan, none of these countries have commercial beekeeping operations capable of producing anywhere near that volume of honey. In fact, according to our research and admissions of the Malaysian Government, that country has only 25 beekeepers with the capacity to export about 45,000 pounds annually, which is what they did in 2001. However, by 2002, after implementation of the anti-dumping duty on Chinese honey, Malaysia exported 1.7 million pounds to the United States and they continued to build upon that volume, reaching as high as 37 million pounds last year alone. Interestingly, the Food and Agriculture Organization at the same time lists Malaysia as a "net importer" of honey, receiving imports from countries, including the United States, to meet its own demand.

Increasingly sophisticated honey import schemes are creating drastically diverging market prices. There is now one price for legitimate honey and another rock bottom price for laundered honey entered into the United States illegally and without paying duties owed to the U.S. Treasury. According to USDA, the average price of all honey sold in the United States was \$1.45 per pound in 2010. During the same period, transshipped Chinese honey coming in through other countries was offered for sale at prices as low as \$.75 per pound (which is only possible because no anti-dumping duty will ever be paid on the imported honey). This fraudulent and illicit trade makes it almost impossible for honey packers who refuse to purchase transshipped product to compete against those who are engaged in this activity.

While largely defenseless, the honey industry has done all it could over the past few years to fight back. In coordination with ICE and CBP officials, we have obtained some welcome results. In the first three months of 2011, honey imports from Malaysia were slowed to less than a million pounds. While this number still represents 80 times the actual Malaysian production capacity, the substantial reduction shows that a combination of market intelligence and committed enforcement officials can produce results. Over the same period of time, imports from Taiwan and Indonesia have similarly fallen dramatically.

Unfortunately, as history has taught us to expect, once one hole is patched, another springs open. As honey imports from these three countries (Malaysia, Taiwan and Indonesia) decreased substantially in the first quarter of 2011, imports from Vietnam have surged to 13 million pounds for the first quarter of this year, which is up from 5 million pounds in all of 2010 combined. Similarly, increased honey imports from India indicate that the honey transshipment business is merely moving to the paths of least resistance. Exacerbating this trend, the European Union recently banned honey from India due to lack of “traceability” and presence of heavy metals. While a welcome move, it has added significant supply pressure and resulted in Indian shippers needing to offload quantities on the only other market of sufficient scale – the United States.

Moreover, transshipment of Chinese-origin honey is not the only trade problem facing the domestic industry. Chinese shippers and others are also mis-describing pure honey as blended syrup, honey syrup, and malt sweetener in order to enter the merchandise under a different customs category and avoid paying the anti-dumping duty. In fact, our industry is concerned that a significant amount of the honey entering the United States without payment of duty is imported as some blend or other category of non-honey sweetener. While the Chinese are employing this tactic to purposefully evade the duty on Chinese imports, it is also being used in transshipment schemes so customs officials will not necessarily notice specific spikes in honey shipments from a particular country. Since blends are not entered as “honey”, such shipments are off the radar.

In 2008, 2009 and 2010, at least 80 million pounds of Chinese-origin honey entered the United States each year without paying the anti-dumping duty. That is equivalent to 35% of all United States honey imports in 2008 and 44% of all honey imported in 2009. In sum, duties of \$300 million otherwise owed to the U.S. Treasury have not been collected. This, of course, does not account for the millions in economic harm done to the domestic industry over the same three-year period. When added together, the numbers are staggering for such a relatively small sector of the economy.

II. Successes: Ongoing Investigations and Enforcement

We are encouraged that the U.S. Department of Homeland Security is continuing to investigate and U.S. Attorney Offices are continuing to prosecute those who support illegal honey laundering activities. In his written statement submitted to the committee last year, CBP Commissioner Alan Bersin highlighted the agency's "targeted enforcement" approach. There is a growing body of evidence that this "targeted" strategy is successful in identifying criminal actors and bringing them to justice.

On May 17, 2008, "two Chicago executives of a German-based food company were arrested on federal charges for allegedly conspiring to illegally import honey from China that was falsely identified as coming from other countries to avoid anti-dumping duties, and that contained an antibiotic not approved for use in food-producing animals, including bees."

Federal authorities have also pursued many other schemes to circumvent the anti-dumping duty on Chinese honey. On October 29, 2009, the U.S. Attorney for Chicago announced that the "president of a honey manufacturer in China" pleaded guilty "to conspiring to illegally import Chinese honey that was falsely identified as coming from the Philippines into the United States to avoid domestic anti-dumping duties."

On December 20, 2010, "the former president of a Seattle-area company was sentenced to a year in prison...and ordered to pay \$400,000 in restitution after an investigation by ICE agents revealed he imported contaminated honey from China." He had "pleaded guilty to federal charges of entry of goods by means of false statements and introduction of adulterated food into interstate commerce." He admitted that between 2005 and 2008, he imported 22 shipments of Chinese honey that was re-labeled to hide the country of origin.

On February 17, 2011, "a Chinese business agent for several honey import companies was arrested in Los Angeles on federal charges for allegedly conspiring between 2004 and 2006 to illegally import Chinese-origin honey that was falsely identified as originating in South Korea, Taiwan, and Thailand to avoid U.S. antidumping duties."

More recently, on March 11, 2011, the "U.S. Attorney for the District of Oregon announced the seizure of approximately 192 fifty-five gallon drums "(totaling 10,560 gallons) of counterfeit honey from a warehouse in Salem, Oregon. This seizure was "part of an ongoing joint investigation conducted by the U.S. Attorney's Office in Oregon, the U.S. Attorney's Office in Chicago, Illinois, and U.S. Homeland Security Investigations."

Unfortunately, despite this growing list of judicial successes, we remain concerned that existing tools to combat illicit trade are simply not sufficient. Enforcement after the fact may prove an effective deterrent for specific would-be foreign criminals, but it has not yet proven effective at stemming the tide of illicit, under-priced and unsafe honey into the stream of United States commerce. It is comparable to an ordinary car theft operation. You can catch as many car thieves as possible, but as long as the "chop shop" goes undisturbed, they will simply find

another thief and just as many cars will be stolen with just a severe and economic impact on the community. Equally, every time large quantities of transshipped honey enter this country, whether the thieves are later caught or not, our industry is directly and irreparably harmed. The two-tiered pricing is exacerbated, we lose domestic producers and honest packers to unfair competition and market share is permanently lost.

Therefore, while we continue to support the targeted enforcement of foreign producers and importers, we also strongly urge an added focus on the demand side of the equation. Without those few packers and importers who are willing to collude in illicit schemes, the Chinese have no ability to evade U.S. trade law. Without collusion there is no market for transshipped honey. And without a market for transshipped honey, domestic producers and countries that believe in fair play can flourish.

We implore our enforcement officials to shine a bright light on the demand for transshipments of rock-bottom priced honey being propagated here in the United States by these few colluding packers and importers, and we urge Congress to provide federal officials with any and all tools necessary to accomplish their respective missions both now and in the years to come. We, as an industry, stand prepared with data, intelligence and resources to support the cause.

III. Past as Prelude: Abuse of the “New Shipper” Bonding Privilege Under the Anti-Dumping Law is Instructive

Perhaps the most poignant example of fraud and duty evasion in the past ten years was the flagrant abuse of the “New-Shipper” bonding privilege afforded to certain Chinese companies. Leading up to 2006, Chinese exporters widely exploited the “new shipper” provision of the U.S. anti-dumping law, which resulted in severe undercutting of the 2001 U.S. anti-dumping order that was meant to protect the domestic honey market. The “new shipper” loophole was used to exploit other orders as well.

Prior to 2006, cash deposits were required on honey imported from Chinese shippers in order to cover estimated anti-dumping duties in the event that the Department of Commerce later found fault with the shipments and determined that duties were owed. However, “new shippers” of Chinese honey were exempt from the cash deposit requirement on the grounds that they had not been a part of the prior dumping activities that had resulted in the imposition of the anti-dumping order. These “new shippers” were instead given the option to post bonds, significantly decreasing the cost of doing business in the United States. Importantly, this bonding option was not required by World Trade Organization (“WTO”) Agreement.

The bonding option provided a powerful financial incentive for Chinese exporters to falsely claim new shipper status, because dumping duty deposits on imports from new shippers could be secured by low cost-bonds (obtained for pennies on the dollar) rather than by the full cash deposits required in most other cases. Once Chinese exporters obtained new shipper status, they harmed U.S. producers by shipping massive volumes of honey or other commodities at very low prices. These massive imports cause devastating and potentially irreparable harm, particularly to domestic agricultural sectors. Moreover, when the government eventually determined that

substantial anti-dumping duties were owed, the shippers' affiliated U.S. importer evaded payment by defaulting or disappearing. In effect, this scheme enabled Chinese exporters to undercut and avoid almost all of the remedial effect of anti-dumping duties while perpetrating substantial harm on the domestic producers as well as packers and importers who were unable to compete.

While the 2001 honey anti-dumping order reduced imports of Chinese-origin honey from almost 59 million pounds in 2000 to 17 million pounds in 2002, in 2003 below-market-priced Chinese imports surged by 200 percent to 53 million pounds, a direct result of new shipper exploitation. This import surge continued in 2004 with the average import price for Chinese honey nearly 40 percent below the average price for all other honey imports. As a result, CBP reported that abuses in new shipper cases were a significant factor in its inability to collect over \$100 million in antidumping duties on imports from China during fiscal year 2003 alone.

The Pension Protection Act of 2006 included a provision that temporarily suspended for three years the ability of importers to post a bond in lieu of cash deposit for estimated duties owed. The amendment served to prevent clear and serious ongoing harm to the domestic honey industry and other antidumping petitioners, including domestic producers of garlic, mushrooms and freshwater crawfish tail meat. As the data in Exhibit #1 shows, a dramatic drop-off in Chinese honey imports occurred between 2006 and 2007.

Unfortunately, this temporary suspension expired on June 30, 2009, and market data suggests that certain shippers may be laying the foundation to again exploit this loophole to the detriment of the domestic agricultural market. While some are of the opinion that the Chinese will not exploit the same loophole again and that bonding companies are not likely to participate in this market, we reject the premise that the domestic industry should passively wait for direct evidence of harm – once again – before Congress acts to close any and all known loopholes.

Let us be clear. We are not protectionists. The U.S. market requires and will continue to require a substantial amount of imported merchandise. Domestic producers cannot meet even half of the 400 million pounds of annual U.S. honey demand. However, lines must be drawn. Trade relationships must be based on trust and integrity. In the case of China and the countries that have facilitated transshipment, we have seen all that we need to. It is time that Congress weighs its decision in favor of the domestic industry and in favor of countries capable and willing to abide by U.S. trade laws. We strongly urge you to re-close the bonding loophole by reinstating the cash deposit requirement that has lapsed.

IV. Conclusion and Recommendations

For more than a decade, the domestic honey industry has suffered at the hand of unfair and unlawful trade practices, primarily perpetrated by Chinese producers and Chinese exporters. Over that same period, we have fought hard to have our voices heard in Washington and to provide information to federal law enforcement officials. Together, we have succeeded in thwarting the activities of certain individuals, and, at times, have even temporarily slowed the inflow of circumvented honey.

Unfortunately, each and every time we succeed, a new scheme is invented. First it was the dumping of artificially low-priced honey on the U.S. market. After a long and costly process undertaken by the industry, an anti-dumping duty was finally imposed on Chinese honey in 2001. Soon thereafter, unscrupulous Chinese exporters exploited the new shipper bonding privilege loophole, again to the detriment of the domestic industry, and this time also depriving the U.S. Government of millions of dollars in unpaid duties. In 2006, when Congress closed that loophole, transshipment of Chinese honey resulted in inordinate amounts entering the United States from countries such as India, Indonesia, Malaysia and Taiwan. Through transshipment, China has more than made up for lost export volume intended by the 2001 anti-dumping order (see Exhibit #1, measured in metric tons rather than pounds).

With mixed success, our federal officials appear to be making progress country by country in the transshipment battle. But, as one country slows its transshipment activities another country takes over. In fact, while we are currently experiencing an appreciable drop in imports from Malaysia and Indonesia, imports from India and Vietnam have surged and reports of as many as 100 containers have departed Indian ports in a single day from a region where only 20 containers are typically produced on an annual basis.

As if all of that were not enough, in recent years, we have seen a substantial increase in imports of honey “blends”. According to the 2001 Anti-Dumping Duty Order, anything less than 50% pure honey by volume is not subject to a duty. As a result, Chinese exporters have been entering inordinate amounts of “blends”. In some cases, these are actual blends (see Exhibit #2) with no assurances of safety or proof of their actual composition. In most cases, however, these are not blends at all. They are pure honey shipments disguised in plain view to avoid duties.

As a proud industry, we are cognizant of our duty to assist government officials in their endeavor to ensure that imported honey is safe, legal and properly labeled as to country of origin. As such, we stand eagerly by to provide market data and intelligence at your request. Together, we believe that we can not only punish the criminal actors who are caught, but we can protect the domestic industry by preventing the inflow of additional circumvented and fraudulently entered honey.

This Committee’s efforts to shine a light on the problem and to put forth legislative solutions may just preserve the viability of the American honey industry and ensure the well being of nearly \$20 billion in pollinated U.S. farm output annually. To be successful now and to ensure that we are adequately nimble to respond to future threats, additional tools are needed. To that end, we recommend that the Committee consider the following recommendations as part of its Customs Reauthorization effort this year:

1. Extend the new shipper bonding privilege suspension permanently;
2. Require collection of cash deposits on suspect subject commodities. CBP should demand cash deposits on U.S. imports where CBP has sufficient evidence to support a belief that the commodity was imported for the purpose of evading antidumping duties;
3. Require CBP to compile a database of individual characteristics of honey produced in foreign countries to facilitate the verification of country of origin markings of imported honey;

4. Establish procedures for CBP investigations regarding allegations of transshipped commodities, including a statutory response time, clear communications with stakeholders and required cooperation with other federal agencies, including the Department of Commerce and the Food and Drug Administration;
5. Provide investigatory authority to the Department of Commerce, the agency best positioned to make determinations on circumvention of the orders that they developed and imposed in the first place;
6. Implement technologies that will facilitate communications between and among the numerous government agencies with regulatory authority over commodities that enter the United States.
7. Require at least one CBP official at each major port who is dedicated to the enforcement of antidumping and countervailing duty laws; and
8. Increase CBP and ICE resources for the enforcement of antidumping and countervailing duties, understanding that there is a significant return on investment if these agencies are able to collect on the \$900 million in uncollected duties owed to the U.S. Treasury on honey, mushrooms, crawfish, and garlic alone.

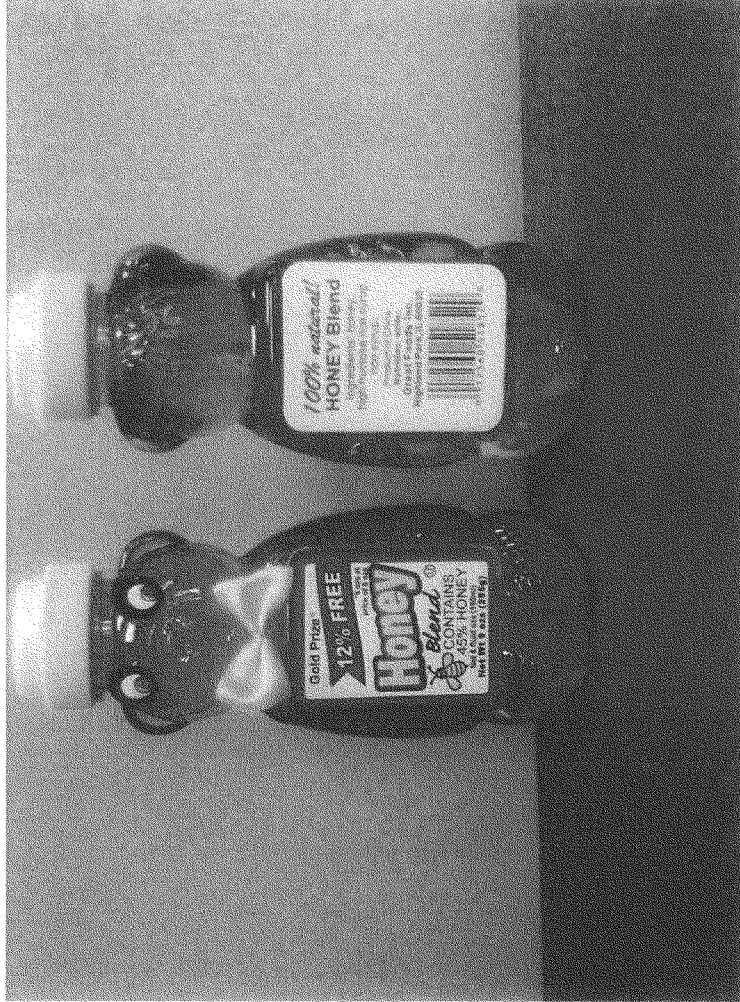
By enhancing authorities and ensuring adequate response times and communications between agencies, among the other recommendations listed, this committee can help to minimize the risk of adulterated honey products being sold as pure honey in the U.S. food chain, respond to numerous commercial fraud schemes, restore the integrity of U.S. trade law, collect substantial anti-dumping duties for the U.S. Treasury and preserve the domestic honey industry as well as the agricultural sectors and agricultural sector jobs that rely on it.

EXHIBIT 1
U.S. Honey Import Data

Table 48 - U.S. Honey Imports, by importing country, calendar year (measured in metric tons)									
	Global to U.S.	India	Malaysia	Taiwan	Indonesia	Thailand	Total of 5 "Countries"	China	
1990	34,944	0	0	1	0	2		11,545	
1991	41,846	0	0	2	0	5		20,334	
1992	51,995	0	0	1	0	4		27,251	
1993	60,617	0	0	3	0	0		34,826	
1994	55,896	0	0	3	0	0		29,334	
1995	40,186	0	0	5	0	0		12,482	
1996	68,307	624	0	10	0	0		19,418	
1997	75,949	1,763	0	16	0	0		11,475	
1998	60,039	440	0	25	0	0		13,828	
1999	82,789	37	0	18	0	0		23,129	
2000	90,056	0	0	27	0	161	188	26,819	
2001	65,700	20	0	27	0	1,302	1,349	17,713	
2002	91,907	2,465	1,039	44	0	4,445	7,993	7,583	
2003	90,906	4,645	3,534	81	384	799	9,443	22,827	
2004	80,994	6,948	442	759	1,876	769	10,795	26,916	
2005	105,677	7,632	220	2,408	1,617	518	12,396	29,366	
2006	125,939	11,090	141	311	1,195	1,795	14,532	32,149	
2007	105,676	7,671	1,891	753	447	790	11,551	17,755	
2008	104,984	13,648	4,150	3,983	1,814	956	24,551	11,252	
2009	95,453	13,137	9,068	5,576	5,124	1,847	34,752	67	
2010	114,526	18,369	15,081	1,751	7,711	1,698	44,610	1,542	
2011(3mos)	18,337	2,341	430	212	1,211	445	4,639	288	

Sources: U.S. Department of Commerce, Bureau of Census; National Honey Board (3 months of 2011)
Last Updated: 3/12/10 and 4/30/11, respectively

EXHIBIT 2
Honey Blends





U.S. Immigration and Customs Enforcement

STATEMENT

OF

J. SCOTT BALLMAN, JR.

DEPUTY ASSISTANT DIRECTOR

**HOMELAND SECURITY INVESTIGATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

REGARDING A HEARING ON

**“ENFORCING AMERICA’S TRADE LAWS IN THE FACE OF
CUSTOMS FRAUD AND DUTY EVASION”**

BEFORE THE

UNITED STATES SENATE

**COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE,
CUSTOMS, AND GLOBAL COMPETITIVENESS**

**Thursday, May 5, 2011 - 2:00 p.m.
215 Dirksen Senate Office Building**

INTRODUCTION

Chairman Wyden, Ranking Member Thune, and distinguished Members of the Subcommittee:

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

ICE ENFORCEMENT EFFORTS

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

this illegal fraudulent trade practice. It also is essential that we continue to work with all relevant federal agencies to confront this challenge. ICE has, therefore, built strong relationships with our interagency partners and international counterparts.

Anti-Dumping and Countervailing Duties (AD/CVD) Program

The ICE HSI Anti-Dumping and Countervailing Duties (AD/CVD) Program is one way that ICE protects U.S. businesses from fraudulent trade practices. AD/CVD orders are issued by the Department of Commerce (DOC) and collected and distributed by CBP. Anti-dumping duties are assessed when importers sell merchandise at less than fair market value, which causes material injury to a domestic industry producing a comparable product. The United States can also impose countervailing duties to offset foreign government subsidy payments on exports of foreign businesses. Duties are imposed to offset the dumping or subsidies provided by the foreign country in order to maintain the competitiveness of United States industry and to foster a level business playing field.

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

Prior to opening a criminal case, ICE must verify the information related to dumping allegations made either by CBP or private industry. ICE agents research,

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

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

AD/CVD Investigations

Since 2006, ICE has initiated 391 cases based on allegations of fraud regarding AD/CVD orders, which to date have resulted in 28 criminal arrests, 86 indictments and 39 convictions. As part of these cases, ICE and CBP have made 161 seizures of goods with a domestic value of over \$16 million. Current AD/CVD orders affect products that Americans use on a daily basis. Of these, ICE has investigated a wide range of commodities including honey, saccharin, citric acid, lined paper products, pasta, polyethylene bags, shrimp, catfish, crayfish, garlic, steel, magnesium, pencils, wooden

bedroom furniture, wire clothing hangers, ball bearings and nails. I would now like to provide a few examples of significant AD/CVD investigations.

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

In February 2007, ICE agents in Atlanta received an allegation from CBP Import Specialists that Goshen Trading (Goshen) was submitting fraudulent documents to CBP to evade the payment of anti-dumping duties on wooden bedroom furniture from China. The goods were allegedly being intentionally misclassified as "other" or "dining" furniture from China. On April 10, 2007, ICE SAC Atlanta agents executed federal search warrants at two Goshen business locations and at the residence of Goshen's owner, Seng Ng, which resulted in the seizure of 27 boxes of documents and eight

computers. Subsequent analysis of the seized documents and computers identified evidence substantiating that Goshen knowingly and willfully submitted fraudulent documents to CBP on at least 185 separate importations of Chinese wooden bedroom furniture. On May 13, 2009, Ng pled guilty to 18 U.S.C. § 542, entry of goods by means of false statements or invoices. On July 27, 2009, Ng was sentenced to 14 months in prison, and ordered to forfeit \$5,993,433.70 to the United States in restitution.

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

false statements, false statements, wire fraud, and money laundering. De La Torre-Escobar and Huizar-Velazquez are scheduled to be sentenced on May 16, 2011.

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

CONCLUSION

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

Statement of Senator Sherrod Brown
“Enforcing America’s Trade Laws in the Face of Customs Fraud and Duty Evasion”
Senate Finance Subcommittee on International Trade Hearing
May 5, 2011

Chairman Wyden, Ranking Member Thune, and members of the Subcommittee, thank you for the opportunity to testify at this very important and timely hearing.

I want to first applaud you for examining the issue of duty evasion.

For a state like Ohio, where manufacturers compete in energy intensive, and trade exposed sectors from steel to solar, customs enforcement is the critical complement to the enforcement of our trade laws.

But when duties on unfairly subsidized or dumped products are evaded, it’s not just cheating. It’s getting caught and then ignoring the penalty.

I think of it like this: if a persistent reckless driver, instead of paying his speeding tickets and slowing down, simply buys a radar detector, the problem isn’t solved and the danger still exists.

That is what our manufacturers face when foreign companies create schemes to evade our antidumping and countervailing duty laws.

They don’t pay the ticket; they just find a way to keep violating the law.

Mr. Chairman, like my colleagues on this panel, I’ve testified before the ITC nearly a dozen times over the past four years.

I’ve stood before the ITC on behalf of Ohio manufacturers of all sorts of everyday products Americans use – from the tires people buy to drive compact cars and earth-moving tractors, or the steel used in pipes, vehicles, or energy products, or even paper products like the thermal paper your receipts are printed on – which is why I always tell Ohioans to ask for their receipts.

There are at least twenty industries with ties to Ohio that have received affirmative decisions in antidumping (AD) or countervailing duty (CVD) investigations at the International Trade Commission (ITC), since 2006.

We know that our AD and CVD laws work. They level the playing field and allow employers to retain and create jobs.

Without strong trade enforcement, Ohio communities like Youngstown, Warren, Lorain (steep pipe) Findlay (tires), and West Carrollton and Hamilton (paper) would be without any recourse when its companies are pitted against unfairly subsidized imports.

Too many imports from China are able to undersell us by significant margins.

This is only possible through Chinese government subsidies to Chinese producers and exporters – and by harmful dumping practices.

But when these duties are so easily evaded, they become meaningless.

According to a report issued by your Subcommittee, foreign companies that face trade duties, and are direct competitors to Ohio manufacturers of steel nails, light-walled pipe and tube, paint brushes, diamond sawblades, oil country tubular goods (OCTG) have proven they will go to any lengths to avoid paying duties, including by shipping the product through a third country. So, I applaud you for taking this issue on.

I support your efforts, and believe a legislative approach is warranted to ensure there is consistent enforcement of our trade remedy laws.

And, I want to note that this hearing is particularly timely as our trade enforcement laws are under attack at the World Trade Organization (WTO).

Earlier this spring, a WTO Appellate Body reversed a prior WTO ruling that had upheld the use of our trade remedy laws against China.

Right now, the Chinese government is said to be planning a \$1.5 trillion, five-year investment in seven strategic manufacturing industries.

At a time when we need to enforce our trade remedy laws to fight this clearly unfair Chinese subsidy, the Appellate Body overreached and threatens to dilute the power of our own laws.

To make sure that doesn't happen, several Senators, including Chairman Wyden, and Senators Portman and McCaskill joined Senator Snowe and me in writing Ambassador Ron Kirk, urging the Administration to take all steps necessary to rectify this ruling.

These steps include pushing negotiations in the Doha Round to ensuring that our countervailing duty law remains fully applicable to China.

So, I thank you again for the opportunity to testify and am eager to work with you and my colleagues to develop and pass meaningful legislation to correct this problem.

**Statement of Allen Gina
U.S. Customs and Border Protection
Senate Finance Committee
International Trade, Customs, and
Global Competitiveness Subcommittee
May 5, 2011**

Introduction

Chairman Wyden, Ranking Member Thune, and Members of the Subcommittee, it is an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) role in detecting and preventing the circumvention of antidumping and countervailing duties (AD/CVD) on imported goods.

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

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

AD/CVD Evasion

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

CBP has a statutory responsibility to collect all revenue due to the U.S. government that arises from the importation of goods. In FY 2010, CBP collected \$310 million in AD/CVD duty deposits on \$5.4 billion of goods subject to AD/CVD orders. The vast majority of manufacturers, exporters, importers, customs brokers and other parties involved in shipments of goods subject to AD/CVD orders accurately provide their shipment information to CBP and lawfully pay the duties due. CBP's main challenge in all areas of trade enforcement, including AD/CVD enforcement, is to identify the small minority of non-compliant shipments amid the universe of compliant shipments.

CBP's ability to fulfill its statutory responsibility to collect all revenue due to the U.S. government that arises from the importation of goods has been affected by companies that willfully circumvent the provisions of the AD/CVD laws in order to avoid paying AD/CVD duties. As evidenced by Senator Wyden's Staff Report on Duty Evasion, it is not difficult for an importer to find and collude with a producer to avoid paying dumping duties. Many of the parties identified in the Wyden report were able to hide their identity as part of the import transaction process. Evasion takes several forms and often involves the collusion of several parties, including the manufacturer, shippers, and the importer. Several schemes can be employed at once, further complicating an already challenging task:

- **Illegal transshipment** involves the manipulation of documents and shipping logistics to disguise the true country of origin of a product. Transshipment is often built into production by design, with false markings and packaging devised to purposefully mimic legitimate production in other countries. Determining a product's country of origin through visual inspection or through verification of shipping documents can be very difficult, especially if cargo has been manipulated prior to import, completely masking the connection back to the true source country.
- **Undervaluation** involves the intentional falsification of documents and declarations to reduce the amount of AD/CVD duty a company must pay. Beyond the suspicion of undervaluation, it can be difficult to sufficiently prove that it is occurring, especially if there is collusion between the producer and importer to create false values.
- **Failure to manifest** (i.e., smuggling) is when a company does not declare goods on its entry documents in order to avoid paying AD/CVD duties.
- **Misclassification** includes improperly declaring goods with the proper duty classification, or mis-describing the goods to avoid suspicion of dumping. This is easier to detect and address than other schemes, but is often used in combination with another scheme such as transshipment, so that it may still appear to fall outside the scope of an AD/CVD case.
- Other schemes that exist include taking advantage of loopholes related to administrative reviews, product engineering to fall outside the scope of a case, employing shell companies as a primary means of avoiding payment, or the use of foreign businesses outside the reach of CBP authorities.

Despite these challenges, CBP, in partnership with ICE, has a strong track record of uncovering instances of illegal transshipment and penalizing those in the United States responsible for this fraud. The following are among our recent accomplishments:

- Special operations that addressed illegal transshipment of Chinese steel wire garment hangers through Vietnam, Korea, and Mexico concluded with the assessment of \$13.1 million in AD/CVD duties and the arrest of two Mexican citizens.
- An ongoing CBP/ICE operation on illegal transshipment of Chinese citric acid resulted in the identification of \$17 million in unpaid AD/CVD duties. Additional revenue recoveries are expected as the operation continues.
- A joint CBP/ICE operation on uncovered mattress innerspring units from China concluded with the assessment of \$5.3 million in unpaid AD/CVD duties.

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

A Layered Approach

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

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

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

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

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

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

New Approaches to AD/CVD Enforcement

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

As you know, under the current retrospective system, there can sometimes be substantial increases in AD/CVD duty rates several years after the initial finding by the Department of Commerce. The bonding system is a key tool in our administration of the import process. We must pay particular attention to the risk of non-payment or evasion posed by non-resident importers of record. For example, we can use our existing regulations to levy Single Transaction Bonds against any importer when we suspect a risk to revenue and I have directed my staff to develop internal guidance to ensure that Single Transaction Bonds are required whenever we suspect that a risk of revenue loss exists.

CBP shares industry concerns about the importance of countering AD/CVD circumvention. We also understand that U.S. industry wants more transparency in CBP's AD/CVD circumvention efforts, and CBP is actively seeking ways to timely release public information about our activities. Unfortunately, criminal cases often take a lot of time to develop as CBP, in cooperation with ICE, fully investigates and prosecutes the parties that are not properly paying their AD/CVD duties. Such public prosecution sends a very strong message worldwide about the U.S. government's AD/CVD enforcement efforts. All of this notwithstanding, we are reviewing our trade secrets statute and regulations to find ways that will allow us to release information to petitioners to make our process more transparent.

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

Some of the activities we are undertaking are:

- Working with the Department of Justice to develop a task force to concentrate resources on the most complex cases just as we have with Intellectual Property Rights;
- Working with the Department of Commerce on release of information that will help us verify the legitimacy of goods suspected of transshipment and to tighten the “new shipper” requirements; and
- Clarifying the responsibility of customs brokers in the requirements for valid powers of attorney to ensure the legitimacy of importers.

Conclusion

Mr. Chairman, Members of the Subcommittee, thank you again for the opportunity to testify today on CBP’s role in detecting and preventing the circumvention of antidumping and countervailing duties on imported goods. I will be happy to answer your questions.

Statement of
Karl G. Glassman
Executive Vice President and Chief Operating Officer
Leggett & Platt, Incorporated

Before the
United States Senate Committee on Finance
Subcommittee on International Trade,
Customs, and Global Competitiveness

“Enforcing America’s Trade Laws in the Face of Customs Fraud and Duty Evasion”

May 5, 2011

Good afternoon, Chairman Wyden, Ranking Member Thune and distinguished Members of this Committee. Thank you for holding this important Hearing on a topic that is critical to our business, to U.S. manufacturing, and to the integrity of our trade laws.

I am the Chief Operating Officer of Leggett & Platt, a diversified global manufacturer headquartered in Carthage, Missouri. We have over 19,000 employee-partners in 18 countries. In the United States, we operate in 28 states and manufacture a wide variety of engineered components and products.

Last August, Senators Wyden and Snowe introduced the ENFORCE Act to address the growing and serious problem of illegal evasion of our trade laws. During his statement for the record, Senator Wyden described “trade cheats,” as importers that “are increasingly – and brazenly – employing a variety of schemes to evade AD/CVD orders.” I want to tell you about our experience with trade cheats.

Leggett’s original product was the mattress innerspring and we have produced them continuously since 1883. Although we now manufacture many other products, innersprings are the heart of our business and we are the largest innerspring manufacturer in the world.

Chinese innersprings first came into the United States in the early 2000s at prices lower than our cost of production. We manufacture innersprings in China for the Asian market and know first-hand that it is not cost effective to produce and ship innersprings from China to the United States. Nevertheless, more and more Chinese innersprings continued to come in at very, very low prices.

By December 2007, our U.S. innerspring operations had deteriorated to the point that we filed an antidumping case against innersprings from China, South Africa and Vietnam. This case resulted in antidumping duty orders on goods from all three countries, and innersprings from China are now subject to antidumping duties ranging from 164% to 234%.

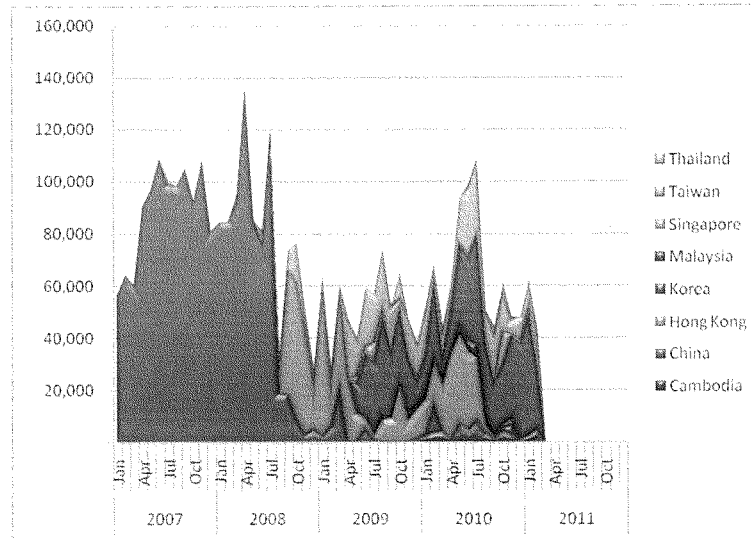
Unfortunately, even before the final antidumping duty order was issued, we had evidence that Chinese innersprings were being shipped to the U.S. through third countries for the purpose of evading these duties. For example, imports of low-priced innersprings from Hong Kong skyrocketed overnight. Prior to our preliminary order in July 2008, no innersprings units shipped from Hong Kong – yet by September 2008 over 35 container loads per month, easily worth \$1.5 million, were being shipped here.

This made no sense to us, so we hired a private investigator to examine the alleged manufacturing facilities listed on the bills of lading. He found no evidence of legitimate innerspring production in Hong Kong.

Additionally, from December 2008 through January 2009, we traced 13 shipments of innersprings from China to Hong Kong and then from Hong Kong to the U.S. We provided Customs with this information in early 2009.

Since the antidumping duty order went into effect, we have also seen a huge influx of innersprings from Taiwan and Malaysia, again, places where there was no prior production of innersprings. And again, we have sent individuals to investigate the alleged manufacturing facilities but have found no innerspring manufacturing in Taiwan. In Malaysia, while there is some legitimate production, the facilities and manufacturing equipment are insufficient for the volume of innersprings reported to be of Malaysian origin in the U.S. International Trade Commission statistics.

From the chart below, which shows U.S. ITC data of innerspring imports by country, you can clearly see the migration of the declared country of origin of the innersprings from China to other Southeast Asian countries, and in particular Hong Kong, Malaysia and Taiwan:



We have developed evidence that each year over one million innersprings subject to the antidumping order are imported into the United States without paying duties of up to 234%. This illegal evasion costs the U.S. Treasury over \$60 million dollars annually on our product alone.

To put this in perspective, if these one million innersprings were produced in the U.S., it would require over 60 full time employees earning more than \$2.5 million in wages and benefits per year. This illegal behavior affects job creation and preservation at our facilities in 21 different states.

We regularly provide Customs with specific evidence on duty evasion. Since October 2008, we have met with or sent information to Customs on 21 separate occasions. Despite our best efforts, these innersprings continue to be imported into the United States with false and fraudulent documentation.

This is not an isolated problem. In September 2009, we and four other affected industries formed a coalition to address this problem. Today our Coalition is comprised of 11 industries, each with duty orders that are being illegally evaded. The Treasury loses over \$400 million each year in unpaid duties due to the evasion of orders in just eight of our industries.

Coalition members have individually and collectively met with Customs, ICE, Commerce, the USTR, this Committee's staff, House Ways and Means staff, and the offices of over 100 Senators and Representatives. We know many industries outside our Coalition with antidumping and/or countervailing duty orders are as frustrated as we are with the pervasive fraudulent evasion of our trade laws.

The Customs personnel we have met with understand our problem, our frustration, and clearly want to address the ongoing fraud and evasion, but the present enforcement scheme does not work. We want Customs and Commerce to have procedures and tools in place to address these illegal activities in a timely manner.

We were very encouraged by the introduction of the ENFORCE Act in both the Senate and House last year, and the efforts of many of our Senators and Representatives and their staffs to find a solution. It is critical that our laws be enforced, both for the integrity of the laws and for the industries that have been injured by unfair imports.

This ongoing illegal duty evasion is not about trade philosophy – it is about effective law enforcement. Leggett & Platt and all the members of our Coalition are committed to working with all stakeholders to come up with sensible, pragmatic, but above all EFFECTIVE legislation that ensures we receive the benefit of the trade remedy we have worked so hard for, and that U.S. laws are enforced.

Our innerspring operations went limping into the Department of Commerce and the International Trade Commission and emerged with what we thought was a meaningful and binding

U.S. antidumping duty order. However, what we and other industries we are working with have found is that the trade cheats are winning. They openly treat our laws with disdain, without repercussion. Importantly, there can be no global rules-based trade without effective enforcement.

Our company works hard to ensure we comply with all laws, in the U.S. and worldwide. We are dismayed to see the way unscrupulous foreign suppliers and their U.S. importers brazenly evade U.S. law, and we want to see those charged with enforcing our laws have the procedures and tools they need to stop the trade cheats.

We support and encourage this Committee to move forward with meaningful, effective legislation to make sure the trade cheats cannot continue to, in Sen. Wyden's words, "cheat American taxpayers out of the revenue that is supposed to be collected on imports ... and cheat American producers out of business that may otherwise be theirs".

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for the opportunity to address you today. I look forward to your questions.

Ronald K. Lorentzen
Deputy Assistant Secretary for Import Administration
Testimony before the
Committee on Finance, Subcommittee on International Trade,
Customs and Global Competitiveness
United States Senate
“Enforcing America’s Trade Laws in the Face of Customs Fraud and Duty Evasion”
May 5, 2011

Thank you Chairman Wyden and Ranking Member Thune for inviting me to appear before you today to discuss the issue of the evasion of antidumping duty and countervailing duty orders and the efforts of the Commerce Department (Commerce) to enforce the trade remedy laws.

As the Deputy Assistant Secretary for Import Administration (IA) at the Department of Commerce, my primary responsibility is to administer the antidumping duty and countervailing duty (AD/CVD) laws, which are designed to counter unfair trade practices that injure U.S. industries in our domestic market. We conduct AD and CVD investigations and subsequent administrative reviews to determine whether imported merchandise is dumped (that is, sold in the United States at less than fair or normal value) or subsidized by foreign governments. If, as a result of our investigation, we find that imports have been dumped or unfairly subsidized, and if the International Trade Commission finds that a domestic industry has been injured as a result of the unfairly-traded imports, we issue an antidumping duty or countervailing duty order. When that happens, we instruct U.S. Customs and Border Protection (CBP) to require importers to pay cash deposits whenever they import merchandise subject to the orders. Thereafter, on an annual basis, we will conduct an administrative review of the entries from the past year to determine the actual level of dumping or subsidization during the prior one-year period.

During the course of our proceedings, particularly our administrative reviews, Commerce is sometimes provided information that indicates possible evasion of the AD/CVD laws and duties owed pursuant to particular orders. In these situations, we provide that information to, and work in close cooperation with, CBP, Immigration and Customs Enforcement (ICE) and the Department of Justice (Justice) to assist their efforts in enforcing the customs laws and ensuring our border measures are effective. Upon examination of the information provided, Department of Homeland Security components may find the information sufficient to initiate an investigation which may result in the imposition of civil or criminal penalties and fines on parties involved in the evasion scheme.

Once a fraud/evasion investigation involving an AD/CVD case is initiated by ICE, Commerce is frequently asked by CBP/ICE agents or the U.S. attorney conducting the investigation to provide assistance. For example, during a fraud investigation of steel wire garment hangers from China, Commerce assisted the U.S. attorney conducting the investigation by providing background and guidance regarding the antidumping process. Further, during a fraud investigation of honey from China, Commerce case analysts and staff attorneys consulted with the U.S. attorney on the case, providing information regarding cash deposit rates, as well as information related to the relevant

administrative and new shipper reviews. As I will discuss later, the cooperation among ICE, Justice and Commerce eventually resulted in several indictments.

Commerce has and continues to work closely with CBP on enforcement issues. Recognizing the importance of this relationship, in 2006, Import Administration formally established a Customs Unit, which falls under the direction of the Deputy Assistant Secretary for AD/CVD Operations. The Customs Unit serves as the liaison between IA, CBP and ICE on many of the fraud/evasion matters related to AD/CVD cases. The Customs Unit's staff members meet regularly with personnel from CBP and ICE to discuss enforcement issues and cases. The Customs Unit coordinates the interaction between agency staff and CBP and ICE to address potential fraud and evasion of AD/CVD cases, and ensures that information requests are addressed on a timely basis.

My staff works with CBP on a daily basis regarding the implementation and enforcement of AD/CVD orders. In February 2010, after years of inter-agency collaboration, the AD/CVD portion of CBP's new commercial trade tracking system, the automated commercial environment, or ACE, went live for entries of merchandise subject to AD/CVD orders. ACE allows for more efficient communication between CBP and Commerce in the implementation and application of the AD/CV duty rates. For example, ACE allows Commerce to apply AD/CVD rates on a per-unit amount basis, in addition to the typical *ad valorem* rates. The application of a per-unit amount is important to counter situations where companies regularly understate the value of their imported merchandise. I will discuss the significance of this later in my remarks.

Commerce's role in detecting and deterring the circumvention of antidumping and countervailing duties is addressed in Section 781 of the Tariff Act of 1930 (the Act). Commerce may conduct circumvention inquiries when it is alleged that minor alterations are being made to subject merchandise in order to evade AD/CVD orders. Commerce may also conduct circumvention inquiries when it is alleged that merchandise subject to an order is completed or assembled in the United States or other foreign countries from parts and components imported from the country subject to the order. Finally, Commerce can find that later-developed merchandise may also be covered by an existing order.

If it is determined that an order is being circumvented, Commerce may, after taking into account any advice provided by the International Trade Commission, direct CBP to suspend liquidation of the entries and require a cash deposit of estimated duties on all unliquidated merchandise determined to be circumventing the order.

For example, in October 2006, Commerce published the final affirmative determination of circumvention of the AD order on petroleum wax candles from China. Commerce determined that candles composed of petroleum and over fifty percent or more palm and/or other vegetable oil-based waxes ("mixed-wax candles") were later-developed merchandise and thus, were circumventing the AD order. In addition, we determined that mixed-wax candles containing any amount of petroleum are covered by the scope of the order.

Commerce is currently investigating seven allegations of circumvention, including steel wire garment hangers from China, laminated woven sacks from China, small diameter graphite

electrodes from China, glycine from China, tissue paper from China, cut-to-length carbon steel plate from China, and ferrovanadium from Russia.

With regard to the tissue paper investigation, on April 6, 2011, Commerce preliminarily determined that certain tissue paper produced and/or exported to the United States by a Vietnamese company was circumventing the current order covering imports of Chinese tissue paper. Because of this determination, Commerce directed CBP to suspend liquidation and collect cash deposits at 112.64 percent for all exports from the Vietnamese exporter effective March 29, 2010, the date of initiation of the circumvention inquiry. The final ruling on this inquiry is due on August 1, 2011. Commerce's decision is subject to further comment from interested parties and we will review and consider all comments before reaching a final determination.

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

Another evasion scheme used by exporters and importers but not covered by the provisions of Section 781 of the act is intentionally undervaluing merchandise at the time of importation to reduce the overall amount of antidumping and countervailing duties owed. Cash deposit rates are typically calculated as a percentage of the entered value of the imported merchandise. By undervaluing the merchandise, importers avoid paying the full duties owed. To prevent importers from undervaluing merchandise as a means of evasion, Commerce has, in certain cases, calculated per-unit cash deposit rates. Commerce has resorted to the use of per-unit rates in several AD cases including crawfish, honey, activated carbon, and garlic from China, as well as fish fillets from Vietnam. For example, the cash deposit rate in the China garlic order is 4.71 dollars per kilogram instead of a percentage of the entered value.

Further, Commerce has encountered situations in which foreign manufacturers have presented false documents during the course of an AD/CVD proceeding. To combat this issue, Commerce amended its regulation governing the certification of factual information submitted to Commerce by a person or his or her representative during AD/CVD proceedings. The amendments are intended to strengthen the current certification requirements by mandating that the party submitting the documents: 1) identify to which document the certification applies, 2) to which segment of an AD/CVD proceeding the certification applies, 3) who is making the certification, and 4) the date on which the certification was made. These new certification requirements better ensure that parties and their counsel may be held legally responsible for the authenticity of specific documents and are also made aware of the consequences of certifying false documents.

Additionally, during its investigations and reviews, when Commerce uncovers information that indicates possible evasion of the AD/CVD laws, we turn that information over to CBP pursuant

to 19 U.S.C. §1677f(b)(1)(a)(ii) which states “Commerce may provide information received in the context of an investigation or administrative proceeding to CBP, to assist the U.S. Department of Homeland Security with an investigation into fraud and evasion.”

Cooperation among Commerce, CBP, ICE, and Justice has resulted in indictments, convictions, and prison sentences for evaders of AD/CVD orders. For example, in October 2005, during verification of the respondent CATACO in the first administrative review of frozen fish fillets from Vietnam, Commerce officials found evidence of mislabeling and duty reimbursements. This information was conveyed to ICE, providing critical information for their criminal case against one of CATACO’s importers. Cooperation amongst multiple federal agencies during the investigation resulted in several indictments, convictions, and prison sentences.

In January of 2007, the U.S. District Court in Panama City, Florida, sentenced Danny Nguyen to Federal prison, and issued criminal fines to Panhandle Seafood, Inc., and Panhandle Trading, Inc. for a multi-year scheme that involved smuggling and distributing mislabeled catfish into the United States and Canada from Vietnam. The 42-count criminal indictment charged that from 2002 to 2005, Nguyen and his two companies conspired with Vietnamese fish exporters to intentionally mislabel hundreds of thousands of pounds of Vietnamese catfish. Nguyen was charged with importing fish into the United States that was incorrectly labeled as grouper and other fish types in-order to avoid U.S. antidumping duties.

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

In October 2008, 12 individuals and companies were convicted of criminal offenses related to a scheme to avoid paying duties by falsely labeling fish for import and then selling it in the United States at below market price. Two Virginia based companies, Virginia Star Seafood Corp. and International Sea Products Corporation, illegally imported more than ten million pounds, or \$15.5 million worth of frozen fish fillets from companies in Vietnam between May 2004 and March 2005.

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

Cooperation between Commerce, ICE and Justice led to the indictment of Alfred L. Wolff GmbH, a German food conglomerate, and 10 executives. Federal prosecutors alleged that the

conglomerate and 10 of its executives conspired to illegally import more than \$40 million worth of honey from China between 2002 and 2009, and concealed its country of origin in order to avoid paying nearly \$80 million in AD duties. Also indicted was Gong Jie Chen, a Chinese national who was the sales manager for a company called QHD Sanhai Honey Co., Ltd., located in Qinhuangdao, Hebei Province, China. He allegedly set up this company as a front to conceal the Chinese origin of the honey being shipped to the United States and to avoid paying AD duties.

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

In October 2008, Commerce issued the AD order on imports of steel wire coat garment hangers from China. However, it became apparent that a scheme had been developed to avoid the order soon after the order was put in place. Accordingly, CBP and ICE instituted a fraud investigation of a particular U.S. importer, during the course of which Commerce provided assistance to the U.S. attorney conducting the case. After completion of the fraud investigation in August 2010, that U.S. importer was arrested and charged with fraud, smuggling, and money laundering in connection with bringing Chinese-made hangers into the U.S. via a third country and falsely claiming a country of origin other than China. Conviction on these felonies carries a maximum prison term of between five and 20 years per count, plus substantial monetary fines and the payment of applicable dumping duties.

The examples I have just provided illustrate the close and expanding relationship between Commerce, Justice, ICE and CBP with regard to stopping duty evasion. We continue to find ways to better coordinate our efforts and to work closely together on this important issue.

Thank you for giving me this opportunity to testify. I am happy to take your questions.

**Testimony of Mr. Robert L. Mahoney
President, Tubular Products Group, Northwest Pipe Company**

*Before the U.S. Senate Committee on Finance – Washington, DC
Subcommittee on International Trade, Customs, and Global Competitiveness
Enforcing America's Trade Laws in the Face of Customs Fraud and Duty Evasion
Thursday, May 5, 2011 – 2:00 pm*

Good Morning Chairman Wyden and Members of the Committee. My name is Bob Mahoney and I am the President of the Tubular Products Group of Northwest Pipe Company. I am proud to have graduated from the U.S. Military Academy at West Point and have served as a Captain in the U.S. Army prior to receiving an MBA from the University of Virginia, Darden School of Business. I have been with Northwest Pipe for the past 19 years.

Northwest Pipe Company operates six plants in the United States producing water transmission pipe in California, Colorado, Oregon, Texas, Utah and West Virginia. We also operate three plants producing steel tubular products in Kansas, Louisiana, and Texas.

Northwest Pipe has been involved in four recent sets of trade cases involving imports of pipe and tube products from China that are produced by our tubular products divisions. These cases were filed during the period of 2007 through 2009 and involved circular welded pipe, light walled rectangular tubing, API line pipe, and oil country tubular goods (OCTG). In all four cases, the Department of Commerce found that imports from China were both subsidized and dumped and the U.S. International Trade Commission determined that these imports from China either injured the U.S. industry or threatened the U.S. industry with injury.

Our response to this trade relief has been to invest heavily in each of our three facilities, resulting in a doubling of our total tubular product group capacity and the hiring of 150 new employees since 2009. These investments in expansions at these facilities have allowed our company to become a major supplier of OCTG and line pipe to many of the new shale drilling areas for oil and gas in the United States including the Marcellus Shale, the Bakken Shale, and the Haynesville Shale area in which our Bossier City, Louisiana plant is located.

Unfortunately, our company and other members of the pipe and tube industry that participated in these cases have seen numerous examples of fraudulent circumvention of the intended relief. This includes reports of Chinese pipe that is merely threaded and coupled in Vietnam and then mislabeled as Vietnamese products. This continues despite current Customs rulings that state that simply threading coupling pipe does not change the country of origin of the product. In addition, our industry has received reports about light walled rectangular tubing (LWR) from China imported in bundles and placed inside of containers that contain granite countertops and neither the Chinese tubing nor the 250% dumping duties are being declared to U.S. Customs.

Clearly, the worst example of egregious customs fraud came in an industry event that I attended and spoke at in Houston, Texas in March 2011 where an importer of OCTG

from Asian countries was also a guest speaker. In front of a crowd of 300 participants involved in the energy tubular industry, this gentleman described how when visiting an OCTG mill in Indonesia that he personally saw workers in the plant painting over the “Made in China” and Chinese mill API markings on the Chinese OCTG and painting on “Made in Indonesia” and the Indonesian companies API license number. This statement at that conference was then published in the American Metal Market (AMM) which is a widely read industry trade publication for those engaged in the steel industry in the United States.

Senator Wyden and members of the Committee, I have three comments about this statement and this type of fraud. First, the speaker would not identify the name of the Indonesian OCTG mill engaged in this practice to myself or Mr. Schagrin who also attended the conference. I understand that Mr. Schagrin gave the contact information for this gentleman as well as the AMM article to officials at U.S. Customs and Border Protection (CBP) so that they could obtain directly information on this fraud. Second, it is in some ways indicative to me of the widespread acceptance and acknowledgement of the transshipment fraud that is occurring with Chinese products that someone would not think twice about sharing information on these practices in public before a large audience. Third, not only does this type of customs fraud cost Northwest Pipe and others in the domestic industries money and our employees and other workers in the domestic industry jobs and work times on the mills, there are also serious safety issues involved with customs fraud. The failure of oil well casing or tubing in a well can cause an explosion with injuries to workers on the rig and environmental damage. If an exploration company, which depends on the mill test reports of the mill that is producing the OCTG, is actually obtaining falsified mill test reports from a mill that is merely painting its stencil on a product made in a different mill, then the safety and dependability of that product is called into question.

As a business executive who is responsible for running a division of a publically traded company and one who proposed a significant investment to our Board of Directors for our plant in Louisiana, our leadership team and board of directors were depending on CBP to enforce the nation’s trade laws and collect the appropriate duties. When that relief is fraudulently and purposefully circumvented, then the predicate for our business investment decisions are unsupported. Senator Wyden, I have had the opportunity to review The Enforce Act of 2010 that you and Senator Snowe introduced in August 2010. As an Oregonian, I am proud to have you represent our state in the Senate and thank you for taking a leadership role on an issue that is so critical to our company, our workers and the industry. I urge you to continue to work with your colleagues in Congress to enact this legislation. Senator Wyden, our industry has been working on this issue for some time and I know that others on the panel today will also tell their story about why we must ensure that these laws are enforced and that there is an end to widespread, blatant and egregious customs fraud. Simply put, our company like many others in this sector must know that these allegations of customs fraud are brought to the attention of CBP and acted upon in a vigilant and expeditious manner.

Thank you for inviting me to appear today before the committee.

Senator Rockefeller Statement for Record
Finance Trade Subcommittee Hearing on Illegal Subsidies
May 5, 2011

Mr. Chairman, this is an issue of great importance to the people of West Virginia. Few states have been hit as hard as we have by foreign competitors using unscrupulous practices to push American businesses out of the marketplace and put American workers on the unemployment line.

It is vital that the enforcement mechanisms designed to counter illegal subsidies work. Just last September, I testified before the International Trade Commission on behalf of a paper company that employed 480 of my constituents in Mineral County, West Virginia. The Commission found that illegal subsidies of as much as 20% from China and Indonesia were harming this American business and the Commerce Department imposed duties to level the playing field.

In this instance, the system worked. American paper companies saw a wrong and reported it to the government which investigated the matter and ultimately ruled on their behalf. If the Chinese and Indonesian companies that were illegally dumping their products here in the United States choose to evade these duties, then the American paper companies will find themselves in the exact same position they were in before the government acted, and my constituents could find themselves out of work. As our witnesses will testify today, this has already happened in other industries, and if we do not find a way to strengthen existing enforcement mechanisms, then it will happen again.

I have spoken out before for West Virginia steel and tin producers and the International Trade Commission saw fit to rule on their behalf. Yet these industries continue to suffer from illegal foreign subsidies from China and other nations and my constituents continue to lose their jobs. That is an unacceptable result.

Just last month, I hosted a discussion in my home state with some of West Virginia's glass manufacturers – an industry that was once thriving in West Virginia, but is now fighting for its life. A big reason for their struggles is foreign competition. When companies from China replicate their products for pennies on the dollar, our glass manufacturers simply cannot compete. If illegal subsidies contribute to this problem, then I want to get to the bottom of it.

The working class men and women of my state deserve the comfort of knowing that their government will defend their jobs against illegal actors. They deserve a government that will use every resource at its disposal to stop the fraudulent bookkeeping and shipping practices that allow foreign competitors to evade global trade laws.

I look forward to hearing from our government witnesses today about the steps they are taking to combat these destructive practices and stand ready to offer whatever assistance I can give to help them in this fight.

Testimony of Mr. Roger B. Schagrin
Chairman, Government Affairs Committee of the Committee to Support U.S.
Trade Laws

Before the U.S. Senate Committee on Finance – Washington, DC
Hearing on Customs Enforcement Issues
Thursday, May 5, 2011 – 2:00 pm

Good morning Mr. Chairman and members of the committee. I am Roger Schagrin and I am pleased to present this testimony on behalf of my firm, our clients on whose behalf we have utilized the anti-dumping and countervailing duty laws to obtain fair trade in the United States' market; the Committee to Support U.S. Trade Laws (CSUSTL), an ad-hoc trade association composed of companies, trade associations, and labor unions including the United Steelworkers, and representing manufactured as well as agricultural products. I serve as the Chairman of the Government Affairs Committee of the CSUSTL. I am proud to have represented domestic manufacturers, workers and USW employees in numerous trade cases over the course of my career, including five cases on steel pipe and tube products against China over just the past three years in which thousands of U.S. jobs were at stake at U.S. plants located throughout the country.

I would like to thank Senator Wyden and others here today for organizing this hearing to explore Customs enforcement issues. In particular, I hope that the results from this hearing provide the Committee with the necessary foundation to develop legislation which will remedy these critical problems. During the course of my legal career, I determined early on that obtaining anti-dumping and countervailing duty orders through the litigation process before the Department of Commerce (DOC) and International Trade Commission (ITC) was meaningless if those duties were not collected by the then United States Customs Service at the ports of entry. Therefore over the past three decades, I embarked on frequent visits to key U.S. ports in order to talk to Customs agents about the collection of duties in specific cases. For the past 20 years, I have also been a member of a coalition of steel trade association representatives that has conducted formal Customs training seminar programs on steel products and anti-dumping duty and countervailing duty orders on steel products for U.S. ports. Participation in this program has allowed me to become well acquainted with the import specialists across a number of product areas at virtually all major U.S. ports.

One thing I can say without any reservations is that Customs and Border Protection (CBP) import specialists and agents at U.S. ports are among the finest in government service with whom I have ever dealt. Their dedication and energy to carrying out their jobs is unsurpassed. I can also say unfortunately, that the amount of Customs fraud today is at least a hundred, or maybe even a thousand times greater than at the beginning of my career. Literally, during the early part of my career I may have transmitted evidence of Customs fraud to the Customs Service once a year. Today our firm files numerous well-documented e-allegations every month on behalf of various clients. Senator Wyden, your

staff, in their excellent report on duty evasion harming U.S. industry and American workers of November 8, 2010, documented the fact that three out of every four Chinese producers contacted in industries covered by anti-dumping and/or countervailing duty orders was willing to work with U.S. importers on fraudulent transshipment and circumvention schemes. Thus, in an era in which duty evasion has become pervasive and commonplace, the present CBP is understaffed, under-resourced, particularly in terms of investigative capabilities abroad, and lacks the leadership and reinforcement from headquarters necessary to make combating of fraudulent evasion of anti-dumping and countervailing duties a well appreciated priority for CBP.

Let me review some of the schemes and anecdotes which have been well-documented across a range of industries. First, as seen in some of the charts accompanying my testimony, there are a significant number of Chinese freight forwarding and shipping companies that openly advertise that their business includes the criminally fraudulent transshipment of goods through third countries with the supply of false documents to change the country of origin of Chinese products subject to unfair trade duties into products of other countries. Second, I have also included in the accompanying documents information demonstrating the misclassification of goods subject to unfair trade duties as goods not subject to duties. This is not just based on the industry's information. For example, in a recent ITC investigation of drill pipe from China, with a report published in February 2011, the ITC noted publicly that it could not use import statistics for drill pipe in the drill pipe investigation because it found that in 2008 and 2009 over \$60 million of OCTG, then subject to an investigation, had been classified as drill pipe. It also found in 2010, when drill pipe was subject to the imposition of duties, that drill pipe was not being classified as drill pipe, but instead as parts of offshore platforms. This list goes on. Plastic retail carrier bags from China have been imported as non-subject garbage bags. Hundreds of millions of dollars of wire hangers and honey have been fraudulently transshipped or misclassified leading to arrests and convictions of some of those taking part in those schemes. Shrimp imports from China have been transshipped or misclassified not only to evade the imposition of antidumping duties, but also to evade FDA restrictions for health safety reasons against certain shrimp imports from China. The list can go on and on. Literally billions of dollars of trade is evading the imposition of billions of dollars of duties as lost revenues to the Federal Treasury. Thousands of laid off workers who could have returned to work have not been recalled to work because the relief in terms of the imposition of duties offsetting subsidies and dumping are not being imposed as a result of fraudulent transshipment and misclassification. Certainly the worst example of CBP's failure to take timely action against Customs' fraud is that of indigo from China. The last U.S. producer of indigo, located in Buffalo, New York, a very hard hit industrial area, won significant antidumping duties against indigo from China. Thereafter, Chinese indigo was transshipped through third countries and the U.S. producer received none of the intended relief of the antidumping duty order. Based on press reports, this producer and their Washington, DC lawyers presented information on this transshipment to Customs. Customs took years to investigate, but came to no resolution on the imposition of duties

on the transshipped merchandise. Finally the U.S. producer went out of business just prior to the start of the first five year sunset review. With no U.S. industry remaining, the order was sunset and I suspect as a result, this investigation was terminated.

It is immensely frustrating for domestic producers and their employees to develop information on Customs' fraud, file e-allegations with CBP or meet with CBP officials in Washington or at the ports, and then receive no feedback. While it is possible or likely that Customs is expending significant resources to investigate and stop this Customs fraud and to impose the appropriate antidumping and countervailing duties, CBP informs domestic parties that it is barred by statute from releasing to the domestic industry any information about its investigations. However, when the domestic industry sees that the transshipped and/or misclassified goods continue arriving at the same or different ports day after day, it is abundantly clear that no decisive action to collect the duties has taken place.

Now that I have identified the problems, I would like to address the potential solutions. First, I would urge the Senate to confirm Customs Commissioner nominee Alan Bersin. Commissioner Bersin has an excellent reputation in law enforcement having distinguished himself as a United States attorney for the Southern District of California. He has served in other law enforcement positions as well. Two years ago the Senate confirmed another nominee for a cabinet position in spite of some tax filing issues on the basis that our country was suffering a financial crisis and needed confirmed leadership in the cabinet immediately. I can tell this Committee that there is a crisis in Customs trade enforcement at our ports today and Customs and Border Protection needs a confirmed Commissioner who can lead the agency forward and implement changes that will result in an end to fraud.

Second, we badly need statutory changes. Given the massive amount of Customs' fraud and disregard of our laws by exporters in the country now subject to the most antidumping and countervailing duty orders by the United States, American companies and their workers who have obtained trade relief must have a transparent and timely system that responds to well documented allegations of duty evasion. Attorneys for domestic industries have developed the expertise that can greatly augment Customs' resources as statutory changes are made to allow access to Customs' information under administrative protective order in the same way that counsel now greatly assist the Department of Commerce investigation practice through a similar administrative protective order system in Title VII investigations before DOC.

Mr. Chairman, the members of the CSUSTL are ready to work with you, your Committee staff, CBP and the DOC in finding the appropriate statutory solution to this problem. I say publicly to those honest importer interests who would oppose this legislation to sit down with us and with the committee staff to iron out acceptable compromises. In my mind, resellers of imported products which have fraudulently evaded the payment of appropriate antidumping and countervailing duties are essentially no different than resellers of stolen merchandise. This is not an acceptable business practice. Finally, there is no doubt in my mind that much of the root of this problem lies in the shift from the old U.S. Customs Service that was part of the Treasury Department

that for 200 years had primarily a revenue function, to the new CBP which is part of the Department of Homeland Security and serves primarily an anti-terrorist function. I understand after 9/11 the need for these changes. However, I consider it unpatriotic and traitorous for anyone, foreign or American, to take advantage of the sacrifices of 9/11 victims and those who have fought against terrorism since in order to evade U.S. duties. Thank you for the opportunity to testify here today.

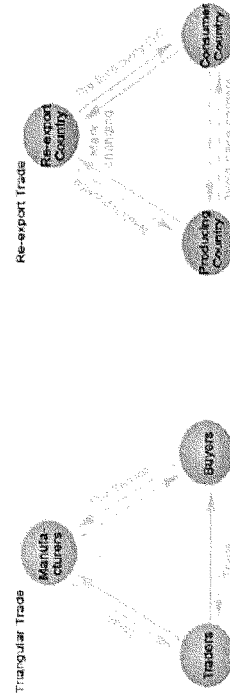
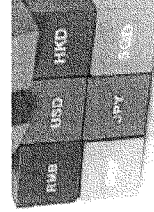


Out-Sourcing Logistics
International Distribution
Triangular Trade
Business Service

According to traders' demands in commercial interests and import tariff reduction, we provide BL switch for triangular trade, changing the CO of origin in order to protect the interests of traders and save tariff expenses.

1. Based on the principle of commercial confidentiality, we HANHEN work seriously as a intermediate part between processing manufacturers, traders and end-buyers and switch documents reasonably.

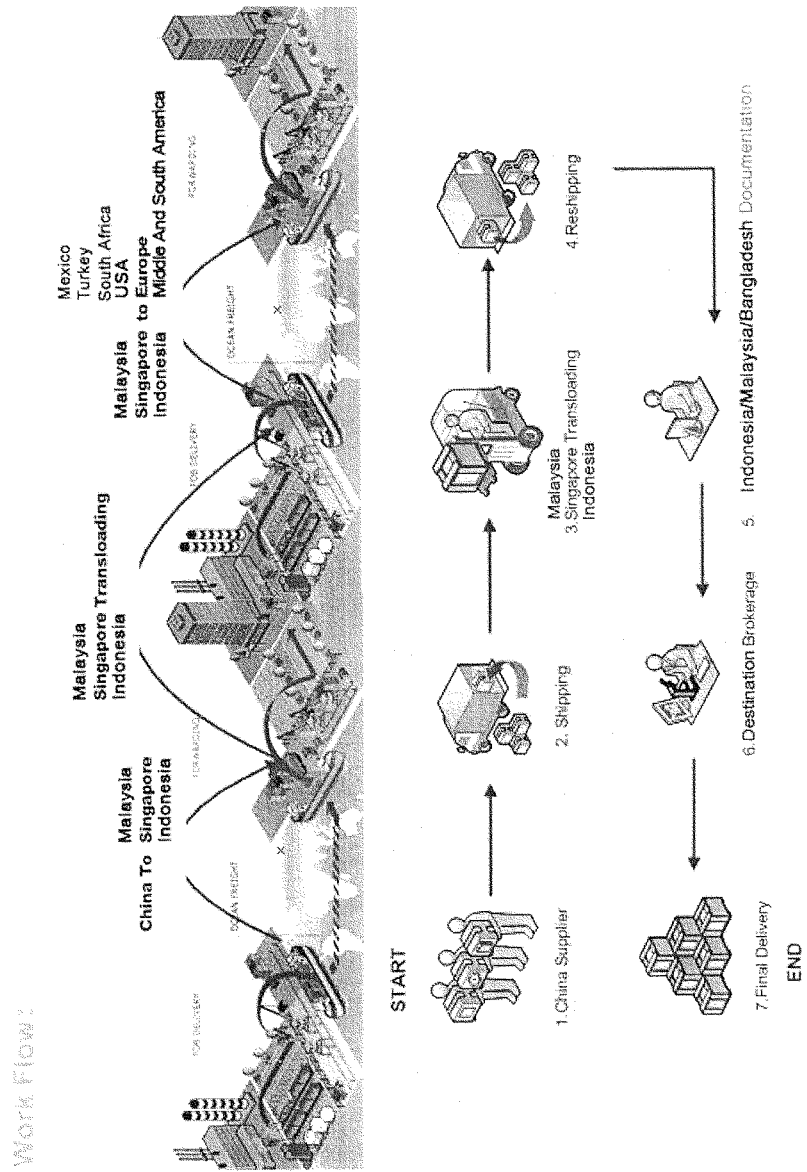
2. We use Singapore, Dubai to offer entrepot trade service and issue CO of Malaysia, Vietnam, Indonesia, Bangladesh in order to avoid tariff barriers.



Source:
<http://www.hanhen.com/j3.asp?id=247>

Internet Offer from a Chinese Shipping Agent Company:

“If you import goods from China (cheaper price and the labor force), you must have the high duty trouble because of the antidumping, but now we can ship the goods to your country with no duty, it is called the transit trading in the third country. First, we will ship the goods to the Singapore or Malaysia, we have some partner in there, they will help us do every documents... Second, we will change the container, and then will order your country shipment, it can avoid the high duty. This is the only way to avoid the antidumping.”



From U.S. International Trade Commission Staff Report Final Drill Pipe from China Injury Investigation

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“However, the issue that concerned Staff most was the substantial level of mis-reporting: more than \$60 million worth of imports of casing and tubing from China, now subject to antidumping and countervailing duty orders in the United States, have been reported to have entered the United States in 2008 and 2009 under statistical reporting numbers that are clearly designated for drill pipe. In addition, in the final phase of the investigations, U.S. importer **** reported the *opposite error*, entering **** of imports of drill pipe from China in 2010 under a non-drill pipe HTS statistical reporting number. **** stated that its customs broker had changed the HTS statistical reporting number to classify the imports as parts (of offshore oil and gas rigs).” – February 2011

Statement of U.S. Senator Olympia J. Snowe
Finance Subcommittee Hearing on
“Enforcing America’s Trade Laws in the Face of Customs Fraud and Duty Evasion”
May 5, 2011

Thank you Chairman Wyden and Ranking Member Thune for holding this hearing at a time when our nation must remain dedicated to enforcing our trade laws and retaining and creating jobs in *this* country.

So far, despite some recent enforcement efforts, this Administration – like successive Republican and Democratic administrations before it – has consistently missed key opportunities to hold countries like China accountable when it violates its international commitments on currency manipulation, institutes discriminatory government procurement policies, and continues with labor and environmental exploitation. When China joined the World Trade Organization in 2001, it promised to make key reforms – such as limiting government subsidies and implementing basic standards on Intellectual Property Rights protection and rules for enforcement. Yet China has failed to live up to many of these commitments, and according to a report released by the Economic Policy Institute last year, since China joined the World Trade Organization, 2.4 million jobs – including 10,000 in my home state of Maine – have been lost or displaced in the U.S. – *severely* impacting trade-sensitive industries like paper production in Maine and resulting in a burgeoning U.S. trade deficit.

And, in terms of today’s hearing, China is also one of the countries most often linked to antidumping and countervailing duty evasion. This is no surprise given that there are approximately 300 antidumping and countervailing duty orders in place on various products – from steel nails and “natural bristle paint brushes” to certain types of coated paper. Notably, roughly one-third of these orders in the U.S. are against Chinese merchandise.

Workers in Maine and throughout the U.S. view our trade remedy laws as a vital lifeline when it comes to combating unfair, market-distorting trade practices – and I have long argued that we must make certain that American industries can compete fully in a fair, global market. Yet unscrupulous foreign exporters are constantly finding new ways to avoid paying U.S. import duties, such as mislabeling merchandise, using transshipments through third party foreign ports to avoid scrutiny, and manipulating invoices.

Although antidumping and countervailing duty evasion has recently been most prominent in industries represented here today like honey production and steel tubes, the potential for an expansion into other sectors represents a very real threat to our economy. For example, in Maine, the paper production industry is not just a major employer – with approximately 7,000 Mainers directly employed in the production of pulp and paper – and upwards of 50,000 additional indirect jobs tied to this industry – paper production is an indispensable economic pillar of our state and across America it is the very heart and soul for many of our rural

communities. And, devastatingly, a shutdown at the East Millinocket paper mill on April 1st has left 450 mill workers in the Katahdin region of Maine under threat of permanent displacement.

Last September I testified before the U.S. International Trade Commission and underscored the market-distorting effects that certain dumped and subsidized coated paper imports from China have on production, prices, and jobs in Maine. In November, the Commission voted unanimously to affirm that these practices have in fact injured the U.S. paper industry by depressing the value of U.S. products, and leading to reduced production, lost wages, mill closures, and jobs losses. Following the Commission's decision, the Department of Commerce issued antidumping and countervailing duty orders at rates equal to the net subsidy and dumping margins to offset these unfair trade practices. U.S. Customs and Border Protection is now responsible for collecting these duties, which are meant to level the playing field for American manufacturers.

This decision was absolutely vital in our efforts to protect the jobs of paper workers in Maine and across the U.S. But now the question is, with an increasing number of Chinese imports surging into the U.S., how confident are we that our government will be able to identify and hold accountable those who seek to evade our antidumping and countervailing duty laws?

Most companies play by the rules, but when unscrupulous foreign exporters invent schemes to avoid paying duties it puts workers in Maine and throughout the nation at a severe disadvantage and bilks our government out of millions of dollars in uncollected fees.

Today I hope to hear some new ideas for holding accountable those who seek to evade our trade laws so that we may start creating jobs in this country – something that should be the fundamental mission of this government and, regrettably for the millions of jobless Americans, something that has not yet happened.

Thank you, Mr. Chairman.

Testimony of Senator Thune at Finance Subcommittee Hearing

WASHINGTON, D.C.—U.S. Senator John Thune (R-S.D.), ranking member of the Senate Finance Committee's Subcommittee on International Trade, Customs and Global Competitiveness, today released the following remarks as prepared for a hearing focused on trade laws:

"I want to start by thanking Subcommittee Chairman Wyden for holding this hearing and all of the witnesses for taking time to testify today. It is unfortunate that trade can sometimes become a divisive issue. We have certainly seen that in the past. However, I believe we should all be able to agree on the principle that U.S. trade laws should be enforced as effectively as possible, regardless of how we view broader trade issues. Today's hearing is an opportunity to examine enforcement of our antidumping and countervailing duty laws, an area where many U.S. producers, shippers and importers believe that the law is not being enforced as well as it should be.

"In my state of South Dakota, for example, we have seen first-hand the impact of our inability to fully enforce the existing antidumping duty on Chinese honey. While imports of dumped Chinese honey initially declined after the antidumping order was put in place, unscrupulous Chinese producers have since found ways around the antidumping duties. These producers have increasingly transshipped their honey through third countries, such as Malaysia and Indonesia. We have also seen Chinese honey mislabeled as honey blends so as to avoid the antidumping duties.

"Unfortunately for U.S. producers, honey is only one example of the problem. Chairman Wyden and a number of other Senators are particularly concerned about steel products evading antidumping duties. In my state of South Dakota, furniture producers have been harmed by circumvention of existing antidumping duties on Chinese bedroom furniture. I believe we must do more to enforce the laws on the books so as to stop the flow of dumped products and I look forward to the opportunity to discuss these issues today in greater detail.

"At the same time we strive to make enforcement of our trade laws more robust, however, I believe we must be mindful of the burdens that are often placed on the vast majority of U.S. importers who are not engaged in any fraudulent activity and the importance of expediting the movement of the legitimate trade that is critical to our economy. We need to remember that we live in an increasingly global economy and that any new burdens on the flow of goods across our borders, even if well-intentioned, can harm our economy and drive commerce and trade to other nations.

"America's retailers, in particular, are large importers and have much at stake in this debate. They have voiced concerns in the past about certain proposed changes to our antidumping and countervailing duty laws and have suggested new approaches, such as moving from the current retrospective system to a prospective system more in line with our trading partners. I am pleased that we will hear the perspective of America's retailers today as well.

"Enforcement of our trade remedy laws is important for another reason—to generate and maintain public support for international trade. While I believe the factual case behind our three pending trade agreements is very compelling—and I was pleased to see the Administration yesterday finally commit to moving forward on all three agreements—it is not enough to quote dry numbers and statistics if we want to rebuild public support for trade. We must also convince Americans that the global trading system is fundamentally fair. We need Americans to know that while our businesses play by the rules, they should expect foreign businesses to do the same. When foreign producers evade our laws and harm U.S. producers, confidence in global trade is undermined here at home.

"As Congress considers the Colombia, Panama and South Korea Free Trade Agreements in the coming weeks and months, broad-based public support for trade will be even more important. I hope that the discussion today will inform our debate and generate new ideas and approaches to ensure that America's trade laws are enforced in a manner that is fair to producers and importers, encourages the movement of legitimate trade, and broadens support for the upcoming trade agreements."

**Prepared Testimony of Marguerite Trossevin
On Behalf of the Retail Industry Leaders Association
Before the U.S. Senate Committee on Finance
Subcommittee on International Trade, Customs and Global Competitiveness
May 5, 2011**

Chairman Wyden and Members of the Subcommittee:

I am pleased to appear before you today representing the Retail Industry Leaders Association (RILA), an association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, manufacturers and service suppliers, which together account for more than \$1.5 trillion in annual sales, employing millions of Americans in more than 100,000 stores, manufacturing facilities and distribution centers across the United States and abroad. We appreciate the opportunity to provide the Subcommittee with RILA's perspective on your efforts to address the problem of customs fraud and unlawful evasion of antidumping and countervailing duties.

By way of introduction, I am Marguerite Trossevin, a member of the law firm Jochum Shore & Trossevin PC and international trade counsel to RILA. I have more than 25 years of experience in trade remedy law, including 13 years at the Department of Commerce where I served as Deputy Chief Counsel at Import Administration, the agency within the Department of Commerce charged with enforcing the U.S. antidumping and countervailing duty laws. I hope that the experience gained during years at the Department of Commerce and in the private sector will be useful to your deliberations.

The subject that the Subcommittee is discussing today is a very serious legal and economic issue. As global trade has expanded over the last few decades, American companies have become more competitive, raising our national income and standard of living. RILA members play a critical role in the manufacture and distribution of goods throughout the United States and globally, creating high paying jobs and providing American consumers access to a broad array of products at affordable prices.

RILA members depend on stable global supply chains and firmly support free and fair trade. We therefore have a strong interest in the issue before the Committee. RILA shares the Chairman's view, as I believe do most of American businesses, that fraud and evasion of U.S. law, including the trade remedy laws, is costly and harmful to the U.S. economy. In fact, RILA's members, who include some of the largest U.S. importers, devote millions of dollars and substantial time and personnel to ensure that they are in compliance with U.S. law and to preserve the integrity of their supply chains, using tools such as sophisticated technology, vendor certification and on-site compliance audits. RILA members don't want to compete with bad actors nor do business with them.

Unfortunately, it is inevitable that there will always be some who try to circumvent the law. The question then becomes, does more need to be done to address the problem and, if so, what. In approaching this issue, RILA respectfully suggests that the Chairman and Members of the Subcommittee keep the following principles in mind.

First, the overwhelming majority of importers play by the rules. Members of RILA and other importers participate in trusted importer programs, such as CTPAT and Importer Self Assessment, and work closely with Customs and other agencies on an ongoing basis to facilitate the prompt and orderly processing of goods at the border, while identifying transactions of concern from a commercial and security standpoint. It is important that efforts to fight evasion recognize and complement these efforts and not stifle, disrupt or overburden legitimate trade that is critical to the competitiveness of so many American companies.

Second, to promote the most effective enforcement of antidumping and countervailing duty orders, the current jurisdictional lines of authority between the Departments of Commerce and

Homeland Security should be preserved. Import Administration at the Department of Commerce and U.S. Customs and Border Protection at the Department of Homeland Security have unique capabilities and expertise. The agencies also have long-established and well-defined responsibilities in implementing and enforcing antidumping and countervailing duty orders, and they already can and do work cooperatively when there is fraudulent evasion of AD/CVD orders. Legislation that would blur the jurisdictional authorities of the agencies would be counterproductive.

Specifically, as U.S. courts have frequently stated, the Commerce Department is the “master” of the law with exclusive authority not only to determine AD/CVD rates, but also what products fall within the scope of an AD/CVD order. Thus, in any dispute over whether a product should or should not be subject to duties, Commerce has the final say. Having that authority rest with one agency promotes consistency, efficiency and orderly and effective administration of the law. In addition, Commerce’s authority extends beyond merely determining whether a product falls within the literal language of the scope of an order. Commerce also has the authority to address situations in which an AD/CVD order is circumvented by exporters who make minor changes in the product, or ship the parts and components to another country for final assembly. Further, in such an inquiry, if an exporter presents Commerce with false or misleading information, Commerce will make a scope ruling adverse to the exporter. Commerce therefore has broad authority to ensure that the disciplines of an AD/CVD order are properly and effectively applied.

Meanwhile, CBP has the expertise and the powers necessary to address fraud and evasion, such as falsely declaring the country of origin of goods transshipped through a third country, or intentionally misclassifying, mislabeling or misidentifying imports subject to AD/CVD orders. Customs can and does already bring its broad enforcement authority to bear in such cases, using its investigative powers and ability to impose civil and criminal penalties. The bill introduced last year would have blurred these lines of authority, placing Commerce in the role of fraud investigator, a task for which it is not equipped and that would drain resources away from the agency’s primary responsibilities and core competencies. The result would be unnecessary inefficiency and confusion that would undermine rather than enhance effective enforcement.

Third, in order resolve a problem it is necessary to clearly define it in the first instance. It is important to bear in mind that certain issues, such as the proper Customs classification for goods, or interpretation of the scope of an AD/CVD order can be complex issues on which reasonable minds can differ. Commerce and Customs already have procedures in place for resolving these issues and, as we understand it, those issues are not the concern being addressed. Rather, the problem being addressed is evasion of AD/CVD duties, which by definition entails a fraudulent scheme, such as transshipping goods and falsely declaring the country of origin. We therefore consider inappropriate provisions, such as those in the bill introduced last year, which would expose importers to substantial penalties *without regard to intent*, which is an essential element of fraud. Such legislation would sweep more broadly and overlap with the processes already in place to address legitimate questions as to the applicability of an AD/CVD order to specific imports. Importers that make a reasonable, good faith effort to properly declare the classification, country or origin and duty liability of their imports are not currently exposed to substantial penalties such as retroactive duty assessments, nor should they be.

Finally, in seeking to catch bad actors Congress should not create innocent victims or disrupt legitimate trade. If there are changes that could enhance Customs enforcement, it is critical to maintain clear and reasonable standards, and ensure procedural due process. Setting unrealistic deadlines or low evidentiary requirements, such as “reasonable basis to believe or suspect”, are not consistent with the requirements of due process and ignore the seriousness of the potential consequences.

To compete successfully in today’s global economy, American companies need access to competitive sources of supply, including imports. American companies – manufacturers as well as retailers – therefore increasingly rely on a global supply chains. Thus, in considering legislation to

address customs fraud, special care should be given to enact legislation that is neither vague nor overly broad such that it impinges on lawful trade. The important economic aspects of imports should be taken into account to produce a balanced piece of legislation.

Moreover, as Congress explores ways to improve enforcement of our AD/CVD laws, we urge you to give careful consideration to the potential benefits of a prospective duty assessment system, as opposed to the retrospective system we now have. The Government Accountability Office and Treasury Department have both identified the retrospective nature of the current U.S. duty collection system as a significant factor in Customs' inability to collect hundreds of millions of dollars in AD/CVD duties each year. Moreover, unlike a prospective system, under the current system, U.S. companies who want to trade fairly cannot and do not know at the time they are making purchasing decisions what Commerce will say constitutes a fairly traded price. The system is therefore unpredictable and results in substantial, unexpected duty rate increases for legitimate U.S. businesses. Predictability and protection are not mutually exclusive – we believe Congress can and should develop a prospective duty assessment system that provides both an effective remedy against unfair trade and greater predictability in the global supply chains that are so critical to U.S. manufacturers, processors, distributors and retailers.

U.S. companies are willing to pay fairly traded prices – they simply need to know what they are so that they can make informed, sound business decisions. As a matter of policy, it makes no sense to tell U.S. companies that Commerce cannot determine what is a fairly traded transaction until years after the fact and penalize the companies for Commerce's not knowing by imposing large duty increases years after import.

Under a "prospective normal value" system, Commerce would determine what the non-dumped price (i.e., "normal value") is and CBP would apply those results prospectively on a transaction-by-transaction basis. Thus, if subject merchandise were imported at a price below the normal value (i.e., at a "dumped price"), CBP would, at the time of import, immediately collect final AD duties equal to the amount of the price difference (the dumping margin). Zero duties would be assessed on non-dumped imports. The same system would apply for calculating and assessing CVD duties.

Under such a system, therefore, injurious dumping or subsidization would be remedied immediately upon importation, and U.S. companies would know in advance what the actual fairly traded cost associated with each potential source is and could make informed decisions regarding competitive strategies and sourcing. That is good for competing U.S. producers as well as consuming industries and other importers. For example, the current system of assessing additional duties 3 years after the fact does nothing to help the competing U.S. producer that lost the sale because the additional duties on imports are not assessed in a manner timely enough to influence purchasing decisions. In contrast, prospective normal values would impact purchasing decisions, prior to import, promoting fair competition when it really matters.

In addition, according to a Treasury study, the collection rate for additional retroactive AD/CVD duties is less than 50%. It is inherently difficult to collect duties years after import. Importers faced with an unexpected liability may be unable to pay, or an exporter may game the system. For example, a foreign exporter with a low AD rate can reduce prices and increase exports and then disappear before the additional duties can be collected. This type of "hit and run" scheme is possible only in a retrospective system. Under a prospective system, CBP would immediately assess higher duties at the time of import if import prices declined; therefore collection rates for AD/CVD duties should be close to 100%, contributing to enhanced enforcement.

On behalf of RILA and its members, I thank you for the opportunity to appear before you today and would be happy to answer any questions you may have.

The Honorable Ron Wyden
Opening Statement
Subcommittee on International Trade, Customs, and Global Competitiveness Hearing:
"Enforcing America's Trade Laws in the Face of Customs Fraud and Duty Evasion."
Senate Committee on Finance

May 5, 2011

Remarks as prepared for delivery:

As the Senate Subcommittee on International Trade, Customs and Global Competitiveness it is our job to promote trade laws and policies that give American businesses and workers the best opportunity to compete globally. It is also this subcommittee's job to ensure that those laws and policies are being properly implemented and enforced.

For almost a century, Democratic and Republican Administrations have promoted and protected America's anti-dumping and countervailing duty laws. These laws recognize the reality is that foreign competitors don't always play by the rules. Some employ unfair and unscrupulous trade practices that put American businesses at a serious disadvantage. So, when it comes to ensuring that American businesses and workers have a level playing field to compete - anti-dumping and countervailing duty laws are the first line of defense.

But it is not enough to just pass these laws, they need to be enforced. Duties don't work unless they are assessed and collected.

Today we will hear from Senators of both political parties and companies from across this nation that the anti-dumping and countervailing duties that protect American business and workers from grievous economic harm are being evaded and flouted by foreign suppliers and dishonest importers.

For more than a year, the staff of this subcommittee has engaged with industry, workers and relevant government agencies to determine the magnitude and scope of the problem of the evasion of AD/CVD orders and how the executive branch is responding.

In one effort, staff created a fictitious import company called AvisOne Traders Inc. With little more than a Gmail account, staff were able to identify numerous Chinese suppliers so brazen in their willingness to avoid U.S. anti-dumping duties that they sent emails detailing how they would falsify documents or transship products through third-party countries in order to get around U.S. laws. Many of the suppliers even post online advertisement boasting of their ability to help U.S. importers avoid paying anti-dumping duties. All this take place under the very sleepy eyes of U.S. Customs and Border Protection, or CBP.

Our staff also learned that it often takes CBP nearly a year to ask its sister agencies for investigatory help when it is needed and when CBP does refer a case to an outside agency they don't follow-up to ensure that it gets handled. It generally takes years for the government to

conclude an investigation into evasion and reassess the appropriate duties that should have been collected.

While agencies are dragging their feet to enforce our trade laws, this country's domestic manufacturers are being hammered by foreign trade cheats. And it's not like the cheaters wait around to get caught and pay their fines, they disappear long before the so-called government watchdogs arrive.

There are two principal American government agencies that are supposed to police this beat. In my view, one of them, CBP, treats allegations of duty evasion like junk mail. The other, Immigration and Customs Enforcement, has been more visible on the issue of alleged illegal movie downloads than taking steps to protect tens of thousands of manufacturing jobs that are threatened by unfair trade.

Witnesses today will describe the relief they won from unfair trade practices and how that relief was undermined by duty evasion and a disinterested and disengaged government. They will describe what basically amounts to bureaucratic water torture. These firms started getting clobbered by dumped imports, so they provide to the International Trade Commission that they are being harmed and they prove to the Department of Commerce that dumping is occurring. They do all this to finally get some relief from the unfair imports only to find that it was meaningless because the same corrupt suppliers are driving what amounts to a Mac Truck through the enforcement loopholes of the federal government.

Last year, I was pleased to join with Senator Snowe to introduce The ENFORCE Act that would discipline the government to quickly begin and conclude investigations into evasion of AD/CVD orders. As many in this room are aware, many of my colleagues and I are working to build off and improve that proposal so that it effectively helps to combat and deter evasion and circumvention of AD/CV duties without frustrating legitimate trade. We will shortly be in a position to move a bill through the Senate and get it to the President's desk for his signature.

This is a critical issue to address. The Administration needs to credibly assure Congress that it is doing all it can to enforce the trade laws at a time when the President is asking the Congress to consider the merits of three Free Trade Agreements and Russia's accession into the World Trade Organization.

But that is not going to happen if the view is that Chinese and other suppliers are going to launder their merchandise through our FTA partners to avoid duties, particularly those in place to remedy dumping and government subsidies.

I now yield to a new Member of the Finance Committee and my new Ranking Member, Mr. Thune.

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STAFF REPORT

DUTY EVASION:

**HARMING U.S. INDUSTRY AND AMERICAN
WORKERS**

Prepared for Senator Ron Wyden

November 8, 2010

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Introduction

U.S. antidumping and countervailing duty (AD/CVD) laws form U.S. industry's protective backbone against injury from unfair trade. These laws provide American producers the ability to counter injurious unfair trade practices and ultimately allow for the imposition of additional duties on unfair imports.

Each year, U.S. companies collectively spend millions of dollars to initiate and litigate AD/CVD cases to keep illegally dumped or subsidized imports from entering the U.S. market and injuring them. Unfortunately, many U.S. producers believe that the evasion of America's unfair trade laws is increasingly pervasive. The circumvention of U.S. AD/CVD laws, either by foreign producers or importers, negatively affects industries throughout the United States, resulting in continued injury to U.S. industry, the loss of American jobs, and the loss of federal revenue.

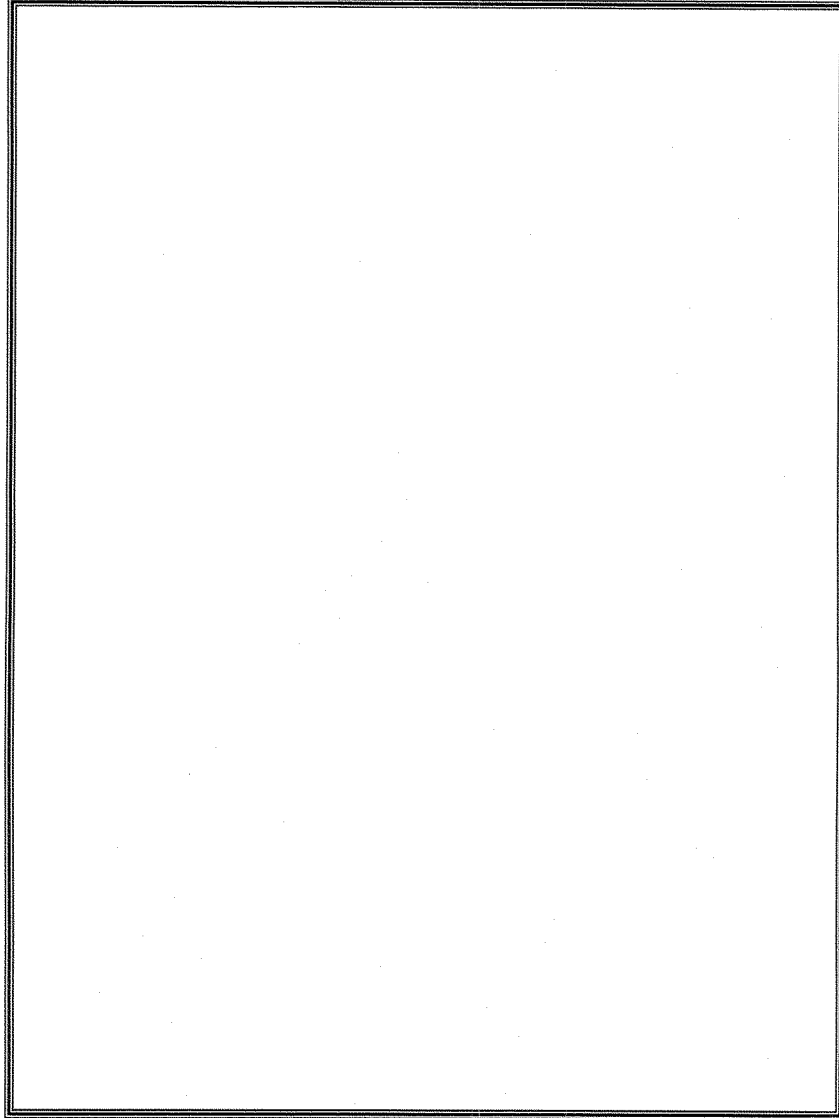
Foreign suppliers subject to AD/CVD orders and their U.S. importers avoid paying AD/CV duties by a number of unscrupulous schemes, including illegal transshipment and falsified country of origin markings, undervalued invoices to pay less duty, and misclassification of goods. In sum, they cheat.

Staff set out to determine just how easy it is to find these trade cheats and determine the ease at which an importer could identify a foreign supplier willing to engage in circumvention schemes. In August 2010, staff created a fictitious company called AvisOne Traders, Inc. and set up a company profile on China's largest business-to-business e-commerce website, Alibaba.com, in order to find companies willing to cheat and evade AD/CVD orders. (AvisOne is an anagram for "evasion.")

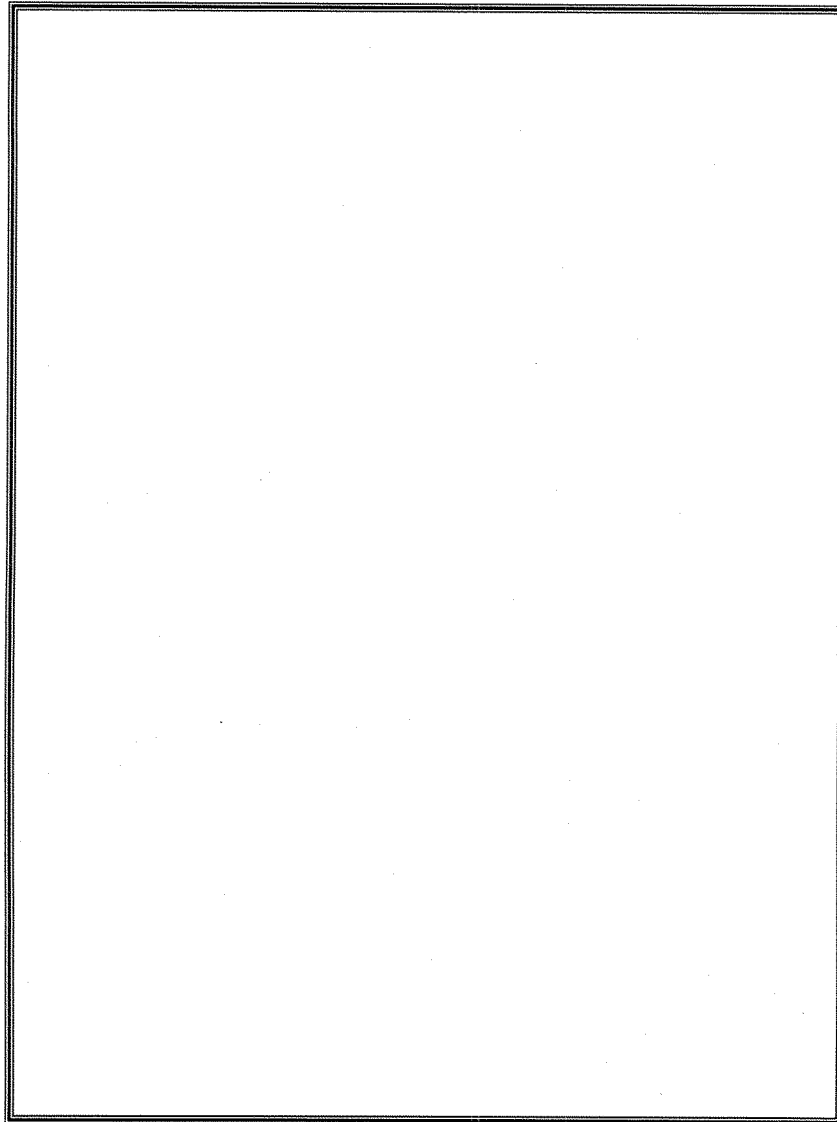
The results are alarming and illustrative of how widespread the problem of duty evasion appears to be. In under two weeks and for as little as 30 minutes a day, one staff person, acting as a "purchasing manager" for AvisOne Traders, Inc., contacted roughly 120 companies through Alibaba.com and received 47 responses. Of these 47, this staff person received written confirmation from 10 Chinese companies that were willing to evade duties on five different products subject to U.S. AD/CVD orders. These products include uncovered innersprings units, lined paper school supplies, steel nails, natural bristle paint brushes, and light-walled rectangular pipe and tube. The AD/CVD orders on this merchandise, which represents just a small fraction of all AD/CVD orders currently in place, were put in place to protect over 120 businesses and 12,000 workers from unfairly traded imports.

This report is a compilation of information obtained by staff over a two-week period, and is organized into three parts. Part I presents e-mail correspondence between staff, acting under the auspices of AvisOne Traders, and Chinese producers. In a couple of additional examples, staff obtained from the counsel of U.S. industry non-solicited e-mails from Chinese producers offering to facilitate the evasion of AD/CVD orders. Part II presents a list of publically identified Chinese companies that advertise—in English—their ability to facilitate the evasion of AD/CVD laws. Part III includes snap shots of company websites that offer services designed to evade AD/CVD laws (in one instance, a website operated by the Chinese government itself and which advertises the services of a Chinese firm that facilitates evasion).

In the event that staff corresponded with a Chinese firm that is of interest to U.S. law enforcement, two versions of this report were prepared. A confidential version containing comprehensive information about the firms with which staff corresponded was provided to U.S. Customs and Border Patrol and Immigration and Customs Enforcement. This version, a public redacted version, was prepared in order to be shared with Members of Congress and their staff.



Part I:
Email Correspondence Showcasing Companies'
Willingness to Evade AD/CVD Orders



Steel nails have a shaft length up to 12 inches, and include steel nails made of round wire and nails that are cut. They may be made of any type of steel, and have a variety of finishes. Nails are used in the construction of houses and used to make furniture and cabinets, among other applications.

- ⇒ Subject to AD order since August 1, 2008 (DOC)
- ⇒ Number of U.S. producers in 2007: 17
- ⇒ U.S. producers' U.S. shipments in 2007: \$220 million
- ⇒ U.S. employment of production and related workers in 2007: 791
- ⇒ U.S. production locations: Arkansas, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Missouri, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Wisconsin, West Virginia
- ⇒ Leading sources of U.S. imports (by value) in 2007: China, Korea, United Arab Emirates (USITCa, USITCb)

Map source: <http://www.coloringcastle.com>

Map source: <http://www.coloringcastle.com>

Companies Willing to Evade U.S. AD/CV Duties on Steel Nails

Staff, posing as a U.S. trading company, contacted these three Chinese steel nail producers/traders via Alibaba.com to inquire whether these companies could avoid paying duties on steel nails by illegal transshipment. In the first instance, Company A offered to transship when it was proposed by staff. In the second and third instances, Companies B and C directly proposed to illegally transship as a way to avoid paying duties. Below are transcripts of email correspondence documenting a willingness to evade AD/CVD orders (highlighted in red). Textboxes provide an explanation of the correspondence.

Company A

Product: Steel Nails
Country of origin: China
Means to evade duties: Illegal transshipment

From: feedback@service.alibaba.com
To: ***
Sent: Tues, August 31, 2010 5:12 AM
Subject: [avisonetraders@gmail.com] I want to buy the product you are selling on Alibaba.com

Dear ***,

You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this sender. Mr. Paul Union is interested in your company.

Buyer's Message

Subject: I want to buy the product you are selling on Alibaba.com.

Dear Sir:

We are a small trading company based in Oregon that supplies a diverse array of products to regional customers in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your concrete steel nails? Also, are your steel nails subject to any U.S. antidumping duties?

Thank you,
Paul Union, Purchasing Manager
AvisOne Trading Company, Ltd.
Tel: (503) 583-4237
Email: AvisOneTraders@gmail.com

Explanation:

In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company A via Alibaba.com, China's largest e-commerce platform.

AvisOne Traders—Providing the Highest Quality Product at the Most Competitive Prices

Company A (cont'd)

From: ***
Sent: Tues, August 31, 2010 10:57 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Concrete nail

Hi, dear sirs:

Thanks for your enquiry about nails

To take this opportunity, we are very glad to introduce our company to you. We are the professional manufacturer and exporter with high reputation in Tianjin city China, handling of nail products etc. Pls let us know the concrete nails specification of you required, we will quote you our lowest price on based of that.

We are looking forward to your early reply.

Best regards.,

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Fri, September 3, 2010 8:36 AM
To: ***
Subject: Re: Concrete nail

Explanation:
 Company A describes its business and products. In the second email, staff asks if it is possible to avoid paying duties.

Dear ***,
 Thanks for your reply. Are you nails subject to any U.S. anti-dumping duties? If so, in your experience is there any way to avoid paying the duties?

Regards,
 Paul

Company A (cont'd)

From: ***
Sent: Sun, September 5, 2010 10:47 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: Concrete nail

Hi, dear Paul:

Thanks for your email.

We have exported our products to U.S but the customer avoid the duties by themselves. So we do not know how can they avoid the duties. Sorry about that. But we can promise our products quality can meet your requirement.

Best regards,

Explanation:
 When asked if there is a way to avoid paying duties, Company A initially says no. However, when illegal transshipment is proposed as a way to avoid paying duties, Company A agrees, demonstrating at the very least that it is aware of the method. In this instance, Company A offers to ship product through a third country.

From: <avisonetraders@gmail.com>
Sent: Wed, September 8, 2010 7:48 AM
To: ***
Subject: Re: Concrete nail

Dear ***,
 Thanks for your reply. Would it be possible to transship the product through a third country and change the country of origin in order to avoid paying the duties?

Best regards,
 Paul Union

From: ***
Sent: Wed, September 8, 2010 11:12 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: Concrete nail

Dear Paul Union:

Thanks for your email.

As you said, we can arrange the container shipping from Xingang to Malaysia, Bangladesh or Singapore. And the shipping agent can help us to issue the original certification, it will increase the cost but i think it must be lower than duties.

Best regards,

Company B

Product: Steel Nails
 Country of origin: China
 Means to evade duties: Illegal transshipment

Explanation:

In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company B via Alibaba.com, China's largest e-commerce platform.

From: feedback@service.alibaba.com

To: ***

Sent: Tues, August 31, 2010

Subject: [avisonetraders@gmail.com]Inquiry about your product

Dear ***,

You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this sender. Mr. Paul Union is interested in your company.

Buyer's Message

Subject: Inquiry about your product

Dear sir:

We are a small trading company based in Oregon that supplies a diverse array of products to regional customers in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your concrete nails? Also, are your steel nails subject to any U.S. antidumping duties?

Thank you,

Paul Union, Purchasing Manager
 AvisOne Trading Company, Ltd.
 Tel: (503) 583-4237
 Email: AvisOneTraders@gmail.com

AvisOne Trades - Providing the Highest Quality Product at the Most Competitive Prices

Company B (cont'd)

From: ***
Sent: Wed, September 1, 2010 3:02 AM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: [avisonetraders@gmail.com]inquiry about your product

Dear Mr Paul Union,
 How are you?
 Our factory have produce the steel nail for 46years.
 If you need the quotation,pls inform me the exact information include the diameter of the wire nail,length of the nail,surface treatment and also the packing demand.
 Sincerely thanks and best regards!~
 Yours ***

Explanation:
 In the first email, Company B describes its business and products. In the second email, staff asks if it is possible to avoid paying duties. Company B responds that it already engages in illegal transshipment.

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Fri, September 3, 2010 8:33 AM
To: ***
Subject: [avisonetraders@gmail.com]inquiry about your product

Dear ***
 Thanks for your response. Are your concrete nails subject to any U.S. anti-dumping duties? If so, in your experience is there any way to avoid paying the duties?

Regards,
 Paul

From: ***
Sent: Sat, September 4, 2010 1:29 AM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: [avisonetraders@gmail.com]inquiry about your product

Dear Paul,
 How are you?
 Thank you for your e-mail. we have export the concrete nails to Canada then to U.S. or other country then to U.S. Our coil nail to U.S. do not need pay the duties.
If you have any other company in Canada or Singapore?
Maybe it is better way to avoid paying the duties.
 Sincerely thanks and best regards!
 Yours ***

Company C

Product: Steel Nails
 Country of origin: China
 Means to evade duties: Illegal transshipment

From: feedback@service.alibaba.com

To: ***

Sent: Tues, August 31, 2010 5:13 AM

Subject: [avisonetraders@gmail.com]Inquiry about your product

Explanation:

In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company C via Alibaba.com, China's largest e-commerce platform.

Dear ***,

You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this sender. Mr. Paul Union is interested in your company.

Buyer's Message

Subject: Inquiry about your product

Dear sir:

We are a small trading company based in Oregon that supplies a diverse array of products to regional customers in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your concrete nails? Also, are your steel nails subject to any U.S. antidumping duties?

Thank you,

Paul Union, Purchasing Manager
 AvisOne Trading Company, Ltd.
 Tel: (503) 583-4237
 Email: AvisOneTraders@gmail.com

AvisOne Trades - Providing the Highest Quality Product at the Most Competitive Prices

Company C (cont'd)

From: ***
Sent: Tue, August 31, 2010 10:23 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: concrete steel nails

Dear sir ,

Good day ! I am *** ,from *** .
 I got your message on alibaba .
 so if you have any need ,please contact me .

Best regard .

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Fri, September 3, 2010 8:37 AM
To: ***
Subject: Re: concrete steel nails

Explanation:

In this series of emails, staff ask Company C whether their nails are subject to U.S. antidumping duties and whether there is a way to avoid paying the duties. Company C proposes shipping product to Malaysia, changing containers, and then sending the new container with a different country of origin certificate to the United States.

Thanks for your reply. I'm looking for concrete steel nails. Are these products subject to U.S. anti-dumping duties? [If so, is there any way to avoid paying the duties?](#)
 Regards,
 Paul

From: ***
Sent: Tue, August 31, 2010 10:23 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: concrete steel nails

Dear sir ,
 Yes . you want concrete steel nails?

[if you want to avoid paying the duties ,there is the way is send the goods to Malaysia and change a box ,then send to U.S](#)

so what do you think about it .

Best regard .

Company C (cont'd)

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Wed, September 8, 2010 7:19 AM
To: ***
Subject: Re: concrete steel nails

Thank you for your reply. So you can transship through Malaysia and change the country of origin to avoid paying the anti-dumping duties? Can your company do that?

Regards,
 Paul

From: ***
Sent: Wed, September 8, 2010 8:43 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: concrete steel nails

Dear sir ,

Thanks for your reply .

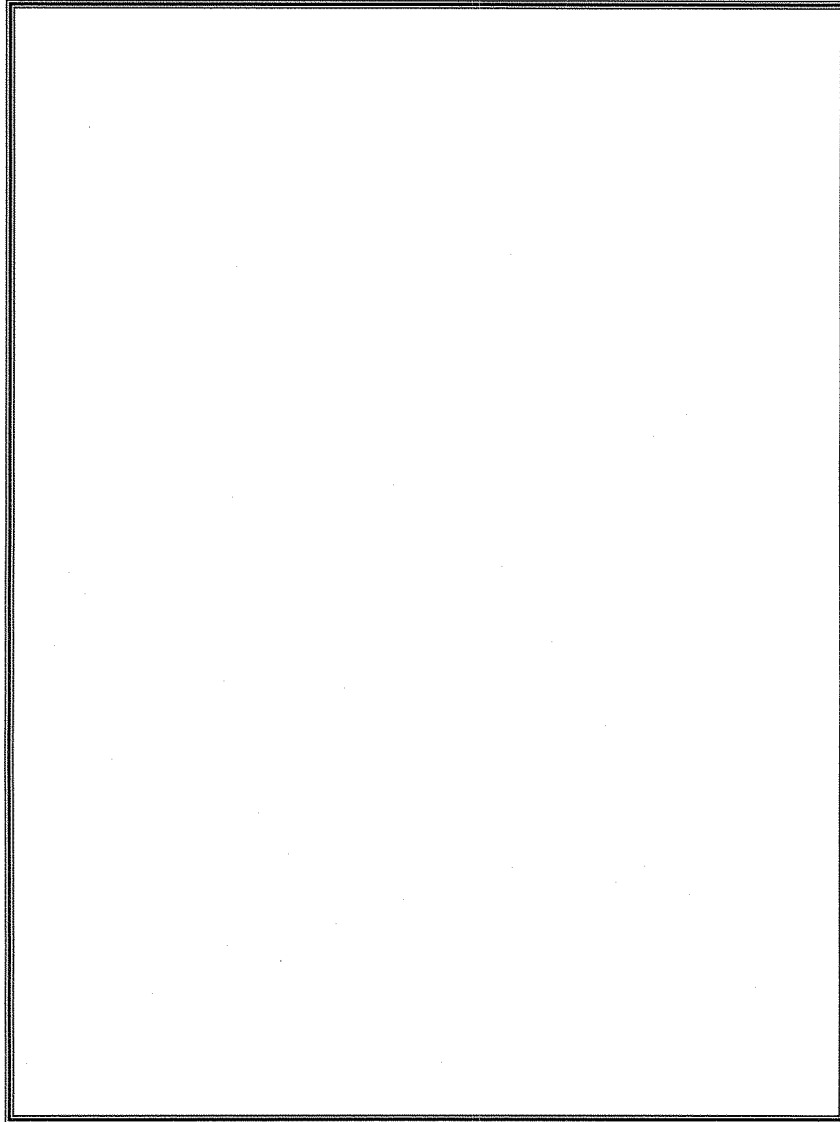
Yes .our company can do this .but in this way ,the cost will increase .

and just tell me your details product information .

Best regard .

Explanation:

Staff respond to Company C to confirm that it can transship product through Malaysia and change the country of origin of the product. Company C confirms its ability to illegally transship.



Certain Lined Paper School Supplies from China

(DOC Case No. A-570-901)

Lined paper school supplies include spiral-bound and wireless notebooks, hole-punched filled paper, and composition books. The paper is typically white and wide-ruled or college-ruled.

Industry at a Glance:

- ⇒ Subject to AD order since September 28, 2006 (DOC)
- ⇒ Number of U.S. producers in 2005: 13
- ⇒ U.S. producers' U.S. shipments in 2005: \$260 million
- ⇒ U.S. employment of production and related workers in 2005: 942
- ⇒ U.S. production locations: California, Georgia, Iowa, Massachusetts, New York, Pennsylvania, Tennessee, Texas, Wisconsin (USITC, USITCd)

U.S. Production Locations of Lined Paper School Supplies



Companies Willing to Evade U.S. AD/CV Duties on Paper Products

Staff, posing as a U.S. trading company, contacted Companies D and E via Alibaba.com to inquire whether they could avoid paying duties on paper school supplies. In the first instance, Company D proposes illegal transshipment through Malaysia to avoid paying duties. In the second instance, Company E professes that it does not know how to avoid paying antidumping duties. However, it states that it deliberately undervalues the value of its products, which is another form of duty evasion. Below are transcripts of email correspondence documenting a willingness to evade AD/CVD orders (highlighted in red). Textboxes provide an explanation of the correspondence.

Company D

Product: Paper school supplies
Country of origin: China
Means to evade duties: Illegal transshipment through Malaysia

From: feedback@service.alibaba.com
To: ***
Sent: Wed, September 1, 2010
Subject: [avisonetraders@gmail.com]I want to buy the product you are selling on Alibaba.com

Dear ***,
You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this send. Mr. Paul Union is interested in your company.

Buyer's Message
Subject: Inquiry about your product

Dear Sir:
We are a small trading company based in Oregon that supplies a diverse array of products to regional customs in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your lined paper products? Also, are your lined paper products subject to any U.S. antidumping duties?

Thank you,
Paul Union, Purchasing Manager
AvisOne Trading Company, Ltd.
Tel: (503) 583-4237
Email: AvisOneTraders@gmail.com

Explanation:
In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company D via Alibaba.com, China's largest e-commerce platform.

AvisOne Traders—Providing the Highest Quality Product at the Most Competitive Prices

Company D (cont'd)

From: ***
Sent: Tue, August 31, 2010 10:04 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: Inquiry about your product

Dear Paul,

It's please to get your enquiry from alibaba. Our factory ***, specializing in paper printing products, stationery notepad is our main product.

Herely I sending you our catalogue, pls check it, hop to meet your interesting. And customed item welcome.

Actually, paper notebook is subjected to U.S. antidumping duties, because the our price is lower much than US market.

Looking forward to your soonly response.

Best regards,

Explanation:

In the first email, Company D describes its business and products. In the second email, staff asks if it is possible to avoid paying duties.

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Fri, September 3, 2010
To: ***
Subject: Re: Inquiry about your product

Dear ***,

Thank you for your response. [Is there any way to avoid paying the anti-dumping duties in your experience?](#)

Regards,
 Paul

Company D (cont'd)

From: ***

Sent: Wed., September 8, 2010 5:44 AM

To: "Paul Union" <avisonetraders@gmail.com>

Subject: Re: Inquiry about your product

Dear Paul,

Notebook of A4, A5, A6 size subjected to U.S. antidumping duties, other size no problem. [Solution is Shipping goods to Malaysia, transship to America to avoid paying the anti-dumping duties.](#)

How do you think about this solution?

Looking forward to hearing from you soon.

Thanks & Best regards,

From: "Paul Union" <avisonetraders@gmail.com>

Sent: Wed., September 8, 2010 7:20 AM

Subject: Re: Inquiry about your product

Explanation:

In the first email, Company D offers to illegally ship product through Malaysia to avoid paying duties. Company D confirms that it can change the country of origin when asked by staff.

Dear ***

Thank you for your reply. [Can your company transship through Malaysia and change the country of origin in order to evade the anti-dumping duties?](#)

Best regards,

Paul Union

From: ***

Sent: Wed., September 8, 2010 7:31 AM

To: "Paul Union" <avisonetraders@gmail.com>

Subject: Re: Inquiry about your product

Dear Paul,

Thanks for your quick reply.

[yes, we can do that](#), but first of all, you should tell me what kind of notebook are you seeking for your market, then I give you the CNF or CIF price, if price is suitable for your market, let's talk over further more.

Looking forward to your early reply with your inquiry.

Thanks & best regards,

Company E

Product: Paper school supplies

Country of origin: China

Means to evade duties: Undervaluation of invoice to pay less duty

From: feedback@service.alibaba.com**To:** *****Sent:** Wed, September 1, 2010**Subject:** [avisonetraders@gmail.com]Inquiry about your product(AdminGenerate)

Dear ***,

You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this send.

Mr. Paul Union is interested in your company.

Buyer's Message

Subject: Inquiry about your product

Dear Sir:

We are a small trading company based in Oregon that supplies a diverse array of products to regional customs in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your lined paper products? Also, are your lined paper products subject to any U.S. antidumping duties?

Thank you,

Paul Union, Purchasing Manager
 AvisOne Trading Company, Ltd.
 Tel: (503) 583-4237
 Email: AvisOneTraders@gmail.com

Explanation:

In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company E via Alibaba.com, China's largest e-commerce platform.

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Company E (cont'd)

From: ***

Sent: Wed, September 1, 2010 1:39 AM

To: "Paul Union" <avisonetraders@gmail.com>

Subject: Our product

Dear paul,

Let me introduce my company to you ,my company—*** is specialized in the manufacturer of various color printed paper cards, paper handbags, packing boxes, gift boxes, labels, tags, brochures, posters, packing materials and other related products for 20 years. Providing 'Quality Products, Excellent Service, Competitive Prices and Prompt Delivery', pls kindly browse our website:*** for free!

we can not only design and produce unique and fashion style products but also can make products according to your requirements, and your design is welcome

Attachment is our catalogue about some paper bags and boxes ,pls check it !

If you have some new inquiry ,pls contact us for free !

Await for your prompt reply !

Best regard !

Explanation:

In the first email, Company E describes its business and products. In the second email, staff asks if Company E's products are subject to antidumping duties and whether it is possible to avoid paying duties.

From: "Paul Union" <avisonetraders@gmail.com>

Sent: Fri, September 3, 2010 8:00 PM

To: ***

Subject: Re: Our product

Dear ***,

Thank you for your message. Are your paper notebooks subject to U.S. anti-dumping duties? In your experience, is there any way to avoid paying the anti-dumping duties?

Regards,

Paul

Company E (cont'd)

From: ***
Sent: Wed, September 15, 2010 4:26 AM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Our product

Dear Paul,

Thank you for your reply !

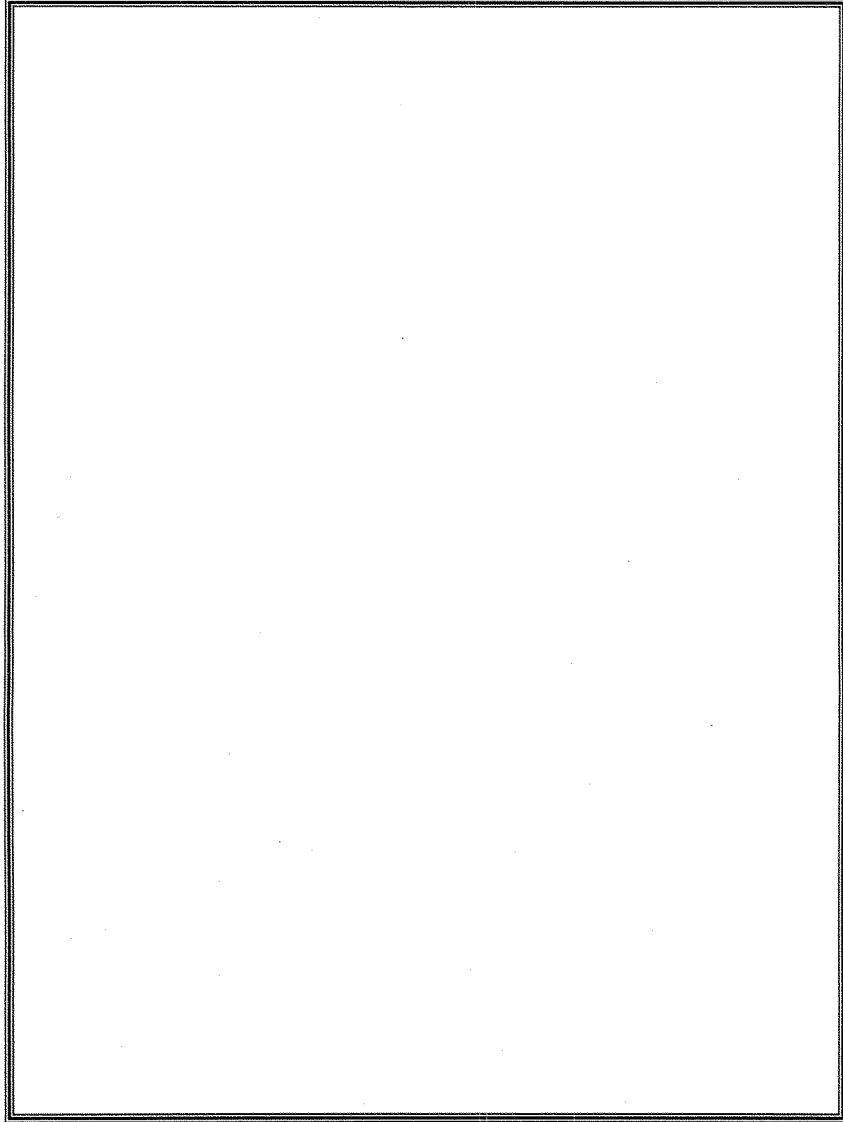
I am sorry so late reply you ! we have no experience to avoid paying the anti-dumping duties , besides we make the commerical invoice , we write that the value of products is less than the factual cost .

Await for your prompt reply !

Best regard !

Explanation:

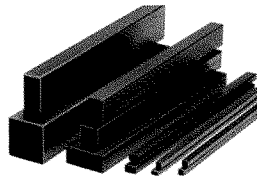
In this email, Company E states that it does not know how to avoid paying antidumping duties, but professes that it undervalues products on commercial invoices, which is a form of duty evasion.



Light-Walled Rectangular Pipe and Tube from China

(DOC Case No. A-570-501)

Carbon-quality welded light-walled rectangular pipe and tube is often referred to as ornamental or mechanical tubing. Principal uses include ornamental fencing, window guards and framing, and railings for construction and agricultural applications. It is also used in metal furniture, athletic equipment, and store display shelves.



Industry at a Glance:

- ⇒ Subject to AD/CVD orders since August 5, 2008 (DOC)
- ⇒ Number of U.S. producers in 2007: 28
- ⇒ U.S. producers' total shipments in 2007: \$513 million
- ⇒ U.S. employment of production and related workers in 2007: 973
- ⇒ U.S. production locations: Alabama, Arizona, Arkansas, California, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, Mississippi, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Wisconsin (USITC, USITCf)

U.S. Production Locations of Light-Walled Rectangular Pipe and Tube



Map source: <http://www.coloringcastle.com>

Companies Willing to Evade U.S. AD/CV Duties on Light-Walled Rectangular Pipe and Tube from China

Staff, posing as a U.S. trading company, contacted Company F via Alibaba.com to inquire whether its rectangular pipe and tube products are subject to U.S. antidumping duties and whether it could avoid paying such duties. Below is a transcript of email correspondence documenting a willingness to evade AD/CVD orders (highlighted in red). Textboxes provide an explanation of the correspondence.

Company F

Product: Pipe and tubular products

Country of origin: China

Means to evade duties: Illegal transshipment, also known as "entrepot" trade

From: feedback@service.alibaba.com

To: ***

Sent: Tues, August 31, 2010 5:52 AM

Subject: [avisonetraders@gmail.com]I want to buy the product you are selling on Alibaba.com

Dear ***:

You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this sender. Mr. Paul Union is interested in your company.

Buyer's Message

Subject: I want to buy the product you are selling on Alibaba.com.

Dear Sir:

We are a small trading company based in Oregon that supplies a diverse array of products to regional customers in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your rectangular tubular products? Also, are your light-walled rectangular tubular products subject to any U.S. antidumping duties?

Thank you,

Paul Union, Purchasing Manager

AvisOne Trading Company, Ltd.

Tel: (503) 583-4237

Email: AvisOneTraders@gmail.com

Explanation:

In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company F via Alibaba.com, China's largest e-commerce platform.

Company F (cont'd)

From: ***
Sent: Fri, September 3, 2010 4:42 AM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: To Paul Union

Dear Paul Union

HAPPY WEEKEND. and hope you received my qoutation of *** rectangular pipes .
 About the antidumping duties .I check up alots of information on the net .I still can't
 sure if rectangular tubular products subject to any U.S. antidumping duties. Many informations said
 that On May 3rd, the InternationalTradeCommission voted for Chinese steel 99.14% at the tax anti-
 dumping tariffs on imports.Are you clear about this ??
 Hope you can tell me more about .

Yours

Explanation:

In the first email, Company F is not sure whether rectangular pipe and tube is subject to antidumping duties. In the second email, staff ask if it is possible to change the country of origin to avoid paying duties.

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Fri, September 3, 2010 7:37 AM
To: ***
Subject: Re: To Paul Union

***,

Thank you for your message. I am not sure if rectangular tubing is subject to U.S. anti-dumping duties.
 Is there any way to avoid paying the anti-dumping duties? Would it be possible to modify the country
 of origin certificate?

Regards,
 Paul

Company F (cont'd)

From: ***
Sent: Sat, September 4, 2010 6:38 AM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: To Paul Union

Dear Paul Union:

Thanks for your e-mail and have a good day .

I search a lot. Yes, there has a way to avoid paying the antidumping duties .It's entropot trade. Ex-
port documents issued by the third countries so that facilitate you in yours customs clearance, avoid "a
nti-dumping duties" customs clearance.

Can you accept the export file as payment terms, at the same time to third countries as its export docu-
ments, can reduce clearance documents tariffs?

And i've make certain about that rectangular tubular products subject to any U.S. antidumping duties.

Do you have any questions?

Yours Sincerely

Explanation:

Company F offers proposes
 "entropot trade" another name for
 illegal transshipment. Company F
 states that it will help find a logistics
 company that can illegally transship.

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Wed, September 8, 2010 7:45 AM
To: ***
Subject: Re: To Paul Union

Dear ***,

My apologies for my late reply. If I understand correctly, entropot trade would involve transshipping
 the rectangular tubular products to another country in order to change the country of origin to avoid
 paying the anti-dumping duties on Chinese product? Can your company do this?

Best regards, Paul

From: ***
Sent: Thur, September 9, 2010 6:02 AM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: To Paul Union

Dear Paul Union:

How are you recently?

Yes you are right ,entropot trade would involve transshipping the rectangular tubular products to an-
other country in order to change the country of origin to avoid paying the anti-dumping duties on Chi-
nese product.I find a company can do this .But the products's price would be a little higher.

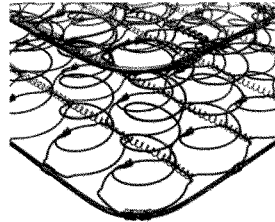
Uncovered Innersprings Units from China

(DOC Case No. A-570-928)

Uncovered innerspring units are composed of a series of individual metal springs joined together and used as the innerspring component in the manufacture of innerspring mattresses.

Industry at a Glance:

- ⇒ Subject to AD order since February 19, 2009 (DOC)
- ⇒ Number of U.S. producers in 2008: 8
- ⇒ U.S. producers' total shipments in 2007: \$539 million
- ⇒ U.S. employment of production and related workers in 2007: 2,970
- ⇒ U.S. production locations: Florida, Georgia, Kentucky, Michigan, Missouri, Mississippi, North Carolina, Texas, Wisconsin (USITCg, USITCh)



U.S. Production Locations of Uncovered Innerspring Units



Companies Willing to Evade U.S. AD/CV Duties on Uncovered Innersprings Units

Staff, posing as a U.S. trading company, contacted Company G via Alibaba.com to inquire whether it could avoid paying duties on uncovered innersprings units. Company G proposed illegally transshipping product through a third country, or undertaking minor assembly in the United States to avoid paying duties. Below is a transcript of email correspondence documenting a willingness to evade AD/CVD orders (highlighted in red). Textboxes provide an explanation of the correspondence.

Company G

Product: Uncovered innersprings units

Country of origin: China

Means to evade duties: Illegal transshipment or minor assembly in United States

From: feedback@service.alibaba.com

To: ***

Sent: Tues, August 31, 2010

Subject: [avisonetraders@gmail.com]I want to buy the product you are selling on Alibaba.com

Dear ***

You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this sender. Mr. Paul Union is interested in your company.

Buyer's Message

Subject: I want to buy the product you are selling on Alibaba.com.

Dear Sir:

We are a small trading company based in Oregon that supplies a diverse array of products to regional customs in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your innersprings units? Also, are your innersprings units subject to any U.S. antidumping duties?

Thank you,

Paul Union, Purchasing Manager
AvisOne Trading Company, Ltd.
Tel: (503) 583-4237
Email: AvisOneTraders@gmail.com

Explanation:

In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company G via Alibaba.com, China's largest e-commerce platform.

Company G (cont'd)

From: ***

Sent: Wed, September 1, 2010 3:17 AM

To: "Paul Union" <avisonetraders@gmail.com>

Subject: RE:FW [avisonetraders@gmail.com]I want to buy the product you are sel

Dear Paul

Thanks for your letter, and thanks for you are interested in our company.

We offer our price, as follows:

Wire :13g,(2.3mm). helical wire:17g (1.4mm) border 6g(4.88mm)

T type 36.5"*73.5"*6" 9*24 10.7Kgs FOB Tianjin US\$11.07/pc

F type 51.5"*73.5"*6" 13*24 14.9kgs FOB Tianjin US\$15.4/pc

Q type 58.5"*78.5"*6"15*26 18.3kgs FOB Tianjin US\$18.92/pc

K type 74.5"*78.5"*6" 18*26 22kgs FOB Tianjin US\$22.75/pc

Loading about 1250pcs in one 40' container. Gross weight 24Mt, Net weight :20Mt.

Yes, our innerspring units is under U.S. antidumping duty, so we have two ways to export to your country: 1) Transit from the third part country, but would add about US\$3000/40' container fee for the third part country.

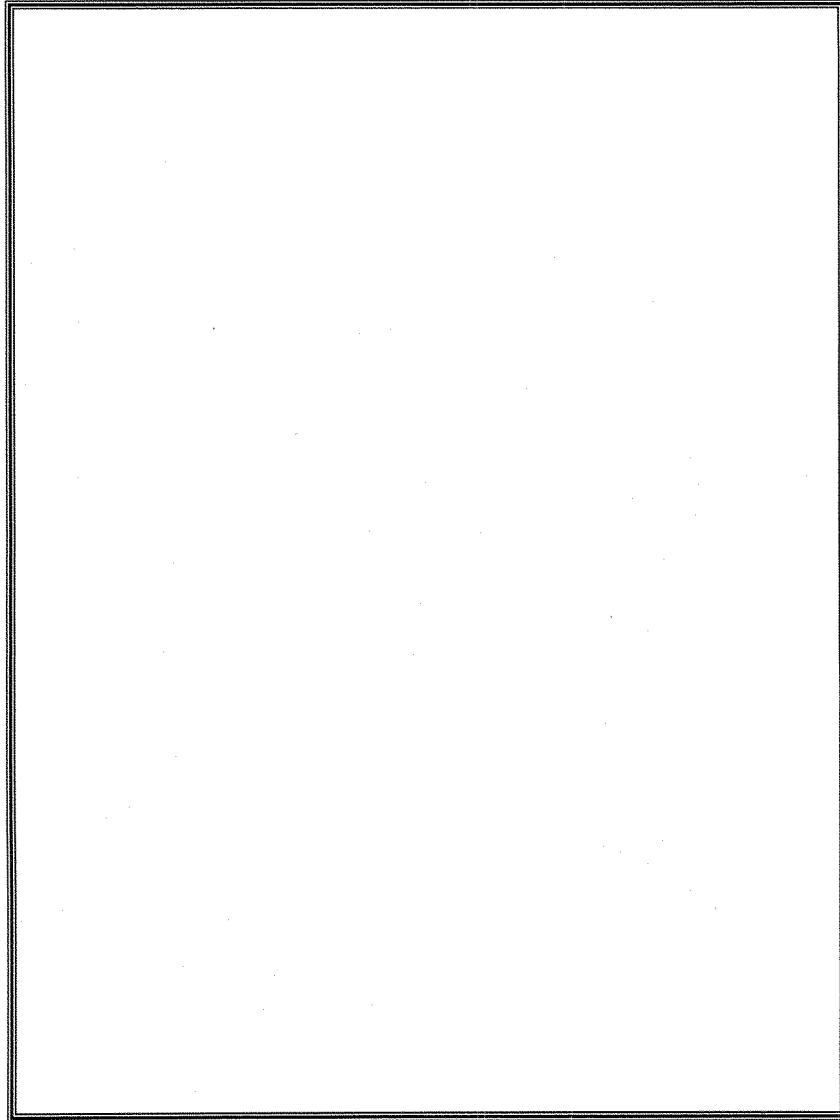
2) We could export the springs and the helical wire to your country, then you could make up them together by yourself.

What do you think, please let me know without any hesitation.

Thanks & Best Regards

Explanation:

In response to staff's inquiry, Company G proposes illegally transshipping innersprings through a third market to avoid paying duties, or proposes that the U.S. importer undertake minor assembly of the product in the United States.



Natural Bristle Paint Brushes from China

(DOC Case No. A-570-501)

Natural bristle paint brushes are made with natural (hog) bristle or other types of animal hair, and are used primarily to apply paint, stain, or varnish. Paint brushes come in several quality ranges and in a wide variety of widths and lengths.

Industry at a Glance:

- ⇒ Subject to AD order since February 14, 1986 (order terminated July 30, 2010 due to lack of interest) (DOC)
- ⇒ Number of U.S. producers in 2003: 12
- ⇒ U.S. producers' U.S. shipments in 2003: \$33 million
- ⇒ U.S. production locations: Florida, Illinois, Maryland, New Jersey, New York, Ohio, Oregon, Pennsylvania, Wisconsin (USITC)

U.S. Production Locations of Natural Bristle Paint Brushes



Companies Willing to Evade U.S. AD/CV Duties on Natural Bristle Paint Brushes from China

Staff, posing as a U.S. trading company, contacted Company H via Alibaba.com. Although the product is no longer subject to antidumping duties, Company H offered to ship product under a different company's name to avoid paying duties. The company stated that it could not directly change the country of origin, although it proposed illegally transshipping goods through Taiwan or Hong Kong as a way to avoid paying duties. Below is a transcript of email correspondence documenting a willingness to evade AD/CVD orders (highlighted in red). Textboxes provide an explanation of the correspondence.

Company H

Product: Natural Bristle Paint Brushes

Country of origin: China

Means to evade duties: Exporting under a different company name (e.g., shipping agent)

From: feedback@service.alibaba.com

To: ***

Sent: Tues, August 31, 2010 5:34 AM

Subject: [avisonetraders@gmail.com] I want to buy the product you are selling on Alibaba.com

Dear ***:

You have received an inquiry from a free member on Alibaba.com. This is the first inquiry from this sender. Mr. Paul Union is interested in your company.

Buyer's Message

Subject: I want to buy the product you are selling on Alibaba.com.

Dear Sir:

We are a small trading company based in Oregon that supplies a diverse array of products to regional customers in the U.S. Pacific Northwest. We are seeking to diversify our supply chain in order to reduce costs. Can you provide a price list for your natural bristle paint brushes? Also, are your paint brushes subject to any U.S. antidumping duties?

Thank you,

Paul Union, Purchasing Manager

AvisOne Trading Company, Ltd.

Tel: (503) 583-4237

Email: AvisOneTraders@gmail.com

Explanation:

In this email, staff, acting as AvisOne Trading Co., initiates a product inquiry with Company H via Alibaba.com, China's largest e-commerce platform.

Company H (cont'd)

From: ***
Sent: Tue, August 31, 2010 9:06 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Info of Natural bristle brush to Mr. Paul Union from China

Dear Mr Paul Union,

We are pleased to receive your following inquiry of natural bristle paint brush dated 31 August. Many thanks for it.

Yes, there has antidumping duties if we export to US market with natural bristle brush. Most of our US customers import paint roller and polyester brush from us. If you can use polyester brush instead of the bristle brush? Our polyester brush can hold much paints too as its split top end and the price is economic too.

Please let us know your comments about it and we will send you the details within one workday if we get your confirmation.

Best regards,

From: "Paul Union" <avisonetraders@gmail.com>
Sent: Fri, September 3, 2010 8:27 AM
To: ***
Subject: Re: Info of Natural bristle brush to Mr. Paul Union from China

Dear ***,
 Thanks for your response. In your experience, is there any way to avoid paying the anti-dumping duties?

Regards,
 Paul

Explanation:
 Company H acknowledges that its natural bristle paint brushes are subject to antidumping duties and asks if AvisOne is willing to purchase a different kind of paint brush. In the second email, staff ask Company H if it is possible to avoid paying duties.

Company H (cont'd)

From: ***
Sent: Fri, September 3, 2010 9:27 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: Info of Natural bristle brush to Mr. Paul Union from China

Dear Paul,

Thanks for your message, maybe we can export in the name of agent's company that can avoid paying the anti-dumping duties.

Best regards,

Explanation:

Company H proposes exporting its products under a different name—in this case, the name of the shipping agent. Staff respond by asking if it possible also to change the country of origin certificate. Company H says that this is not possible, and proposes that AvisOne purchase brushes not subject to AD duties.

From: "Paul Union"
 <avisonetraders@gmail.com>
Sent: Fri, September 3, 2010 8:27 AM
To: ***
Subject: Re: Info of Natural bristle brush to Mr. Paul Union from China

Dear ***

My apologies for responding late to your email. As you describe it, your company can ship product under a different name (in this case, the shipping agent) in order to avoid paying the anti-dumping duties? Is it possible that your company can change the country of origin as well?

Looking forward to your thoughts on this. Best regards, Paul

From: ***
Sent: Wed, September 8, 2010 9:36 PM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: Info of Natural bristle brush to Mr. Paul Union from China

Dear Paul Union,

Thanks for reply. I checked with the Exit Inspection and Quarantine, but the answer is "no" to change the origin country to other.

Now we don't have any better good thoughts about it, our most customers in America used the polyester material instead or just purchased the rollers. Can you use the polyester to instead the bristle?

Looking forward to your comments.

Best regards,

Company H (cont'd)

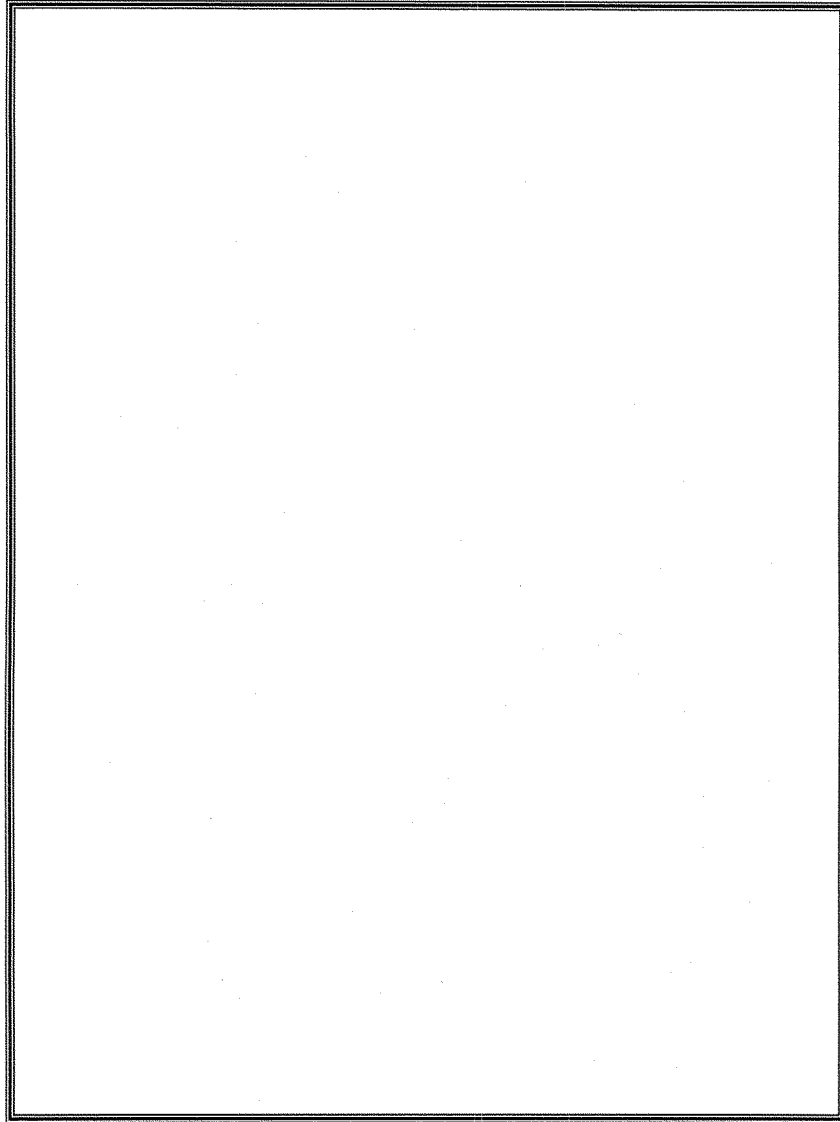
From: ***
Sent: Thur, September 9, 2010 2:00 AM
To: "Paul Union" <avisonetraders@gmail.com>
Subject: Re: Info of Natural bristle brush to Mr. Paul Union from China

Dear Paul Union,

Do you know any companies in Taiwan or HK who can help you to export the brushes to your company? We send the brushes to them and then they export to you with their name.

Explanation:

In this last email, Company H proposes exporting its brushes to companies in Taiwan or Hong Kong that can then re-export the brushes under those companies' names.



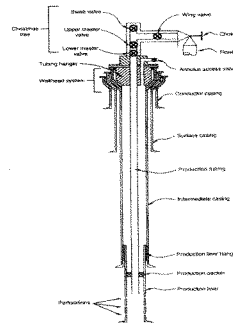
Oil Country Tubular Goods (OCTG) from China

(DOC Case No. C-570-944)

OCTG include carbon and alloy steel casing and tubing used in oil and gas wells. Casing is a circular pipe that serves as a structural retainer for the walls of the well. Tubing is installed inside the casing and is used to conduct the oil and gas to the surface.

Industry at a Glance:

- ⇒ Subject to AD/CVD orders since May 21, 2010 (DOC)
- ⇒ Number of U.S. producers in 2009: 7
- ⇒ U.S. producers' U.S. shipments in 2008: \$6.2 billion
- ⇒ U.S. employment of production and related workers in 2008: 5,819
- ⇒ U.S. production locations: Alabama, Arkansas, Colorado, Iowa, Kentucky, Ohio, Oklahoma, Pennsylvania, Texas (USITC, USITck)



U.S. Production Locations of OCTG



Companies Willing to Evade U.S. AD/CV Duties on OCTG from China

Company I is a trading company based in Turkey. It buys and sells Chinese-origin pipe products and changes the country of origin certificate to non-Chinese product. Below is a transcript of email correspondence provided to staff that document a willingness to evade AD/CVD orders on OCTG (highlighted in red). Textboxes provide an explanation of the correspondence.

Company I

Product: Oil Country Tubular Goods

Country of origin: China

Means to evade duties: Changing country of origin certificate

From: ***

Sent: Wed, August 11, 2010 3:45 AM

To: ***

Subject: DEAR *** PIPES FOR USA

DEAR ***

JUST MY BIG SPANISH PARTNER WHICH WE MADE WITH THEM OVER 10 MILLION USD PIPE ORDERS BEFORE SAID ,THEY CAN SHIP GOODS FROM VALENCIA SPAIN WITH EU ORIGIN CERTIFICATE .GOODS WILL BE PRODUCED IN CHINA& THEY WILL CHANGE ORIGIN IN SPAIN AND REEXPORT .THIS ONE OK? ALSO OUR SPAIN SELLER CAN OFFER UKRAIN OR EU ORIGIN .BUT SUGGEST ME TARGET PRICE . 4-YOUR MSN OR SKYPE ID ? MY SKYPE ID *** MY MSN *** MY MP ***

BEST REGARDS

From: ***

Sent: Wed, August 11, 2010 5:32 PM

To: ***

Subject: RE: DEAR *** PIPES FOR USA

***,

THIS IS ILLEGAL!! It is called "circumvention" and is subject to firm prison time.

We will end all discussion at this stage.

Explanation:

In this example, Company I, working with its business partners, is offering a U.S. importer Chinese-origin pipe with a false country of origin certificate. The U.S. importer recognizes that this is illegal, and ceases communication with Company I.

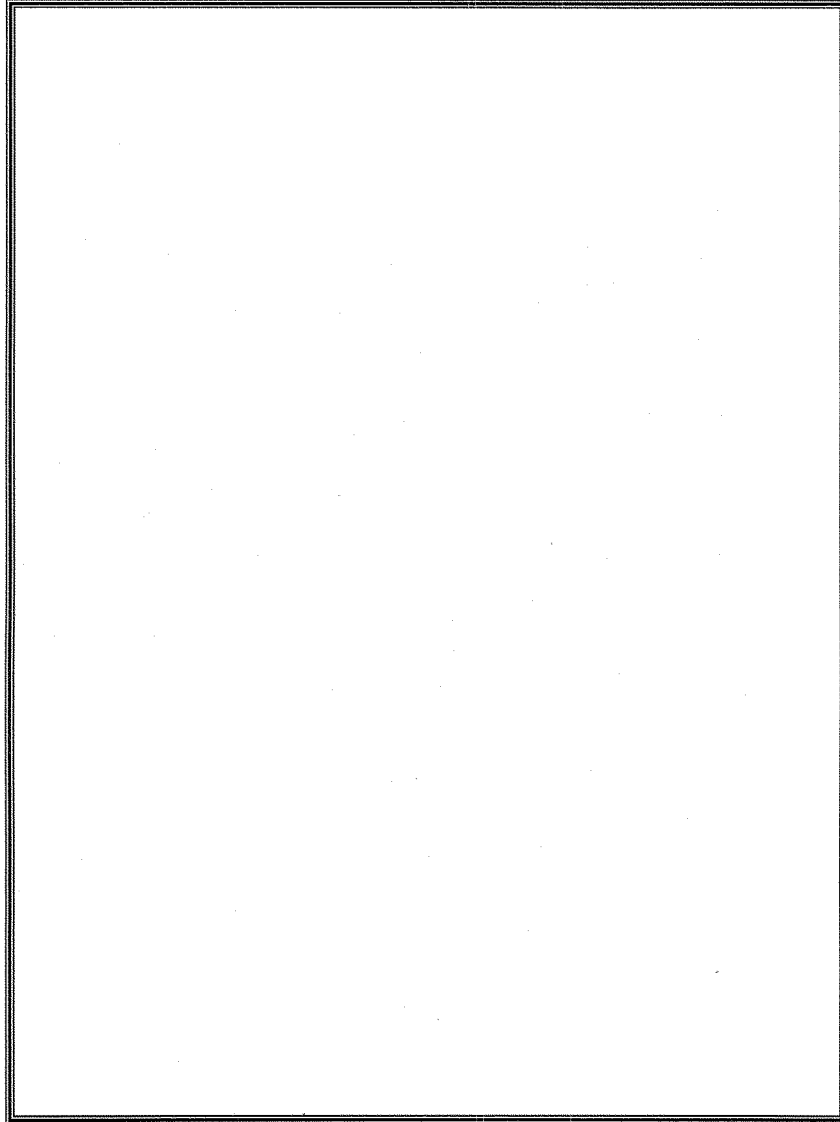
Company I (cont'd)

From: ***
Sent: Wed, August 11, 2010 9:46 AM
To: ***
Subject: DEAR *** PIPES FOR USA

DEAR ***
YOU ARE VEYR HARDWORKING PERSON.
IT MEANS IF THEY CHANGE ORIGIN WITH COATING, PAINTING, BEVELLING ETC FORMALLY ,ACCORDING TO EU LAW ALSO NOT POSSIBLE TO USE CHINESE RAW MATERIAL ? SO I IGNORE IT.
2-ANY TARGET PRICE AS 0 ANTIDUMPING TAX ORIGINS ?

BEST REGARDS

Explanation:
Company I acknowledges that Chinese-origin pipe is subject to anti-dumping duties, but "ignores it."



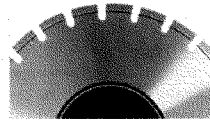
Diamond Sawblades from China

(DOC Case No. 570-900)

Diamond sawblades are circular cutting tools that have numerous functions and applications for cutting, ranging from cement, asphalt, marble, and tile, to masonry work such as brick and stone.

Industry at a Glance:

- ⇒ Subject to AD/CVD orders since January 23, 2009 (DOC)
- ⇒ Number of U.S. producers in 2005: 22
- ⇒ U.S. producers' U.S. shipments in 2004: \$121 million
- ⇒ U.S. employment of production and related workers: 480 (finished diamond sawblades only)
- ⇒ U.S. production locations: California, Georgia, Kansas, Massachusetts, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Washington (USITC, USITCm)



U.S. Production Locations of Diamond Sawblades



Map source: <http://www.coloringcastle.com>

Companies Willing to Evade U.S. AD/CV Duties on Diamond Sawblades from China

Companies J and K are Chinese trading companies that import and export diamond sawblades. Company J characterizes antidumping duties as a "political game," while Company K admits that it engages in illegal transshipment to avoid paying antidumping duties. Below are transcripts of email correspondence documenting a willing to evade AD/CVD orders (highlighted in red). Textboxes provide an explanation of the correspondence.

Company J

Product: Diamond sawblades

Country of origin: China

Means to evade duties: Undervaluing invoices and misclassifying goods to avoid paying duties

From: ***

Sent: Thur, December 10, 2009 6:54 AM

To: Sales email account

Subject: Diamond tools and cutting machineries

Explanation:

In this email, Company J describes its business and products.

Dear Sir or Madam,

We are a Chinese company specialized in manufacturing various diamond tools which are widely used in Europe and USA.

Best ratio of quality to price could be achieved with the help of our diamond tools.

I'd like to offer you below tools for a reference in hope that we could be your competent and reliable partner in China.

Once got your requests, I'd like to send you our whole catalogue and pricelist.

Your prompt reply would be mostly appreciated.

Regards

Company J (cont'd)

From: ***
 Sent: Thur, December 10, 2009 9:47 PM
 To: ***
 Subject: Re: Diamond tools and cutting machineries

Are your saw blades subject to antidumping duties?

From: ***
 Sent: Thur, December 10, 2009
 To: ***
 Subject: Diamond tools and cutting machineries

Hi Sir,

Thanks for your prompt reply.

I don't think it's a big problem for us. We have 3 solutions to help you out of this high duty---it's just a political game: anti-dumping duty.

1. We can change the actual value of products in the Invoice a little bit (as for small quantity such as trial order)
2. Our factory has responded to the lawsuit and will only be charged with 20% duty. When you order large quantity, it's no big deal.
3. We could ship the blades as the category of core.

Moreover, if you have any solutions, we would like to cooperate your actions from our side.

Regards

Explanation:
 The U.S. importers asks if Company J's sawblades are subject to anti-dumping duties. Company J responds that antidumping is a "political game." Company J offers to undervalue the company invoice or misclassify the goods to avoid paying duties.

Company K

Product: Diamond sawblades
Country of origin: China
Means to evade duties: Illegal transshipment

Explanation:
Company K engages in illegal transshipment to avoid paying duties.

From: ***
Sent: Thur, August 5, 2010 9:28 PM
To: ***
Subject: Re: Diamond Blades

Hi ***,

Thanks for getting back to me.

No, we are not affected by the anti-dumping as we can do trans-shipment.

Regards,

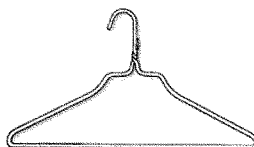
Steel Wire Garment Hangers from China

(DOC Case No. A-570-918)

Steel wire garment hangers are produced primarily for use by the dry cleaning, industrial laundry, textile, and uniform rental industries.

Industry at a Glance:

- ⇒ Subject to AD order since October 6, 2008 (DOC)
- ⇒ Number of U.S. producers in 2007: 7
- ⇒ U.S. producers' U.S. shipments in 2007: \$12 million
- ⇒ U.S. employment of production and related workers: 139
- ⇒ U.S. production locations: Alabama, California, Illinois, Kentucky, New Jersey, Texas, Virginia, Wisconsin (USITCn, USITCo)



U.S. Production Locations of Steel Wire Garment Hangers



Companies Willing to Evade U.S. AD/CV Duties on Steel Wire Garment Hangers from China

Companies L and M are Chinese metal hanger producers. In the first instance, Company L states that it can illegally transship through either Taiwan or Malaysia. In the second instance, Company M states that it can illegally transship via a third country for its "friends." Below are transcripts of email correspondence provided to staff that document a willingness to evade AD/CVD orders (highlighted in red). Textboxes provide an explanation of the correspondence.

Company L

Product: Steel wire garment hangers
Country of origin: China
Means to evade duties: Illegal transshipment

From: ***
Sent: Thu, January 14, 2010 11:57:59 PM
To: ***
Subject: Re: ***

Attachment is our price list (FOB Shanghai), please find it. We have two ways to ship containers to US. One is from Taiwan, the transport charge is \$4200.00 per container. Another is from Malaysia, the transport charge is \$3200 per container, but the shipping date will be much longer than from Taiwan.

Please check the price, if it's ok, please let me know.

Best regards,

Explanation:
Company L offers to ship containers to the United States via Taiwan or Malaysia. Although not explicitly stated in this email, the motive for shipping through a third country is to avoid paying duties.

Company M

Product: Steel wire garment hangers
Country of origin: China
Means to evade duties: Illegal transshipment

From: ***

Sent: Friday, April 09, 2010 9:27 PM

To: ***

Subject: Re: RE: RE: Re: Hanger Business

Yes, the tariff rate is high. However, we are not extinct because of it.

We keep a solution for our friends. It is benefit for us and our client. Both have made profit from it.

We do not know how much profit you can make from working with wells. In China, yes, wells' tariff rate is the lowest in china.

It is about 16%. He is the only one company for the first rank. Our factory is of the second rank.

However, we still alive. "Fact speaks louder." Our clients also make profit working with us.

For this kind of client, we usually ship via another country, through which you only need to pay about 3.5% or lower rate. So for this, usually, CIF, DDU or DDP is suitable for you.

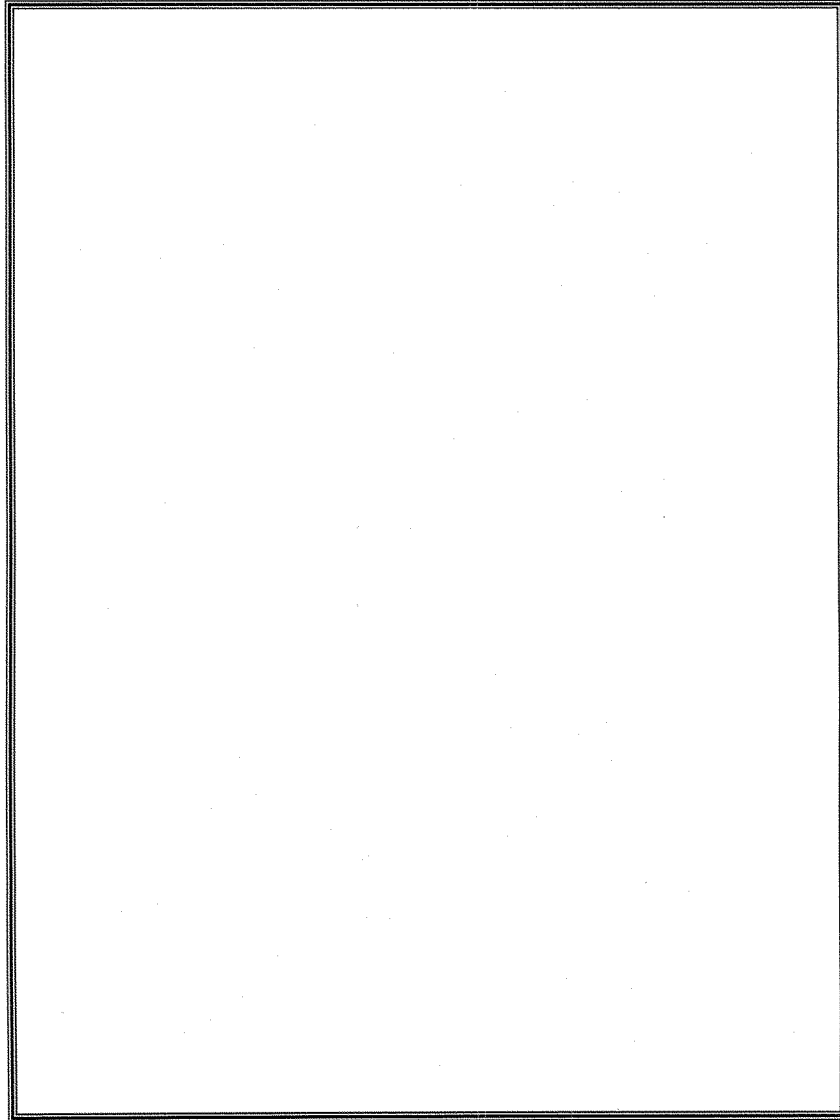
If you do not know it properly, we can do DDP for you. That is, door to door service. Its procedure is very easy for you, just like we send a package through courier. Through it, we will send the hangers directly to your warehouse. In a word, it will save you much energy, and most important, a lot of money.

A trial order may make you know much about us.

We look forward to your reply, and hope we can cooperate with each in the near future.

Explanation:

Company M offers to illegally ship product through a third country to avoid paying duties. As stated by Company M, this service is offered to "our friends" and that illegal transshipment "is a benefit for us and our client."

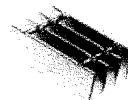


Steel Grating from China

(DOC Case Nos. A-570-947 and C-570-948)

Steel grating (commonly referred to as bar grating), consists of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of pieces; and (5) whether or not they are galvanized, painted, coated, clad or plated. Excluded from the scope are expanded metal grating, which is a single sheet or thin plate that has been slit and pulled; and safety plank grating, which is a single sheet or thin plate that has been pierced or cold formed.

Steel grating is designed to support and distribute the weight of objects. Common end uses include walkways, mezzanines, catwalks, fire escapes, stairways, and flooring.



Industry at a Glance:

- ⇒ Subject to AD/CVD orders since July 23, 2010 (DOC)
- ⇒ Number of U.S. producers in 2009: 7
- ⇒ U.S. producers' U.S. shipments in 2009: \$162 million
- ⇒ U.S. employment of production and related workers in 2009: 518
- ⇒ U.S. production locations: Alabama, Illinois, Indiana, Ohio, Oklahoma, Mississippi, Pennsylvania, Texas, Utah (USITCp, USITCq)

U.S. Production Locations of Steel Grating



Map source: <http://www.coloringcastle.com>

Companies Willing to Evade U.S. AD/CV Duties on Steel Grating

Company N is a Chinese steel grating producer. Below is an email provided to staff that documents the company's disregard for antidumping duty orders (highlighted in red).

Company N

Product: Steel grating
Country of origin: China
Means to evade duties: Illegal transshipment

From: ***
Sent: Mon, August 30, 2010 1:01 AM
Subject: ***

Below is the result of your feedback form. It was submitted by () on Monday, August 30, 2010 at 01:01:13

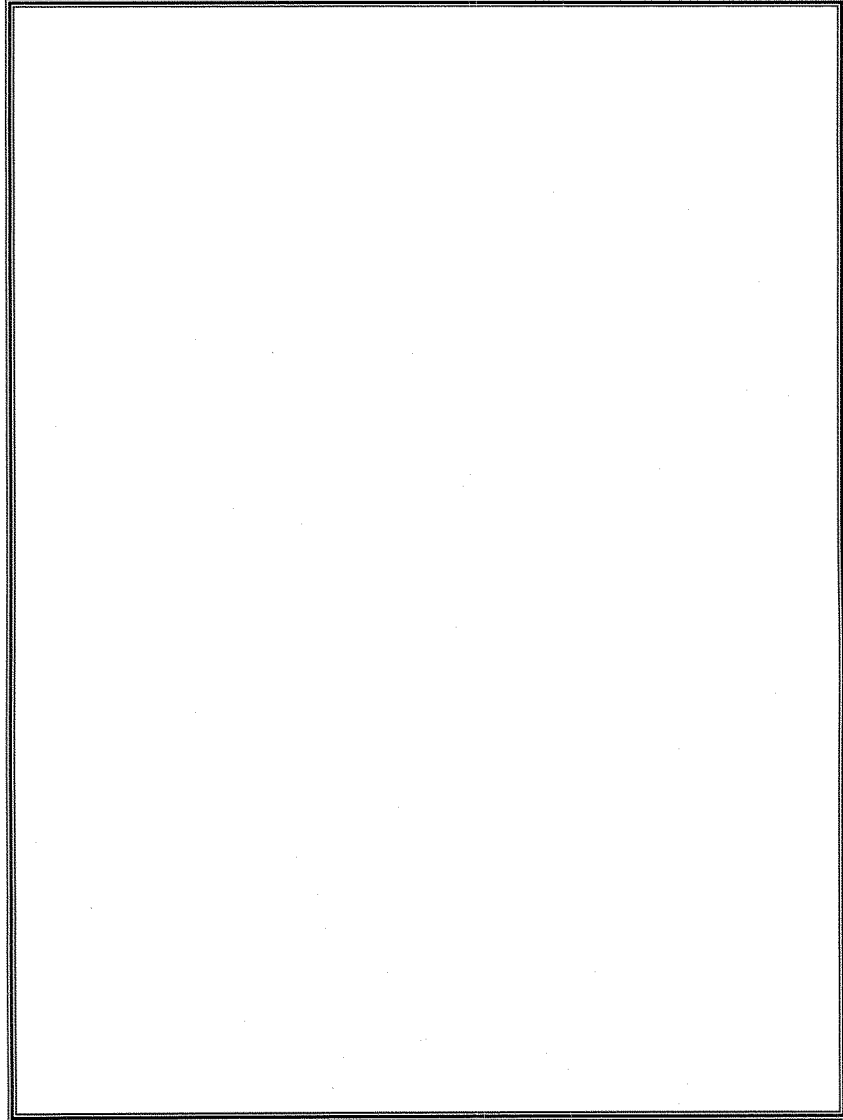
Name: ***
Company: ***
Address: ***
City: Ningbo
State: Zhejiang
ZIP: 315195
Country: China
Phone: ***
Email: ***
Comments: Dear Sir,

If you need the best steel grating with low-cost, why not contact us directly here?

[FYI, Antidumping duty is no problem for us.](#)

Submit: Send!

Part II:
Foreign Logistics Companies Willing to Evade U.S.
AD/CV Duties



Foreign Companies Willing to Evade U.S. AD/CV Duties

The following foreign logistics companies publically advertise services to avoid paying AD/CV duties and other import restrictions like import quotas. These firms advertise their services in both English and Chinese on websites like alibaba.com, China's largest e-commerce website that links buyers and sellers. Most evasion schemes involve illegal transshipment through a third country and falsified country of origin certificates for Chinese-origin product destined to the United States and other export markets. Many firms work with factories located in third countries to obtain authentic country of origin certificates for Chinese-origin product.

Everysky International Forwarding Agency

Address:	No. 455, Zhong Shan East Road, Ningbo, Zhejiang, China, 315400 Tel: +(86) 0574 2790 3558
Web:	http://www.everskyline.com/special1.php?id=6 http://www.alibaba.com/member/cn109650969.html http://www.made-in-china.com/showroom/infism/companyinfo/Eversky-International-Forwarding-Agency-Co-Ltd-.html
Company representative:	Mr. Zhao Hui Customer service representative: Mr. Cheng Tel: +(86) 0574 2787 9775 Email: jeffningbo@163.com
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Prepares false country of origin certificates for Indonesia and Malaysia. Principal transit ports are Singapore and Port Klang, Malaysia.

H&T International Logistics Ningbo Ltd.

(subsidiary of Hualianton International Logistics Co., Ltd.)

Address:	Room 10-1, Yinyi Time Square, No. 8, Lengjing Street, Haishu District, Ningbo, China Tel: +(86) 574 8785 2330
Web:	http://www.hltnb.com http://blog.china.alibaba.com/blog/nb75520859/article/b0-i7726014.html
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Prepares and provides false country of origin certificates and re-exports products through Port Klang, Malaysia. Company stipulates that domestic (Chinese) exporters must reach an understanding with the foreign importers regarding export documents (i.e. falsified country of origin certificates) and payment terms. Products illegally transshipped include fasteners, steel pipe, steel wire rope, steel wire hangers, aluminum products, clothing, shoes, candles, bearings, and citric acid.

Foreign Companies Willing to Evade U.S. AD/CV Duties (cont'd)

Ningbo Star International Freight Forwarding Co., Ltd

Address:	Also known as: Ningbo Richstar Freight Forwarding Agent Co., Ltd. High Storm International Freight Forwarding Co., Ltd. Win-Win International Freight Forwarding Co., Ltd. Sharp Gate Street, Ningbo City, Zhejiang Province, No. 58, City Renhe Center, 16-1, China Tel: +(86) 0574 8768 6088
Web:	http://www.richstarfreight.com http://www.sweiphone.eb80.com
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Company uses different names when advertising transshipment services. Obtains authentic country of origin certificates from foreign factories despite product being of Chinese origin. Ships product from the Chinese ports of Dalian, Tianjin, Qingdao, Ningbo, Xiamen, and Shenzhen to Port Klang, Malaysia.
Illegal export procedures:	(1) Company's Malaysian branch acts as consignee in Malaysia. Removes first leg transportation manifest from China. (2) After cargo leaves China, customers provide copy of release of export documentation (e.g., first leg transportation, packing list, and invoice). (3) Malaysian branch in charge of procedures for changing containers and arranging booking for second leg transportation. (4) Before departure, Malaysia factories apply for certificates of origin for use for shipment of Chinese origin.

Pulinktrans China, Ltd.

Address:	Room 206, Goldenland Building, No. 773 Siping Road, Shanghai, China, 200092 Tel: +(86) 21 6107 6102
Web:	http://pulinktranschina-3141826.en.gongchang.com/ http://www.hifob.com/redirect.php?tid=22211&foto=lastpost
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Provides authentic third-country country of origin certificates to clients, and can provide official authentication (by foreign country embassy) and notarized inspection report. Reportedly has cooperated closely with Ministries of Trade and Industry and Chambers of Commerce in Singapore, Malaysia, Indonesia, Thailand, Hong Kong, and the United Arab Emirates. Ports include Shanghai, Ningbo, Qingdao, Tianjin, Zhapu, Wenzhou, Shenzhen, and Hong Kong. Transshipment hubs include Malaysia and Thailand. Products illegally transshipped include fasteners, steel pipes, steel wire hangers, and clothing.

Foreign Companies Willing to Evade U.S. AD/CV Duties (cont'd)

Shenzen Sunpower Interntional Logistics, Ltd.

Address:	Room 2207, Gonglu Building, Block C, Yitai Centre, Dongmembei Road, Luohu District, Shenzhen, China, 518003 Tel: +(86) 0755 2519 1363 Email: sunpower@szsuperior.com
Web:	http://www.szsuperior.com/cn/home/index.asp http://www.ilazhu.cn/search/sell-service-9.html
Other info:	Company based in Shenzhen, China, but headquartered in Ipoh, Malaysia. Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Provides various country of origin certificates depending on degree of customs inspection, production subject to AD/CV duties, and country of destination. Third-country certificates of origin provided include Taiwan, Malaysia, Indonesia, Bangladesh, Thailand, Vietnam, and Sri Lanka. All certificates of origin are provided by in-country factories. Company provides all documentation, customs declarations, factory inspection, and other relevant procedures.

Wintrans Logistics and Investment & Management Co., Ltd

Addresses:	Room 26A-D, Ocean Building, 268 Lujian Road, Xiamen, Fujian, China Tel: +(86) 592 806 5305 Email: info@wintrans.com.cn Shenzhen Wintrans Logistics Co., Ltd. Luohu District, Shenzhen City, Pacific Business Building, B1402, Shenzhen, Guangdong, China Shanghai Wintrans Branch Siping Road, 188 2108, Shanghai China
Web:	http://www.wintrans.com.cn/en/info/detail.asp?ID=5 http://cn.made-in-china.com/showroom/wintransalice/companyinfo/%E5%8E%A6%E9%97%A8%E9%80%9A%E6%B4%B2%E7%89%A9%E6%B5%81%E6%8A%95%E8%B5%84%E7%AE%A1%E7%90%86%E6%9C%89%E9%99%90%E5%85%AC%E5%8F%B8.html
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Claims to work with business partners in Indonesia, Myanmar, and Malaysia that provide certificates of origin issued by factories located in those countries. Directs payment through Malaysia or Hong Kong. Products include steel pipes, apparel, shoes, ceramics, and furniture. Export markets include the United States, Canada, Mexico, Turkey, and Latin America.

Foreign Companies Willing to Evade U.S. AD/CV Duties (cont'd)

Gateway Container Line Co., Ltd.

Addresses:	Gateway Container Line Co., Ltd. (Qingdao) B-1022, Yu Yuan Mansion, No. 75 West Hong Kong Road, Qingdao, China, 266071 Tel: +(86) 532 8197 8801 Gateway Container Line Co., Ltd. (Tianjin) Room 2602, Twain building, Hanggua Plaza, Dagunan Road, Hexi District, Tianjin, China, 300000 Gateway Container Line Co., Ltd. (Shanghai) Room 2201, No. 1, Alley 258, Dongbaoxing Road, Shanghai, China, 200080 Tel: +(86) 21 6356 0173 Room 612, Hesun Building, No. 1600 Yan'an Road (W), Shanghai, China, 200052 Tel: +(86) 21 5258 5515 Gateway Container Line Co., Ltd. (Ningbo) 19 Floor, Unit B, Century Square, No. 118 Daliang Street, Ningbo, China, 315000 Tel: +(86) 574 8717 5858 Gateway Container Line Co., Ltd. (Shenzhen) Room 1705, Building A, Huaguoshan Building, South Garden Road, Shekou, Shenzhen, China, 518067 Tel: +(86) 755 2680 5586
Web:	http://www.gateway-group.cn/en/index.htm
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Claims to provide services to both domestic (Chinese) exporters and foreign importers.

Foreign Companies Willing to Evade U.S. AD/CV Duties (cont'd)

Global Success International Transportation (Shenzhen) Ltd.

Address:	18F, Overseas Friendship Building, No. 12, Ying Chun Road, Luohu, Shenzhen, China, 510800 +(86) 755 8214 5368 Email: info@globalsourcing.com.cn
Web:	http://www.globesuccess.com.cn/en/index.asp http://www.ecplaza.net/tradeleads/seller/5605380/transshipment_project.html
Registration no:	Certified by China's Ministry of Commerce as a licensed non-vessel operating common carrier (NVOCC) (NVOCC#MOCNV 01254).
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Transshipment hubs include Malaysia, Singapore, Indonesia, Bangladesh, the Philippines, and India. Third-country certificates of origin are issued for Chinese-origin product. Provides illegal transshipment services for the following products subject to U.S. AD/CVD orders: fasteners, threaded rod, steel hangers, locks, and wooden bedroom furniture. Also provides transshipment services for products subject to AD/CV duties in Europe, South America, and Turkey.

Dyna International Shipping Ltd.

Address:	Room 01-02, 16/F, Ginza International Building, Shennan Road, Shenzhen, Guangdong, China Tel: +(86) 755 2151 7557 Email: Shenzhen@dynaprc.com Other offices located in: Hong Kong, Guangzhou, Shanghai, Beihai, Huangpu, Nanhai, Foshan, Zhongshan, Wuhan, Kunming, Ningbo
Web:	http://www.dynaprc.com/english/index.asp http://www.hardware-wholesale.com/d-p115413722755560100-service-to-avoid-the-anti-dump-tax-import-from-china/
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Transshipment hubs include Malaysia, Singapore, Thailand, and Indonesia with third-country certificates of origin. Advertises illegal transshipment services for Chinese products subject to AD/CV duties in the United States, Mexico, Colombia, Egypt, Turkey, and Europe.

Foreign Companies Willing to Evade U.S. AD/CV Duties (cont'd)

Hanhen Shipping (China) Co., Ltd.

Address:	A-1109, Jintian Building, Heping Road, Luohu, Shenzhen, China Tel: +(86) 0755 2556 5280
Web:	http://www.hanhen.com http://ca2.mofcom.gov.cn/article/supplydemandofchina/supply/200905/20090506267440.html
Identification no:	China Tax ID: 440300769195249 United Nations Procurement Division Vendor ID: 09D00065 (Logistic Supplier)
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Transshipment hubs include Singapore and Dubai. Country of origin certificates from Malaysia, Vietnam, Indonesia, and Bangladesh are issued for Chinese-origin products subject to AD/CVD orders. Advertises illegal transshipment services on the website of the Embassy of China in Canada.

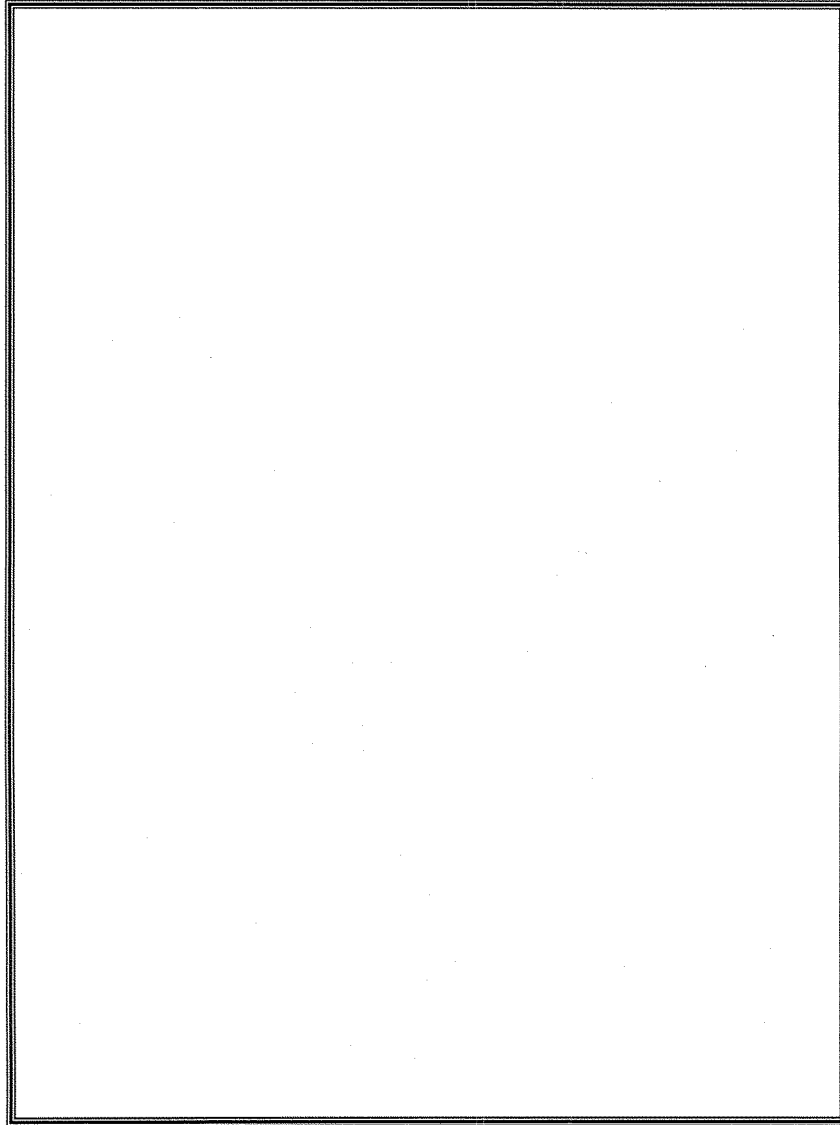
Suzhou Yuncheng Ex/Im Co., Ltd.

Address:	No. 8-7 Shop, Shuixiang West Road, Meili Street, Songling Town, Wujiang, Jiangsu, China, 215200
Web:	http://yuncheng.en.alibaba.com/trustpass_profile.html http://www.alibaba.com/product-gs/269042075/Third_country_re_exports_seamless_steel.html
Company representative:	Mr. Yucheng Zhou
Business registration no.:	320584000113121
Issuing authority:	Suzhou City Wujiang Administration for Industry and Commerce
Issue date:	10/18/2007
Expiration date:	10/17/2017
Registered capital:	RMB 3,000,000
Other info:	Advertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Advertises illegal transshipment services for seamless steel pipe and carbon steel fasteners, among other products.

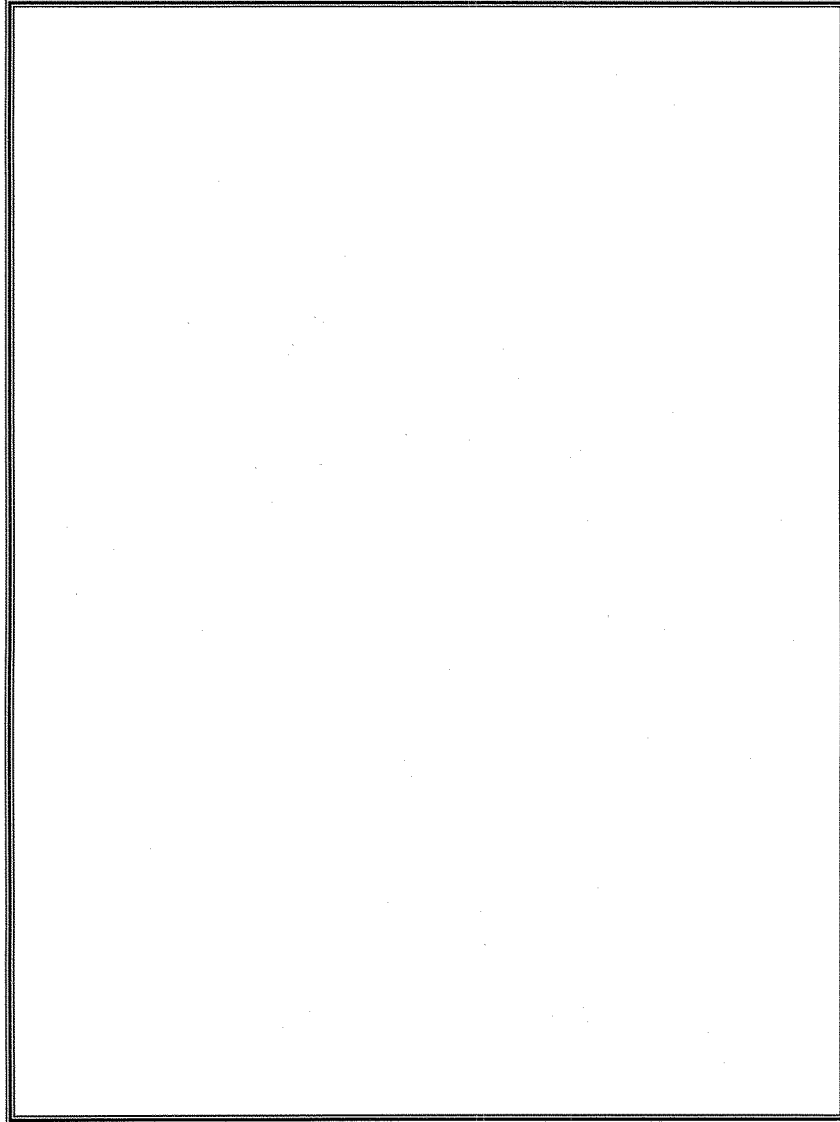
Foreign Companies Willing to Evade U.S. AD/CV Duties (cont'd)

L'Assurex International Logistic Ltd.

Address:	Room 1207, Logistics Center, No. 1, Haitian Road, Huli, Xiamen, Fujian, China, 361000
Web:	http://www.lassurex.com http://www.alibaba.com/product-gs/282892965/sea_freight.html http://lassurex.en.alibaba.com/product/283189523-209769395/shipping_agency_in_china.html?tracelog=cgsotherproduct1
Company representative:	Mr. Liming Zheng
Registration no.:	350200200006505
Issuing authority:	Xiamen City Administration for Industry and Commerce
Issue date:	10/11/2007
Expiration date:	10/10/2027
Registered capital:	RMB 10,000,000
Other info:	Advertises illegal transshipment services on alibaba.com to avoid paying AD/CV duties and other import restrictions. Provides certificates of origin from Malaysia, Indonesia, and India for Chinese-origin product. Export markets include the United States, Venezuela, Brazil, Argentina, Europe, Jordan, Egypt.



Part III:
Examples of Companies Advertising
Illegal Transshipment Services on the Internet



Source: <http://ca2.mofcom.gov.cn/article/supplydemandofchina/cooperation/200905/20090506267416.html>

Hanben Shipping http://www.hanben.com/3.asp?id=247

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Out-sourcing Logistics

International Distribution

Triangular Trade

Business Service

According to traders' demands in commercial interests and import tariff reduction, we provide EL switch for triangular trade, changing the CO, etc. in order to protect the interests of traders and save tariff expenses.

1. Based on the principle of commercial confidentiality, we HANBEN work seriously as a intermediate part between processing manufacturers, traders and mid-buyers and switch documents reasonably.

2. We use Singapore, Dubai to offer entrepot trade service and issue CO of Malaysia, Vietnam, Indonesia, Bangladesh in order to avoid tariff barriers.

Triangular Trade

Re-export Trade

Hanben
 Contact us
 QA Entry
 Online

Contact: info@hanben.com | Global Contact: info@hanben.com
 Tel: +86 755 25584780 Fax: +86 755 25581580/1580

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1 of 1
3/25/2010 3:12 PM

Source: <http://www.hanben.com/3.asp?id=247> (company has since removed "re-export trade" diagram from website)

Source: [http://www.alibaba.com/product-gs/333447619/ansshipment the best way to avoid.html](http://www.alibaba.com/product-gs/333447619/ansshipment%20the%20best%20way%20to%20avoid.html)

China Trade Leads

Service to Avoid the Anti-Dump Tax Import from China

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Service to Avoid the Anti-Dump Tax Import from China

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1. Service to avoid this anti-dump tax import shoes from China to Europe/Mexico/USA.
2. Service to avoid this anti-dump tax import garment from China to Europe/Mexico/USA/Columbia.
3. Service to avoid this anti-dump tax import Door Locks from China to Egypt/South America.
4. Service to avoid this anti-dump tax import metal Silicon from China to Europe.
5. Service to avoid this anti-dump tax import metal valve from China to Mexico.
6. Service to avoid this anti-dump tax import ceramic tile&PVC from China to Turkey/Egypt.
7. Service to avoid this anti-dump tax import Bike Rbings from China to Europe.
8. Service to avoid this anti-dump tax import Energy-saving lighting from China to Europe.

Please do not hesitate to contact me if need this kind of service.

Bill of Lading Forms [www.dhfrt.com](#)
Comply with DOT & EPA Regs. Hazmat, Straight
Bill of Lading & Supplies.

Freight Forwarding [www.FreightForwarder.com](#)
Reliability, Service, Low Prices Across the Globe
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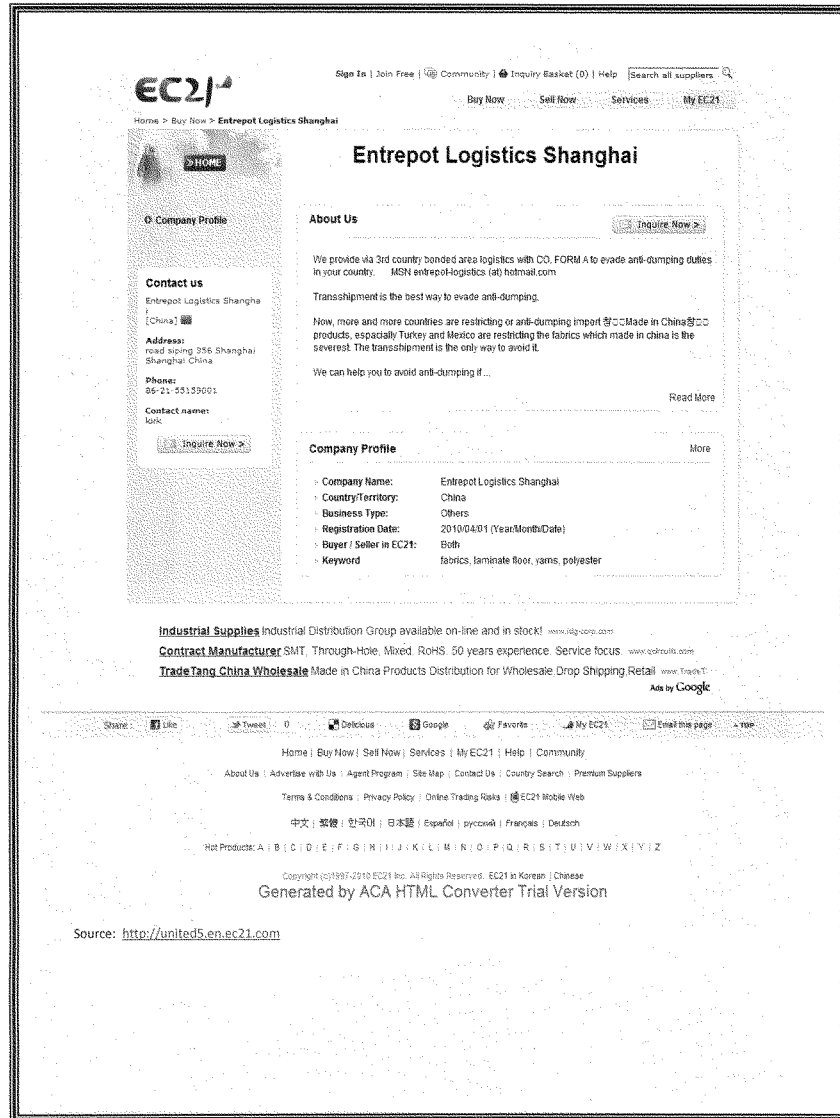
Service to Avoid the Anti-Dump Tax Import from China

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Transshipment, Help You Avoid Anti-Dumping Duties

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Expires: 08/31/2011

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Company: EVERSKY INTERNATIONAL FORWARDING AGENCY CO., LTD
Website: <http://www.re-export.net/>

Description:
 Are you looking for a way to avoid antidumping? Transshipment may be the best way at present.
 How we will show you how it helps you to avoid anti-dumping and how it reduces your cost.
 As we know, your country doesn't charge high tariffs for all the country but China. Now we can help you to provide the documents to your government certifying that the products are made of other low tariff countries instead of China.
 How can we do it?
 1st: We need to export those products (made in China) to other country (just as Malaysia). It is easy for us to do it and which just need cost your little money.
 2nd: We will finish custom clearance for those cargos in Malaysia and then send it to our warehouse. Picking up those to re-load it to the new container (booking with Malaysia).
 3rd: Finding a local factory to provide all the original documents to your country. And then export the products to your instruction Port.
 After the operation of above, the original will be changed from China to Malaysia. You just need to pay the normal import duty.
 We are experienced in it for many years, and we are confident that we have the ability to help you to lower the import tariff. You are welcomed to contact us if you are fond of our service.
Tags: transshipment, freight forwarder, sea freight, air freight, avoid anti-dumping

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Our Business:

Best tailor made sea, air, land and multimodal shipping solutions for clients, issue authorized all way Bill of Lading

FCL Export Business:

Take the advantage of preferential contracts with KAMLINE, COSCO and COSCO, we're able to provide requested cabinet space during peak seasons as well as long term stable price for Europe lines to ports Hamburg, Felixstowe, Rotterdam and Antwerp; For Mid-east Persian Gulf lines to ports Dubai, Abu Dhabi, R. Abbas, Bahrain, Dammam, Doha, Kuwait and Muscat. Simultaneously, we also offered competitive rates.

Bulk Cargo Export Business:

Being expert large machinery and autos in the manner of bulk cargo for long time, we've built up close relations with bulk carrier companies and bulk cargo ports.

Import Business:

Depend on a professional team, we have been offering flawless import distribution services for years, customers world wide are now able to trace their cargos on ship via our website. Our client-oriented employees are available for any queries even during national holidays.

Air Cargo Business:

Our competitive rate and services is to Southeast Asia, Australia and Europe.

Special Services: Third Country Transshipment

The fact that import tax for some product varies in Customs of different countries makes reasonably avoid anti-dumping possible. Since we are founded, count on our reliable official intelligence and mature experience, we have been providing One-Stop Third Country Transshipment logistic service for domestic exporters and foreign importers, effectively helped our clients lower the cost, increase the profit and the competitiveness.

Ningbo Advertising

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TRANSHIPMENT PROJECT TO AVOID ANTIDUMPING TAX

Company: Globe Success International Transportation (Shenzhen) LTD
Membership: Free Member since Feb 26, 2009
Country/Region: China
Address: 1891, Oversea Friendship Building 12th, Yingshun Road, Lushui, Shenzhen, Guangdong, China 518000
Contact: Mr. ARINA LEE
Phone: 86-755-8230-7952
Fax: 86-755-8230-7954
Mobile: 86-1371-4948-400
Page: TO AVOID ANTIDUMPING TAX

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TRANSHIPMENT PROJECT TO AVOID ANTIDUMPING TAX

(1) In order to save the antedumping tax when import the goods from China, here we would like to provide the service to China shippers and overseas consignees to arrange their goods to the final countries, such that they can be in Vietnam, Singapore, Indonesia, Bangladesh, Philippines, India, etc. and export the final goods documents into the countries to the final destination country.

A. antedumping goods export from China to USA
a. Industrial, truck, iron, steel, hardware, etc.
b. Industrial, truck, iron, steel, hardware, etc.

B. antedumping goods export from China to Europe
a. Industrial, truck, iron, steel, hardware, etc.
b. Industrial, truck, iron, steel, hardware, etc.

C. antedumping goods export from China to South America
a. Hardware, software, etc.

D. antedumping goods export from China to Turkey
a. Hardware, software, etc.

E. other antedumping goods, and more in the future

2. We further discuss, just let us know below information, then we will provide the best project for the results you want and advice for it (shipping).

A. goods name if any H.S CODE, etc.
B. quantity
C. destination
D. shipping method (air, sea, etc.)
E. if special requirements (such as handling, insurance, etc.)

Appreciated to your further contact

Best regards!
Ms. ARINA LEE
Globe Success International Transportation (Shenzhen) LTD
SHENZHEN OFFICE
TEL: 86-755-8230-7952
FAX: 86-755-8230-7954
MOBILE: 86-1371-4948-400

1891, Oversea Friendship Building, 12th, Yingshun Road, Shenzhen, China.

Optional Information
1891, Oversea Friendship Building, 12th, Yingshun Road, Shenzhen, China, 518000

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Trade Leads China Wholesale
We offer connections to 1,000,000 China Manufacturers, 100 Quality
All Export Service
Reliable worldwide logistics and freight solutions.
Buyer Membership
We have to innovative Co-location Opportunities for Export Companies

Contact Information
Ms. ARINA LEE
(transshipment deal)

Company: Globe Success International Transportation (Shenzhen) LTD
Address: 1891, Oversea Friendship Building 12th, Yingshun Road, Lushui, Shenzhen, Guangdong, China
Postcode: 518000
Telephone: 86-1371-4948-400
Fax: 86-755-8230-7954
Mobile: 86-1371-4948-400

Source: http://www.ecplaza.net/tradeleads/seller/5605380/transshipment_project.html

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Our service: Avoid antidumping transshipment; Customs clearance in Russia.

1. Sea, air, rail transportation, import and export booking, customs clearance, warehousing, storage and other traditional services.

2. To circumvent anti-dumping, a third country of transit transport, while providing many products such as certificates of origin and embossing endorsement.

3. To provide Russia... [Click for Details]

Member Info

Business Type: Service, Agent, Other
Number of Employees: 5 - 50
Business Scope: Service
Member Since: 2009
Last Sign In Date: 2010-09-29

Product List

Product Name	Update Date
Export via 4 Third-Country Against The Anti-Dumping Policy	2010-07-05
Customs Clearance in Russia or Ukraine	2010-01-18

Related Category: Service » Commercial Service

Contact Details

Pulinktrans

Company Name: Pulinktrans China Ltd.
Company Address: Room 205, Goldenland Building, No. 773 Siping Rd, Shanghai, P. R. China
City/Town: Shanghai
Province/State: Shanghai
Country/Region: China
Zip/Postal Code: 200092
Phone Number:
Fax Number:
Homepage: Please [sign in](#) to view contact details
Mobile:
Contact Person (Department): Mr. Zhang (Re-Export Department)

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Shanghai Wintrans Branch

We are a professional forwarder who can provide this entrepot services via Malaysia or Indonesia.

This will help you to evade high anti-dumping duties and anti-subsidies at your country, so that we may have chance to re-establish our business.

The general procedure can be operated as below steps:
1. Transport from China ports to Malaysia, Port Klang / Singapore
2. Transport from ... [Click for Details]

Member Info

Business Type: Trade Service
Number of Employees: 5 ~ 50
Business Scope: Transportation
Member Since: 2010
Last Sign In Date: 2010-04-21

Contact Details

Wintrans
LIMITED

Company Name: Shanghai Wintrans Branch
Company Address: Siping Road 188 2100, Shanghai, China
City/Town: Shanghai
Province/State: Shanghai
Country/Region: China
Zip/Postal Code:
Phone Number:
Fax Number:
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Mobile:
Contact Person (Department): Mr. Henry

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- USITCm. "Diamond Sawblades and Parts Thereof from China and Korea Do Not Injure U.S. Industry, Says USITC." Press Release, June 19, 2006.
- USITCn. *Steel Wire Garment Hangers from China*. Inv. No. 731-TA-1123 (Final), September 2008.
- USITCo. "Steel Wire Garment Hangers from China Injure U.S. Industry, Says USITC." Press Release, September 11, 2008.

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USITCq. "Certain Steel Grating from China Injures U.S. Industry, Says USITC." Press release, June 24, 2010.

**TESTIMONY OF SENATOR ROB PORTMAN
TO THE UNITED STATES SENATE
COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND
GLOBAL COMPETITIVENESS**

MAY 5, 2011

Thank you Chairman Wyden and Ranking Member Thune for this opportunity to talk about the important issue of customs evasion. I know this issue is a personal one for both of you – for both Oregon’s steel tube industry and South Dakota’s honey producers – and it is certainly a crucial issue for numerous Ohio industries.

As you may know, I have visited over 90 Ohio factories during the past few years and have hosted economic roundtables talking to business leaders and workers, which has given me a clear sense of what needs to be done here in Washington. Small business owners, workers, plant managers and local economic development leaders all shared their insights regarding the roadblocks they face when it comes to growing their businesses and expanding employment.

To no one’s surprise, Ohioans and all Americans are most concerned about jobs, and increasing exports is key to American job growth. Exports support over 10 million American jobs. By gaining access to markets for workers, farmers, and service providers, we’re not just helping the economy and creating better jobs, we’re also seeing an increase in our exports relative to the rest of the world.

We need to expand foreign markets for American products, and we can start by passing the export-opening agreements that have already been negotiated. I am pleased by yesterday’s announcement that technical negotiations on the South Korean, Colombian, and Panamanian agreements will begin shortly. These agreements will knock down barriers to American goods and services and add U.S.

jobs at a time when we need them badly. According to the President's own analysis, these agreements could create 250,000 American jobs. Every day that we wait is another day that we fall behind. As other countries move forward and sign agreements, we are stuck not even on the playing field. The European Union's agreement with Korea goes into force on July 1, the same day that the Canada-Colombia agreement goes into force.

Opening markets and vigorous enforcement of trade laws go hand-in-hand, which was my approach as U.S. Trade Representative. I am proud of my record standing up for American workers against illegal trade practices. In fact, at USTR, I initiated the first-ever legal case to be litigated and won against China before the World Trade Organization because of China's unfair treatment of U.S.-made auto parts.

While opening markets is key, it is also important to enforce the trade laws that are currently on the books. As fast-growing economies establish a larger presence in global markets, it is important that they adhere to international rules. Countries like China are not playing by the rules. A lot of people talk about China's currency manipulation – and I agree, China is manipulating their currency. However, this isn't just about currency. This is about a variety of policies and practices like indigenous innovation, transshipment, violations of intellectual property rights and the anti-competitive practices of its State Owned Enterprises. While the opening of China's market represents a huge opportunity for American companies, China is also practicing a form of state-led economic development by systematically distorting its markets in ways that give certain of its companies an artificial and unearned advantage over American companies in global markets.

When countries or individual companies violate the rules of trade, it is vital that the sanctions that discipline these violations are aggressively enforced. Customs evasion is a particularly troubling way for some companies to avoid the rules of the road in international trade. When goods are illegally dumped in the United States, jobs in Ohio and around the country are put at risk. That is why American companies spend millions of dollars every year on anti-dumping and countervailing duty cases. Therefore, after all of the time, effort and resources that are expended to get a protective order put in place, it is extremely concerning that these goods continue to illegally enter our country through illegal transshipment and falsified country of origin markings, undervalued invoices to pay less duty, and misclassification of goods. While most companies play by the rules, too many do not. Left unchecked, this situation has the potential to erode American confidence in the global trading system and diminish support for measures that improve our global competitiveness.

Customs evasion is also a problem for our federal budget with hundreds of millions of dollars of duties not paid each year. While I believe that the federal government has grown beyond appropriate limits, and we should not look to extract more resources from the private sector to fund this expansion, I think we can all agree that funds owed to the federal government by law must be paid. Every dollar in customs duties that bad actors illegally evade represents a dollar of additional borrowing that will be heaped on our \$14 trillion debt. Future generations should not have to subsidize customs duty evasion by those who refuse to play by the rules.

Ohio industries have been particularly impacted by customs evasion including pipe and tube, prestressed concrete steel wire strand and lined paper products. Let me give you a couple examples.

U. S. Steel makes seamless oil country tubular goods (OCTG) -- a sophisticated type of pipe used in drilling for oil and gas -- at a mill in Lorain, Ohio. V&M STAR makes the same product at its mill in Youngstown. Together, these mills employ almost 1,000 Ohioans in good-paying jobs.

I visited V&M STAR earlier this year and they were very concerned about this issue. V&M STAR is a great example of what we have seen in so many other industries. When given a level playing field, Ohio workers, like those at V&M STAR, can compete against anybody. In fact, they just invested \$650 million in their Youngstown facility, creating 350 full-time jobs.

Concerns have also been raised by JMC Steel, the largest independent producer of pipe and tubular products in North America. JMC produces two million tons of standard pipe and tube, line pipe, OCTG, electrical steel conduit, and hollow steel structural pipe every year. They are headquartered in Beachwood, Ohio with facilities across the state in Cambridge, Niles and Warren. They have experienced many of the same problems facing the pipe and tube industry, and I know JMC submitted a statement for the record that specifically outlines their areas of concern.

Just a few years ago, the U.S. OCTG industry was severely impacted by a surge of dumped and subsidized imports from China. In 2008 alone, over \$2.8 billion worth of unfairly-traded Chinese OCTG entered this market -- making this one of the largest trade cases in U.S. history. The effects on the economy of northern Ohio -- and everywhere in the United States where this high-end product was produced -- were devastating.

Subsequently, the U.S. Department of Commerce found that Chinese mills were trading unfairly, the International Trade Commission (ITC) granted relief, and

Chinese imports declined. But almost as soon as the relief was put in place, evidence of fraud and circumvention began to turn up everywhere. Numerous Chinese web sites actively promote their ability to evade this critical trade relief by falsifying the country of origin of Chinese pipe products. Traders in other countries apparently engage in the same type of illegal activity. This often is as simple as shipping a Chinese product through a third country, without any further processing, and fraudulently changing the documentation to indicate a new country of origin. Other reports indicate that trading companies will often engage in minimal processing in a third country -- for example, merely "threading" pipe, which is not enough to change the origin under U.S. law -- and nonetheless report the third country as the country of origin. Finally, there have been persistent reports of Chinese pipe products being brought in under the wrong tariff heading, presumably as a means to evade unfair trade orders in the United States.

Another impacted industry in my state produces prestressed concrete steel wire strand (PC strand). PC strand is steel wire strand produced from carbon wire rod that is used to compress concrete structural members to allow them to withstand heavy loads. Typical uses for PC strand include bridges, parking garages, and certain concrete foundations. The domestic PC strand industry employs roughly 250 production and related workers and has annual net sales of about \$400 million, including 80 workers at American Spring Wire Corporation in Bedford Heights, Ohio. Along with two other producers, American Spring Wire was a petitioner in the successful 2009 trade action against China. As a result of that action, both antidumping and countervailing duties at significant levels were imposed against imports of PC strand from China.

Even before the case ended, however, Chinese traders began to approach U.S. producers and importers with proposals to circumvent any resulting trade orders. The Chinese producers proposed a plan they called “carry trade,” whereby they would send PC strand from China to a third country where the PC strand would be relabeled and possibly repackaged to reflect a different country of origin. By doing so, the antidumping and countervailing duties would be avoided. Malaysia was expressly identified as a proposed country for this unlawful transshipment of PC strand. The Chinese trader stated that an importer could open a letter of credit in Malaysia, where an agent of the trader’s company would be located, and that agent could in turn open a letter of credit to the Chinese PC strand producer. The country of origin certificates would then be changed to say “Malaysia” rather than “China,” even though the PC strand was produced in China, and all duties that should be paid would be avoided.

Once the trade orders against PC strand were entered, Malaysia did indeed become a new source of significant imports through use of this transshipment approach. While imports from Malaysia were non-existent in 2008, they increased to 4.7 million pounds in 2009 and then surged to 32.8 million pounds in 2010, while imports from China – now subject to trade orders – declined. Although the U.S. PC strand industry has met with and provided detailed information to Customs and Border Protection on this transshipment scheme, no action has been taken to correct this problem to date.

Evasion has also been extremely harmful to the U.S. companies and workers who make lined paper products, several hundred of whom live and work in Ohio. For example, after duties were imposed on dumped and subsidized imports of lined

paper school supplies from China, Indonesia, and India, producers in these countries began to circumvent the order by transshipping through third countries.

As these examples demonstrate, customs evasion is a big issue for companies in Ohio and across the country. I commend the Chairman and his staff for your report last year on this issue. While we need to avoid disrupting the orderly flow of legal goods and services entering our country, we need to take concrete steps to stop the flow of illegal imports and put an end to these unlawful practices that are bad for our economy and bad for American workers.

As we think about ways to combat this problem, I hope we will look both at specific steps to stop evasion and broader ways to modify our duty assessment system.

Our discussions with Customs and Border Protection (CBP) lead us to believe that the agency has difficulty quickly investigating suspicious trade flows and acting on information provided by industry sources. Concerns about CBP's ability and interest in focusing on trade are not new. It takes an average of almost a year for CBP to respond to allegations of evasion and circumvention and several years to conclude an investigation. Even once evasion or fraud is discovered, CBP only is able to collect about 1-2 percent of the duties and penalties owed. This is not a sufficient deterrent to unscrupulous actors that are interested in evading trade remedy duties either through transshipment or document fraud and misrepresentation.

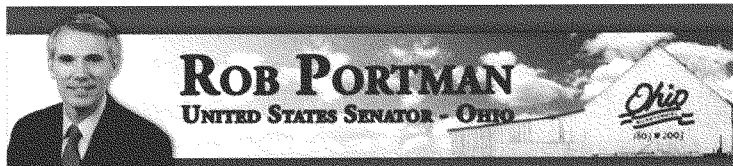
It is important that our trade laws be enforced with consistency. I understand that CBP may be interested in implementing a stronger, more coherent approach to combating evasion, but it may be necessary to have some statutory guidance that ensures consistent enforcement of trade remedy duties and accountability by

CBP. A variety of ideas have been discussed, and I believe industry and CBP should work collaboratively to find ways to combat this problem, possibly through a formal task force.

We also need to consider how CBP allocates its resources. CBP needs to better focus its resources so that a disproportionate amount is not focused on the lowest risk importers, while leaving fewer resources for others whom are likely to be more suspect.

Other ideas include CBP developing and implementing an account management system whereby importers and shippers have fully integrated and automated security and customs accounts, allowing the various agencies of the Department of Homeland Security to work in a more coordinated fashion.

Thank you again for the invitation to testify on this important issue. I appreciate your attention to this issue and hope we can work together on ways to prevent goods from illegally entering our country.



FOR IMMEDIATE RELEASE: Thursday, May 05, 2011
 MEDIA CONTACT: Jeff Sadosky | 202-224-5190

Portman Fights Illegal Customs Evasion Which Is Harming Ohio Economy and American Taxpayers

WASHINGTON, D.C. — Today, U.S. Senator Rob Portman (R-Ohio), a former United States Trade Representative, submitted testimony before the Senate Finance Committee Subcommittee on International Trade, Customs, and Global Competitiveness on customs evasion, continuing to highlight the importance of enforcing our trade laws and protecting American job creators.

"Foreign companies who are not playing by the rules, harming Ohio companies and American taxpayers, should not be allowed to do an end-run around the law. American job creators are being cheated, we need to ensure they're able to fight on an even playing field, where we know they can compete and win," said Portman, who initiated the first-ever legal case to be litigated and won against China before the World Trade Organization because of China's unfair treatment of U.S.-made auto parts.

Portman cited a report from Senator Ron Wyden (D-OR) that showed numerous Chinese suppliers willing to engage in customs fraud to avoid paying U.S. anti-dumping and countervailing duties (AD/CVD).

"Numerous manufacturers, like V&M STAR, U.S. Steel and JMC Steel, across Ohio are concerned about unfair trade practices and the effect it has on their business so it is important to remain committed to leveling the playing field."

Last month, Portman strongly advocated to the Department of Commerce for increased protections resulting in a duty on those who are unfairly trading lightweight thermal paper. The duty will distinctly protect Appleton Papers, which employs 400 workers in West Carrollton, OH and 2,500 workers nationwide.

"While we need to avoid disrupting the orderly flow of legal goods and services entering our country, we need to take concrete steps to stop the flow of illegal imports and put an end to these unlawful practices that are bad for our economy and bad for American workers," Portman added.

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COMMUNICATIONS

**HEARING BY THE
U.S. SENATE FINANCE COMMITTEE'S SUBCOMMITTEE ON INTERNATIONAL
TRADE, CUSTOMS, AND GLOBAL COMPETITIVENESS
ON
ENFORCING AMERICA'S TRADE LAWS IN THE FACE OF CUSTOMS FRAUD AND
DUTY EVASION
MAY 5, 2011, 2:00 P.M.
STATEMENT OF AGRI-FAB, INC.
809 SOUTH HAMILTON STREET
SULLIVAN, ILLINOIS 61951**

On behalf of Agri-Fab, Inc., and the employees who work at its headquarters and manufacturing facilities in Sullivan, Illinois, we applaud the Senate Finance Committee's Subcommittee on International Trade, Customs, and Global Competitiveness for its consideration of the dilemma that we and many other domestic industries face in defending the antidumping and countervailing duty orders that were so difficult to obtain.

Agri-Fab was founded in 1975 under the core philosophy of providing employment for the people of Sullivan, a town in central Illinois of nearly 4,400 residents. Over time, we have grown to become the second-largest employer in Sullivan. But that opportunity was threatened when we began to see knockoffs of our tow-behind lawn groomers—consisting of tow-behind lawn sweepers, aerators, dethatchers, and spreaders—entering the market from China and sold at prices that were less than our cost of materials. In 2007, we faced a choice: either follow the trend and outsource our production to China or hold true to our core philosophy and keep our workers employed in Sullivan. We are submitting these comments today because of the choice we made back then.

For domestic tow-behind lawn groomer manufacturers to reasonably survive in this market, we had to seek help from the government by petitioning, on behalf of the domestic industry, for it to impose antidumping and countervailing duties on unfairly traded Chinese manufactured tow-behind lawn groomers. The fight against unfair Chinese trade practices required a significant investment of our energy, time, and capital. During the investigation we encountered stiff resistance from the Chinese respondents. However, we prevailed. Antidumping and countervailing duty orders on tow-behind lawn groomers from China were issued in August 2009, and we were able to re-establish relationships with the U.S. customers that we had lost in the prior years.

We did not expect, however, to see the trade enforcement orders that we fought so hard for to be subverted so quickly. Within months after the orders were published, we began seeing signs of lawn groomers being transshipped through third countries prior to being imported into the United States, thereby evading the imposition of antidumping and countervailing duties. Despite our efforts to bring attention of these transshipments to the government in the hopes that it would stop these activities, the shipments grew from a trickle to a steady inflow. These

shipments have dealt our industry a significant setback. Agri-Fab estimates that it alone has lost millions of dollars in tow-behind lawn groomer sales to Chinese imports that have been funneled through other countries.

We also did not expect to find our government unable or unwilling to help us expose and end these fraudulent transshipments. On several occasions, we conducted our own investigations of these transshipments and reported our findings to U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”). Our efforts at working with CBP and ICE, however, have been frustrating, and have demonstrated that enforcing unfair trade orders is not these agencies’ priority.

We are especially concerned about what appears to be a step back in terms of agency interest in enforcing the antidumping and countervailing duty orders on tow-behind lawn groomers. Last May, Alonzo Peña, ICE’s Deputy Assistant Secretary for Operations, testified before the House Subcommittee on Trade that the agency was involved in approximately 90 investigations relating to evasion of antidumping and countervailing duty orders, and mentioned the order on tow-behind lawn groomers by name.

At this hearing, J. Scott Ballman, Mr. Peña’s successor, stated that ICE had conducted 391 investigations involving antidumping or countervailing duty orders since 2006, but *failed* to include lawn groomers in the list of 17 commodities that have been investigated in this timeframe. Whether the omission is an oversight or an inference that ICE concluded its investigation, it reveals the difficulty that we and other small industries have had in convincing the government to pay attention and effectively maintain these orders. ICE may be content to let the injury to the domestic industry intensify to some minimum threshold before taking any action, but we cannot afford to procrastinate in this way.

The domestic market for tow-behind lawn groomers may not be as large or as broad as that for some of the other commodities with antidumping or countervailing duty orders in place, but neglecting to enforce these orders results in a significant negative impact on the federal revenue. With antidumping and countervailing duties of approximately 400 percent for imported tow-behind lawn groomers from China, we anticipate that the government has been deprived of over \$12 million in duties as a result of illegal transshipments of lawn groomers alone. When this figure is multiplied across the myriad of other products’ antidumping and countervailing duty orders that are not being policed by CBP and ICE, the cost to the government of non-enforcement of these orders is staggering.

Much talk lately has centered around the government’s concern with preserving and protecting American jobs, particularly in manufacturing sectors. We sought antidumping and countervailing duty orders as a last resort to the alternatives of outsourcing lawn groomers or exiting the market altogether, both of which would have resulted in the losses of jobs in Sullivan, Illinois. However, even after successfully obtaining these orders, we may still be faced with these unpleasant choices if no action is taken by our government.

In conclusion, without active enforcement of these orders, including aggressive pursuit of all parties who participate in the illegal transshipments of these goods, the victory that we worked so hard to obtain will ring hollow, and more manufacturing jobs will be lost to unfairly priced imports. We thank you again for your focus on this matter, and urge that this Subcommittee take speedy and decisive action to prioritize enforcement of antidumping and countervailing duty orders and save our domestic industries.

Statement on Behalf of the Coalition to Enforce Antidumping & Countervailing Duty Orders
United States Senate Committee on Finance
International Trade, Customs, and Global Competitiveness Subcommittee
May 5, 2011

The Coalition to Enforce Antidumping & Countervailing Duty Orders (the “*Coalition*”) applauds the work of the Trade Subcommittee of the Senate Finance Committee to examine customs fraud and duty evasion and the effects those practices are having on the enforcement of our trade laws.

The Coalition consists of companies and associations from 11 U.S. industries. Each member represents a U.S. industry that has suffered material injury, or been threatened with material injury, by reason of unfairly-traded imports. In some cases, these imports have also been found to be unfairly subsidized. In each case, the products are subject to antidumping (“AD”) and/or countervailing duty (“CVD”) orders.

Each member of the Coalition has invested years and enormous amounts of company resources – both financial and human – working to obtain AD/CVD orders to staunch the flow of unfairly-traded imports. Our members have succeeded in satisfying rigorous statutory requirements before two separate federal bodies – the Commerce Department and the United States International Trade Commission – only to find that the products subject to the AD/CVD orders continue to find their way into the U.S. without paying the duties imposed by the United States Government, and that are owed by U.S. importers.

Duties are being evaded by unlawfully transshipping the goods through third countries that are illegally identified as the country of origin; by falsifying shipping documents to misrepresent the country of origin or to misclassify the goods; and, by performing minor or insignificant operations in a third country. We suspect that many other “creative” means exist to illegally evade the duties imposed on the goods by the U.S. Government.

Our members’ experiences demonstrate a fundamental failure by Commerce and CBP to timely and effectively enforce AD and CVD orders. The failure of effective enforcement has resulted in the loss of millions of dollars of dumping duties to the U.S. Treasury. Just within eight of the Coalition’s 11 member industries, we estimate that over \$400 million in duties is not paid each year, primarily due to illegal transshipment schemes that send subject merchandise through Taiwan, Malaysia, Korea and other Southeast Asia countries.

Our members have presented CBP, and, in some cases, ICE, with compelling evidence of duty evasion, only to see the apparent evasion continue – and grow ever more blatant. Our members’ AD/CVD orders are not being adequately enforced, and our industries are continuing to be harmed by unfairly priced or subsidized goods that enter the United States without paying lawfully-owed duties. This has forced our members into the position of trying to enforce our own orders, by collecting and presenting the overwhelming evidence of wrongdoing to CBP and others. Some of the material we have found is shocking – emails from manufacturers with offers to transship, logistics company websites explaining the processes used to avoid the antidumping duties.

With such blatant resources readily available to facilitate evasion of AD/CVD duties imposed by the U.S. Government, it is not surprising that the Coalition’s members continue to see goods subject to these AD/CVD orders come into the United States without paying the duties AND being sold, for example, at the same prices as those already found by the Department of Commerce to be “less than fair value”. What is surprising is that, despite repeatedly presenting CBP with specific evidence of these practices,

the duty evasion continues and grows, with little or no indication that anything is being done to stop it by the very agencies charged with enforcement.

Apart from representing a significant amount of revenue that is owed to the U.S. Treasury, if the proper duties were collected on these imports, importers who have become so dependent upon dumped imports would no longer be competitive with domestic manufacturers. American workers would be producing and delivering additional products and earning additional wages and benefits.

On November 8, 2010, Senator Ron Wyden released a report directly examining this issue, entitled **Duty Evasion: Harming U.S. Industry and American Workers** (the “Wyden Report”). The Wyden Report details multiple examples of duty evasion schemes that are being offered and used to undermine the effectiveness of U.S. trade laws by exporters, importers and logistics companies.

Such illegal transshipment and related schemes not only damage U.S. industries and their workers, by denying them the legally-contemplated remedial effect of our AD/CVD laws, but also adversely affect legitimate foreign manufacturing companies – the presence of illegally transshipped products in foreign markets will drive down prices and crowd out legitimate producers in other countries.

We recognize that our government, and CBP and ICE in particular, are tasked with multiple missions that place significant demands on their personnel and resources. Effective enforcement of the trade laws – and specifically AD and CVD orders – is critical to the ability of our companies and industries to remain competitive, and to the overall health of our national economy. CBP lists AD/CVD enforcement as a “priority trade issue” – we agree with this characterization, and submit that it should be treated as such.

To be very clear, this issue has nothing to do with trade philosophy. It has everything, however, to do with enforcement of the law. Failing to do so sends a signal to our largest trading partners that our government is willing to turn a blind eye on such unlawful activities. It sends a signal to U.S. industries and workers that our government is unwilling or unable to enforce its own laws. It also sends a signal to U.S. industries and workers that our government expects them to not only bring and win trade cases against unfair imports, but to then also personally attempt to enforce the AD and CVD orders that result.

The Coalition supports the efforts of the Trade Subcommittee to introduce bipartisan legislation addressing customs fraud and duty evasion. We are committed to helping solve these problems in any way possible.

Respectfully submitted,

The Coalition to Enforce Antidumping & Countervailing Duty Orders

Please direct any correspondence or questions for the Coalition to the attention of:

Wendy March Watson
Associate General Counsel
Leggett & Platt, Incorporated
No. 1 Leggett Road
Carthage, MO 64836
Phone: 417-358-8131, ext.2441
Email: wendy.watson@leggett.com

Amy R. DeArmond
Government Policy & Legal Affairs Strategist
Leggett & Platt, Incorporated
No. 1 Leggett Road
Carthage, MO 64836
Phone: 417-358-8131, ext.2539
Email: amy.dearmond@leggett.com

Coalition to Enforce Antidumping & Countervailing Duty Orders



American Spring Wire Corporation – Bedford Heights, Ohio
Order on *prestressed concrete wire strand* from China, Brazil, India, Korea, Mexico and Thailand



GEO Specialty Chemicals – Lafayette, Indiana
Order on *glycine* from India, Japan and South Korea



Insteel Industries – Mt. Airy, North Carolina
Order on *prestressed concrete wire strand* from China



JMC Steel Group – Beachwood, Ohio
Order on *circular welded carbon-quality steel line pipe* from China



Leggett & Platt, Incorporated – Carthage, Missouri
Order on *uncovered innerspring units* from China, South Africa and Vietnam



M&B Hangers – Leeds, Alabama
Order on *steel wire garment hangers* from China



Mid Continent Nail – Poplar Bluff, Missouri
Order on *steel nails* from China



Seaman Paper – Otter River, Massachusetts
Order on *tissue paper* and *crepe paper* from China



SSW Holdings Company – Elizabethtown, Kentucky
Order on *kitchen appliance shelving racks* from China



Southern Shrimp Alliance – Tarpon Springs, Florida
Order on *frozen or canned warmwater shrimp* from China, Brazil, Ecuador, India, Thailand and Vietnam



Vulcan Threaded Products – Pelham, Alabama
Order on *carbon steel threaded rod* from China

**Statement on Behalf of GEO Specialty Chemicals, Inc.
United States Senate Committee on Finance
International Trade, Customs, and Global Competitiveness Subcommittee
May 5, 2011**

GEO Specialty Chemicals, Inc.
401 South Earl, Suite 3A
Lafayette, Indiana 47904

This statement for the record is submitted on behalf of GEO Specialty Chemicals, Inc., a producer of a broad range of chemical products used in the construction, agriculture, oil and chemical processing industries. GEO is the largest U.S. producer of glycine (amino acetic acid), which has applications in the pharmaceutical, food, feed and finishing metals industries.

GEO would like to thank Chairman Wyden, Ranking Member Thune and other Members of the Subcommittee for addressing a trade issue of critical importance to U.S. businesses. The growth of GEO's glycine business demonstrates that U.S. industries can compete and win when the U.S. government enforces trade laws to combat unfairly priced imports. GEO's experience, however, also shows that rampant duty evasion injures U.S. businesses and undermines the integrity of U.S. trade laws.

GEO entered the glycine business in November 2005 after acquiring a struggling glycine facility. At that time, U.S. glycine production was moribund. GEO helped to revive the U.S. industry by increasing production efficiencies and producing reliable, high-quality glycine products. This revival, however, would not have been possible unless GEO used U.S. laws to protect against unfair Chinese competition. GEO committed substantial resources toward improving the effectiveness of an existing antidumping order against glycine from the People's Republic of China (China). GEO repeatedly demonstrated to the Department of Commerce (Commerce) that glycine from China should be subject to significantly higher antidumping duty rates. After antidumping duties were increased to ensure that Chinese glycine was sold at fair prices in the U.S. market, GEO was able to increase glycine sales and expand U.S. glycine production.

GEO's continued success is owed both to GEO's product quality and production efficiencies and to vigorous enforcement of U.S. trade laws to ensure imports of Chinese glycine are fairly priced. For years, however, these gains have been significantly undermined by those willing to evade antidumping duties on Chinese glycine by transshipping it through third countries like the United Kingdom, Taiwan and Thailand or by making insignificant changes to it in third countries like India and Korea. Flagrant disregard of the existing order has resulted in the continued dumping of Chinese glycine in the U.S. market.

GEO's problem is all-too-similar to those of other companies appearing before the Subcommittee: after duties against Chinese glycine were raised to combat unfairly priced imports, glycine began appearing from third countries that had little or no glycine production. The situation is intolerable. Commerce and the International Trade Commission provide a deliberative, transparent and fair process for determining when imports are unfairly priced and causing injury to U.S. industry. Allowing these imports to evade the results of those

determinations adds another layer of injury to U.S. businesses, hurts foreign companies fairly pricing their products in the U.S. market and undermines U.S. trade laws.

GEO has responded to duty evasion in two ways: (i) submitting evidence of Chinese glycine transshipped through third countries to Customs and Border Protection (CBP); and (ii) participating in an anti-circumvention inquiry at Commerce. GEO has pursued these courses of action at significant expense.

GEO has notified CBP through the E-Allegations system of the transshipment of Chinese glycine through third countries in violation of U.S. law. GEO also has met with CBP officials to discuss these concerns. This information has apparently disappeared into a black hole. Because CBP has refused to provide updates on the status of these investigations, GEO remains unclear what government action, if any, has been taken to halt the illegal transshipment of Chinese glycine through third countries to the United States.

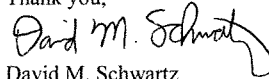
In December 2009, GEO also began an anti-circumvention inquiry with Commerce, which was formally initiated in October 2010. GEO demonstrated that Chinese glycine had either been transshipped through or insignificantly altered in India and asked Commerce to include this glycine within the scope of the existing antidumping order against Chinese glycine. The ongoing anti-circumvention inquiry offers abundant evidence that Chinese-origin glycine continues to enter the United States as "Indian-origin" glycine. GEO is confident that Commerce will decide to include the transshipped glycine within the order. While this would help the domestic glycine industry, the inclusion of transshipped glycine will still not protect the industry against unscrupulous foreign glycine shippers who continue to commit customs fraud.

A generation ago, Congress recognized that duty evasion within the context of trade remedies is a serious problem. When Congress enacted anti-circumvention provisions in 1988, it provided Commerce broad authority to include within the scope of a trade remedy order products subjected to insignificant manufacturing in third countries or the United States, or products designed to circumvent an order. Commerce's power to assess the scope of an order, however, is ineffective if CBP is not equipped to stop customs fraud. Foreign producers that Commerce identifies as circumventing trade remedy orders can routinely create new shell companies that exist solely to evade U.S. duties. U.S. enforcement agencies need increased resources and expanded authority to keep up with companies that are hell-bent on evading duties.

In short, the status quo is unacceptable. GEO believes that a more transparent and timely system to respond to duty evasion is required to protect U.S. businesses and the integrity of U.S. trade laws. Commerce's authority to conduct anti-circumvention investigations is indispensable to maintaining the integrity of U.S. trade remedy laws. The anti-circumvention provisions, however, should be augmented with statutory changes to improve customs fraud investigations. U.S. businesses that provide well-documented and verifiable evidence of customs fraud should be given greater access to information concerning the status and outcome of customs fraud investigations. This will improve the transparency of these investigations and improve government enforcement through increased CBP/private-sector dialogue.

GEO believes that Chairman Wyden's Enforcing Orders and Reducing Circumvention and Evasion Act (ENFORCE Act), introduced in Congress last year, would be a step in the right direction. GEO looks forward to supporting a meaningful and effective legislative solution to duty evasion and will be happy to provide any information or suggestions that would be helpful to the Committee in drafting its bill.

Thank you,

A handwritten signature in black ink that reads "David M. Schwartz". The signature is fluid and cursive, with the first name "David" and last name "Schwartz" clearly legible.

David M. Schwartz
Counsel to GEO Specialty Chemicals, Inc.

Thompson Hine LLP
1920 N Street NW, Suite 800
Washington, DC 20036

WRITTEN STATEMENT FOR THE RECORD

DAVID SEEGER

**PRESIDENT
JMC STEEL GROUP**

BEFORE THE

TRADE SUBCOMMITTEE OF THE FINANCE COMMITTEE

OF THE

UNITED STATES SENATE

**HEARING ON ENFORCING AMERICA'S TRADE LAWS IN THE FACE OF
CUSTOMS FRAUD AND DUTY EVASION**

May 5, 2011

JMC Steel Group appreciates the opportunity to submit written remarks in conjunction with the hearing on enforcement of U.S. trade laws. JMC Steel is the largest independent producer of pipe and tubular products in North America. We produce approximately 2 million tons of standard pipe and tube, line pipe, OCTG, electrical steel conduit, and hollow steel structural pipe every year. The company was founded in 1877, and we have 11 facilities in North America which employ approximately 1,750 people. Many of our workers are represented by the United Steelworkers. We have facilities in Illinois, Michigan, Pennsylvania, and Ohio. Our company has been successful because of its strong commitment to product quality and customer service, and because we employ the newest process technologies.

The pipe and tube industry has long been plagued by unfairly traded imports and we, along with the rest of the industry, have used the trade laws in the past to address unfair and injurious pricing and government subsidies. However, in 2006 we encountered a flood of imports of standard and structural pipe from China, the likes of which we had never experienced before. Between 2002 and 2006, imports from China increased by from 10,000 tons to 690,000 tons -- a 6800 percent increase. During this period four U.S. mills closed, and 500 workers lost their jobs. Our industry lost market share and incurred huge and unsustainable operating losses. Chinese imports captured nearly one-third of the entire U.S. market.

In response to the flood of imports from China, the U.S. industry filed antidumping and countervailing duty petitions on circular welded pipe in June 2007. In June 2008, the Department of Commerce found that Chinese producers were dumping their product in the U.S. market at margins ranging from 69 to 86 percent, and that they were also receiving government subsidies averaging 37 percent. The International Trade Commission also found that Chinese imports were causing material injury to the U.S. industry. Duties were imposed, and pricing in the U.S. began to return to more normal market-based levels.

JMC Steel subsequently participated in antidumping and countervailing duty cases covering line pipe and OCTG, sectors of the pipe and tube industry that began to see similar increases in low-priced imports from China. Those cases were concluded in 2009 and 2010 and were also successful.

Within a couple of years, however, we began to hear disturbing reports that Chinese pipe and tube producers were starting to circumvent the duty orders. We started to see a proliferation of Internet sites that advertised assistance to importers to avoid paying duties on Chinese pipe by providing fraudulent country of origin certificates. We also began to see pipe that was produced in China illegally transshipped through third countries, including Vietnam, Malaysia, and Oman.

Last year, staff in Senator Wyden's office set up a shell company in order to explore the extent of circumvention of duties by Chinese companies. Their investigation uncovered a company based in Turkey that was offering to sell Chinese OCTG to the U.S. without having to pay the duties. The solicitation stated that the Chinese product would be transshipped through Valencia, Spain, where it would be given a certificate of origin from the European Union.

Just recently, a participant at a pipe and tube conference in Houston provided a first hand account of Chinese pipe that was shipped to Indonesia where the ends of the pipe were threaded, and the words "Made in Indonesia" painted over the Chinese origin marking. Threading does not change the country of origin for pipe, and imports of such pipe into the United States are subject to the full duties applicable to Chinese pipe.

The commercial trend toward shipping pipe in containers is also leading to difficulties. Previously, pipe had always shipped bulk in bundles. The shift to containerized shipments makes visual inspection in Customs ports all that more difficult and permits a different type of circumvention -- namely the misclassification of merchandise as something other than pipe and tube products subject to antidumping and countervailing duties.

Our industry has been quick to report all the evidence regarding circumvention to Customs and Border Protection ("CBP") and Immigration and Customs Enforcement ("ICE"). We have met with ICE and CBP on numerous occasions. We have met with Customs officials at the ports where we believe duty evasion is occurring in order to educate them about our products, and to brief them on possible circumvention schemes. In short, we have done everything we can do to make the U.S. government aware of what is going on. But the fraud continues unabated. We met as part of the larger delegation from the Committee to Support U.S. Trade Laws with Customs as recently as April 26, 2011.

The circumvention of our trade laws hurts the United States in several critical ways. First, it robs the U.S. industry of the relief that it is due from the successful trade actions it has brought, as dumped and subsidized Chinese imports continue enter our market. Second, U.S. producers cannot rebuild their market share, or invest in new equipment or add new jobs. Third, the U.S. Treasury is deprived of the duties that would otherwise be paid if this product was properly declared as being of Chinese origin. At a time when we are experiencing a budget crisis in this country, can we really afford to let China game the system and avoid paying the duties it owes? Finally, it makes a mockery of our trade laws. If the U.S. government is willing to work

so hard to investigate allegations of dumping and subsidies, and to get duties in place when they are merited, why won't it enforce those duties?

JMC Steel urges Congress to pass legislation that will provide the structure, procedures, and tools to allow CBP and ICE to enforce antidumping and countervailing duty orders. This is a national security issue, as well as a trade issue. Failure to provide adequate enforcement of our trade laws will inevitably result in a further deterioration of our manufacturing base and the loss of good-paying manufacturing jobs in this country. I view this as every bit as important as interdicting counterfeit products -- a practice that Customs has devoted considerable time and resources to address.

JMC Steel supports the reintroduction of the ENFORCE Act, and urges the Senate to pass the bill this year. Delay will only mean continuing harm to U.S. companies facing circumvention and fraud. JMC Steel appreciates the leadership of Senators Wyden and Snowe on this issue, and JMC Steel is committed to working with the rest of the Senate to build strong bipartisan support for this common sense legislation.



**Enforcing America's Trade Laws in the Face of Customs
Fraud and Duty Evasion**

U.S. Senate Finance Committee

Subcommittee on International Trade, Customs, and Global Competitiveness

Thursday, May 5, 2011

Testimony Submitted by:

Mr. Cass Johnson

President

National Council of Textile Organizations

The National Council of Textile Organizations (NCTO) is pleased to offer this testimony regarding the Finance Committee's hearing on "Enforcing America's Trade Laws in the Face of Customs Fraud and Duty Evasion." The issue is timely for a number of reasons. The country continues to struggle economically and customs fraud has become a significant factor in the loss of U.S. textile and other manufacturing jobs in the United States. Customs fraud is also having a significant impact on the level of revenue directed to the U.S. Treasury. We estimate that more than one billion dollars annually is lost, as result of the illegal activity of textile and apparel imports by foreign exporters¹. At a time of increasing deficits and growing unemployment, the U.S. Congress must ensure that Customs and Border Protection address the massive amount of fraudulent activity occurring at our ports and borders.

Customs enforcement is a key priority for NCTO and the U.S. textile industry as trade agreements (and our preference programs) are the textile industry's lifeblood. The majority of products and components that our members produce are exported to the CAFTA/NAFTA/ANDEAN region for assembly and then imported back into the United States duty free. Each of these agreements requires that goods, from the yarn stage to the final garment stage (also called the "yarn forward" rule), be sourced from the region which has helped build a large textile and apparel sector in the Western Hemisphere that covers ten countries, employs nearly two million workers and produces two-way trade in excess of \$25 billion dollars annually.

Because duties on textiles and apparel are relatively high, this trade is vulnerable to abuse. And with minimal chance of getting caught the incentive to cheat is high and the payoff is extremely lucrative. Unscrupulous importers can cut 15 percent or more off the cost of a garment by funneling illegal yarns, fabrics or garments through our FTA and preference regions and claiming those goods to be of U.S. (or regional) origin. Textiles and apparel imports account for 46 percent of all Customs duties collected, nearly \$12 billion a year, so the stakes are enormous and the free trade areas have become a magnet for fraudulent activity.

The mechanisms that illegal exporters use to commit textile fraud are exactly the same as the ones that are used to evade countervailing duty and dumping orders. Goods are illegally transshipped, undervalued or mis-labeled. Phony importing companies are created that pay minimal bonds and disappear once fraud is alleged. Penalties are seen as a 'slap on the wrist' as they are often minimal and very rarely fully collected.

Much of the background on textile fraud is troubling; however, the industry was encouraged by the strong commitment that Customs and Border Protection Commissioner Alan Bersin made to NCTO's membership in April 2011. Bersin admitted that Customs has not paid adequate attention to the costs of textile fraud in the past and assured the industry that Customs would again make textile fraud a top priority. The Commissioner highlighted new efforts the agency has initiated which targets textile fraud out of Mexico, including joint operations with Mexican Customs. NCTO is also encouraged by the appointment of Mr. Al Gina as the new Assistant Commissioner of International Trade at Customs.

Despite the renewed focus, Customs itself is hindered by a bureaucratic mentality and a culture that puts revenue collection and fraud prevention near the bottom of its priority list. Congress must play a key role in refocusing Customs to ensure revenue is collected (and given to the U.S. Treasury) and illegal fraud does not cost us additional manufacturing jobs. Customs commercial enforcement efforts have been underfunded and poorly resourced and we need Congress to send a strong message to Customs that commercial enforcement is a

¹ CVD and dumping experts testified that \$900 million in CVD and dumping duties remain uncollected and that transshipment schemes are now rife for goods under CVD and dumping orders. In textiles, 40 percent of overseas FTA factories are found to be non-compliant when inspected by U.S. Customs and Chinese undervaluation of apparel products shipped directly to the United States and paying full duty has been shown to be widespread. In the textile arena alone, up to one billion dollars in revenue is lost because of customs fraud.

priority. This can be accomplished through a thorough Customs reauthorization bill that will provide Customs the resources and direction it needs to cut down on widespread fraud. As numerous GAO studies have pointed out, Customs efforts in the fraud area more than pays for itself in terms of increased revenue to the U.S. Treasury.

Increase in Textile Fraud Parallels Reduction in Customs Resources

Since the passage of the Central American-Dominican Republic Free Trade Agreement (CAFTA) in 2005, our industry has grown increasingly concerned with Custom's ability to effectively enforce our trade agreements. Following the passage of CAFTA-DR, agreed to fulfill a legislative mandate to hire (73) new textile and apparel import specialists that had dated back to the passage of the Uruguay Round. These hires were intended to boost Customs resources in preparation for the implementation of CAFTA; however, a majority of the staff hired was posted in ports that have minimal textile and apparel trade. In addition, the Textile Enforcement Office was also downgraded in terms of resources and priority and moved into a 'policy focused' department. This prompted a wave of senior staff with decades of experience to leave the office; many of these positions have never been filled. Currently, the office lacks a Director and is 40 percent understaffed. In almost every reporting area, Customs interdiction efforts have show a significant fall-off during the same period of time.

The downturn of this division has occurred while the industry has experienced a sharp increase of textile fraud coming through the CAFTA/NAFTA region. The government's own textile production verification teams are finding a 40 percent average non-compliance rate at FTA factories they visit. U.S. textile "exports" of certain products to NAFTA/CAFTA countries sometimes run at twice the level of actual U.S. production. Mexican trade statistics show that as much as one-third of denim jeans from Mexico are made from Chinese fabric – yet almost all denim jeans from Mexico come in duty free with a certification saying the fabric is from the region. Last year, Customs completed Operation Mirage which confirmed that Chinese exporters were also using multiple schemes to evade duties for a significant amount of apparel shipped to the United States.

Yarns America Example

Perhaps the most stunning example is the case involving Yarns America. Two years ago, Yarns America was highlighted in a subcommittee hearing in the House as a blatant example of illegal activity. Their website claimed they had yarn spinning plants throughout the Southeast but in reality they occupied a one room office in Brooklyn, New York.

In 2009, Harding Stowe, the CEO of R.L. STOWE MILLS, a 103 year old yarn spinner in North Carolina, testified before Congress on the problem with Yarns America. When he spoke, Mr. Stowe had just finished closing his last yarn plant in the United States and laying off the last of his 300 workers. He had watched his yarn export business be captured by companies that falsely claimed to be supplying U.S. made yarn for apparel made in the CAFTA region. He had identified the companies, identified the Pakistani yarn, sent information repeatedly to Customs and then was forced to stand back and watch his three-generation family business go under.

Unfortunately, due to the inadequacy of Customs trade laws, reduced resources and lack of interest on the part of the Justice Department, Yarns America is still bringing in Pakistani yarn and claiming that it was made in the United States. Earlier this year, an NCTO member company offered to set up a sting operation to bring Yarns America to justice; the Justice Department however turned that company down.

\$1 Billion Revenue Impact on the Treasury

In addition to job losses, there is also a significant loss of revenue to the federal government due to textile and apparel fraud. The U.S. Treasury loses twice, first because duties are not being paid and second penalties for customs violations are going uncollected by Customs. A 2008 GAO report² found that Customs failed to collect half a billion dollars in AD/CVD duties and more recent estimates place that number close to one billion dollars. However, recent reports of extreme undervaluation of textile and apparel products coming from China could dwarf those figures. Through Customs own investigations, most notably “Operation Mirage” in 2010, it has become increasingly clear that a large number of importers are deliberately undervaluing textile and apparel imports from China. We understand that there is a single case involving an importer of women’s apparel in New York where duty evasion could amount to \$50 million or more. Reports of undervalued Chinese goods entering into the Port of Los Angeles through phony front companies that are paid pennies a garment have become all too routine.

Another serious concern that underpins all the illegal trade activity is the possible threat to national security. If it is difficult or impossible to identify the true importer of the goods, how confident can we be in the security of the system and supply chain as a whole. Customs fraud has become a type of shell game where phony companies, phony agents and phony claims all work in an orchestrated manner to cheat the system. The inability of CBP to crack down on these fraud networks reveals a serious hole in our national security network. If a phony resident agent can import undervalued Chinese apparel at little or no risk, that same phony agent could as easily import weapons or other dangerous materials that compromise the health and safety of our citizens.

Lack of Customs Response Prompts Legislation

These developments have prompted textile supporters in Congress to take the unusual step of drafting corrective legislation, which would refocus textile enforcement resources at Customs and help to bring a halt to the widening problem of textile fraud. This legislation, the Textile Enforcement and Security Act (TESA), was introduced in the House and Senate last year and will be introduced again later this year.

With its impact on U.S. jobs, losses to the U.S. Treasury, and national security concerns, the area of commercial enforcement clearly needs new attention and new focus. CBP personnel are dedicated and hardworking and the top ranks of Customs are tasked with multiple and sometime conflicting priorities. As Customs responsibilities have grown to encompass new security issues and an increasing number of trade agreements, the agency’s budget and resources have remained static. In certain areas, such as commercial operations, resources have declined sharply relative to the rapid increase in imports coming onto U.S. shores. Customs has been forced to use a shrinking resource pie to deal with ever increasing problems. This phenomenon is nowhere better reflected than in the textile trade enforcement area.

Changing Face of Textile Trade

Over the past twenty years, the U.S. textile and apparel industry has come to increasingly rely on exports to our trade preference areas. This new pattern of trade – the sending of yarn and fabric components to the

² U.S. GAO Report 08-391, “Antidumping and Countervailing Duties; Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection” March 2008.

CAFTA/NAFTA/Andean region for return as finished garments to the United States – has created the need for more sophisticated enforcement regimes. These regimes must now seek to ensure that not only the final product, the garment, is made in a trade preference country, but that yarn and fabric components are also produced in the beneficiary countries.

These new requirements – which are so important to the livelihoods of millions of workers both inside the United States and in the trade preference regions themselves – have posed new and unique challenges for Customs. In the past five years, the textile industry – as well as Customs – has discovered that many of the enforcement mechanisms that were originally devised have failed to meet the high standards to which they aspired.

As a result, today, our members report seeing much more illegal activity than they did five or ten years ago. There is a general feeling that fraudulent importers and producers have identified the loopholes in the system and how to utilize them for their benefit. At the same time, it also seems clear that Customs ability to pursue commercial textile fraud has been hampered by declining budgets, other priorities and inadequate tools. As a result, our industry has conducted its own internal investigations into why fraud seems to be increasing and we are now at a point where we believe that there are concrete steps that can be taken by the Congress to help Customs better target its enforcement efforts in the commercial trade arena.

Solutions

Several areas that we focus on in the legislation are the direct result of projects and strategic operations that Customs itself has put into place over the last several years as it has attempted to get a better grip on textile customs enforcement issues. Other issues are the result of broader concerns that the textile industry shares with other industry groups. Still other measures are the result of concerns regarding paperwork burdens and other measures that may unfairly encumber trade. All in all, we have tried to address existing concerns in a manner that would provide Customs with useful and supportive initiatives to better combat commercial fraud and increase trade facilitation. We look forward to reviewing our proposals with the Committee and Customs.

Specifically, as a result of our investigation, we came to the following key findings:

1. Customs verification systems regarding free trade and preference claims are burdensome for importers and yet often provide Customs with little actionable information.
2. Customs can do a better job of matching import specialists assignments to high textile trade ports.
3. Importers that do not reside in the United States and are therefore outside this country's legal authority have become an increasing source of fraudulent activity.
4. Customs needs additional resources and focus to combat undervaluation of goods, particularly from China.
5. Customs does not have sufficient resources to effectively partner with foreign customs services, particularly free trade areas.
6. The Justice Department discourages commercial fraud cases, and this discourages high publicity prosecutions that could send a strong message to bad actors.

Review of Key Findings

1. Customs verification systems regarding free trade and preference claims are burdensome for importers and yet often provide Customs with little actionable information.

One of the major reasons for the increase of fraudulent activity in the free trade and preference areas is that the basic system for detecting fraud has broken down over the weight of the illegal activity being perpetrated. The basic textile customs enforcement system was devised during the NAFTA negotiations and it has proven increasingly unable to cope with the current level of fraud occurring. During NAFTA, the prevalent concern regarding textile customs enforcement was the evasion of quotas in place on Asian producers; fraud in the NAFTA region was relatively small. Today, quotas are no longer in place and the scope of fraudulent activity has shifted to the trade preference areas. As trade preference and free trade areas have expanded, so has the realization that the rewards for bringing in goods illegally labeled as made in an FTA country are enormous.

The original NAFTA model that was predicated on relatively low levels of fraud could sustain a resource intensive response that the NAFTA customs enforcement model required. That model no longer works well in today's global environment. For example, under the current NAFTA model, Customs requires that importers of record verify that they meet the rules of origin for textile and apparel products on a shipment by shipment basis. They do this by claiming a duty preference and they are required to have paper documentation to back their claim up. However, most fraud – and almost all fraud reporting – comes at a stage in the import process that is several steps removed from importation. Typically, fraud occurs when Asian yarn or fabrics are substituted for U.S. yarns or fabrics. This takes place either when the goods are knit or woven or when they are sewn together. Thus when fraud takes place, the importer of record often has no idea that the fraud has occurred – all he or she has required of the apparel manufacturer is that they agree to provide CAFTA or NAFTA qualifying goods.

Unfortunately, a system to track whether the apparel or the fabric manufacturer was actually in compliance with the conditions and requirements of the FTA was not seen as necessary when the current enforcement model was developed in the 1990's. And because there are no systems currently in place to track the supply chain compliance, Customs investigations of fraud are enormously time consuming and resource intensive. For instance, when a U.S. yarn producer discovers that they have lost orders to a phony company, they typically contact Customs with the information. They can usually supply the name of the fabric producer and the name of phony yarn company – typically a knitter in Central America – that has been sold the phony goods (usually at a very cheap price). Customs, however, needs to know the name of the importer of record in order to proceed with a fraud penalty. Under the FTA rules, Customs can only penalize the importer of record – no one else in the supply chain can be penalized or held accountable. However, in 99 percent of all fraud cases, the U.S. textile mill has no idea who is listed as the importer of record at the port of entry.

In order to find the importer of record, Customs must begin a laborious and often futile effort which requires that it contact the knitting mill where the phony yarns were sent. Because the knitting mill is typically outside the country, Customs sends a production verification team to the knitting mill and examines its records. The fabric manufacturers' records show where the yarns came from and where the knit fabric (which may contain the illegal yarns) are sent. Customs must then visit the apparel manufacturer who is also most likely to be outside the country. It must send another production verification to that manufacturer to determine which garments were made of the fabrics sent from the knitting mill. Only after Customs finally determines which garments contain the illegal fabrics then Customs can begin to assign rate advances to the importer of record who, knowingly or not, improperly claimed a trade agreement preference rate.

The system has also become further compromised by the use of "blanket affidavits." These affidavits allow the importer of record to get an affidavit from a yarn or knitting mill that certifies that all products sent to the

importer are FTA qualifying. Importers typically insist on these affidavits because sending paperwork along the production chain on a shipment by shipment basis is cumbersome. However, when Customs investigates a fraud claim through the importer of record, an importer of record typically responds with blanket affidavits from U.S. mills certifying that the products sent to the apparel manufacturer are FTA qualifying.

Customs is hamstrung because it can only penalize importers on a shipment by shipment basis but blanket affidavits are typically used to cover dozens or even hundreds of shipments. There is simply no way that Customs can verify whether the yarns or fabrics that are covered by a blanket affidavit are actually those used in a particular shipment. To make matters worse, blanket affidavits are now being used as “cover” to shelter illegal activity. Today, a knitter in Central America may buy a small amount of U.S. made yarn and repeatedly use the same blanket affidavit to “cover” his or her purchases of Pakistani or Chinese yarns and fabrics.

In the last five years, it has become clear to NCTO and its members that major changes are needed to the free trade area enforcement model if fraud is to be brought under control. Our experience has shown that the current model does not achieve the objectives of facilitating trade while also achieving an effective enforcement mechanism.

One possible change is an electronic tracking system that would allow Customs to get aggregate data by yarn and fabric mills to show how much product is actually being produced for each importer of record. This system would allow Customs to match actual U.S. textile exports to claims of duty preferences for imported goods. The system would be relatively easy to construct and would involve entering in the entry document a two digit code that would identify a particular yarn or fabric plant where the components originated. While this type of system would require importers to more closely track components as they move through the production chain, it would eliminate the need for paper records and would also reduce the number of verifications that Customs now must conduct.

The later point is an important one: to find fraud today, Customs must often cast a wide net, reeling in information from importers from dozens or hundreds of shipments to catch a single fraudulent entry. This is disruptive, expensive and time consuming for importers. And many times large and compliant producers are targeted repeatedly for investigations. With an electronic based tracking system, this type of intrusive investigation would be sharply curtailed.

Another possible change is the creation of an account based system that could verify that certain verification procedures were used at the yarn, fabric and apparel manufacturing stage to ensure that only legal goods were getting duty free entry. Today, Customs has no means to compel producers at any stage in the process to keep good records, to segregate compliant versus non-compliant goods and to conduct proper inventory control. As a result, more often than not, the only record keeping is a blanket affidavit. A comprehensive account-based system that would reward good behavior and good systems and allow Customs to better target bad players that could help reduce the likelihood of fraud. The current Automated Commercial Environment System (ACES) program being implemented, which is both electronic and account based, could serve as a useful tool in this effort if the data could be used for export and import commercial verification and if tracking of textile component parts for claims of duty free preferences in free trade areas were added.

2. Customs can do a better job of matching import specialists assignments to high textile trade ports.

In June 2009, the Small Business Committee's Subcommittee on Rural Development, Entrepreneurship and Trade held a hearing on textile import enforcement which highlighted many of the concerns NCTO is raising today. As a result of last year's hearing on textile customs enforcement by the Small Business Committee, NCTO discovered that Customs allocation of import specialists trained in textile and apparel verifications no

longer matched the high risk profile of textile trade today. Import specialists are the front line troops in the effort to combat commercial textile fraud and data clearly show that most commercial fraud is being found in free trade areas.

However, import specialist assignments do not reflect that shift in fraud. Today, import specialists that were trained specifically to do textile and apparel verifications are often assigned to ports that receive very little preference area textile trade. And the largest ports that do textile and apparel trade verifications now turn out to have relatively few trained specialists assigned. For instance, data show that Customs has assigned only 6 percent of all trained import specialists to the ports that handle 44 percent of all textile and apparel trade preference claims.

Import Specialists Trained to Do Textile and Apparel Preference Verifications Vs. Actual Port Textile and Apparel Claims				
Port	Textile and Apparel Preference Trade (TAPT)	Percent of Total TAPT	Textile and Apparel Trained Specialists	Percent of Total Trained Textile and Apparel Import Specialists
Miami – Port Everglades	\$4.0 billion	23%	8	2%
Laredo, TX	\$1.8 billion	10%	7	2%
Gulf Port/El Paso	\$1.9 billion	11%	5	2%
TOP TAPT PORTS	\$7.7 billion	44%	20	6%

Source: US Customs Service. Data is for the top 25 ports processing textile and apparel preference claims. There are 329 import specialists trained to do textile and apparel verification claims.

Looking at specific ports, we discovered that there were only eight textile and apparel specialists dedicated to the top two –Miami and Fort Everglades- textile and apparel ports (by value) to handle import verifications. These two ports alone import more than \$4 billion worth of textile and apparel trade preference claims annually. And yet, the Champlain, NY port which handles only \$501 million in preference claims has 11 textile and apparel import specialists. These types of disparities are troublesome and we believe the Customs needs to move more quickly to redirect its resources towards high risk areas of textile enforcement. (It is important to note that these specialists, while trained in textile and apparels, also handle other import verifications.)

The problem with staffing reaches higher up in the organization as well. Since the Textiles Office was transferred into the Office of Trade, staffing has fallen dramatically and many senior staff with decades of experience have left the office either through retirement, transferring back to Operations or have transitioned into the private sector. As a result, the office is severely under staffed and the impact is having a direct impact

on its enforcement activities. Commercial fraud figures show that Customs is interdicting less illegal textile and apparel goods than before and penalties have fallen by 50 percent since the office was moved, despite the increase of fraudulent activity. Customs needs additional resources so that it can return the textile enforcement office to optimal staff levels.

3. Importers that do not reside in the United States and are therefore outside this country's legal authority have become an increasing source of fraudulent activity.

Non-residents are required to designate a resident agent in the state for which the port of entry is located. However, the resident agent is not held accountable should the imports be undervalued, or if the nonresident importer is unable to be located to collect duties or penalties. We are concerned that issues regarding this program which are already being raised in conjunction with food safety, toys, and products under dumping and countervailing duty orders are now spreading to the textile and apparel area. It appears that fraudulent actors are increasingly aware of how to game the system. This is done by setting up a resident agent as the "fall guy" for the non-resident importer who remains safely offshore and out of Customs's reach. However there is no real "fall" in terms of the money lost to the U.S. Treasury because the resident agent is not held accountable for penalties. Thus, even when fraud is discovered, there is no way for Customs to successfully punish the offender. This is a complex issue which we know that Customs is grappling with and we urge the Committee to work with Customs to find answers to address this issue.

4. Customs needs additional resources and focus to combat undervaluation of goods, particularly from China.

With the removal of quotas and safeguards, as well as the downturn in the economy, we have received numerous reports of undervaluation schemes. These schemes are an effort to pay minimal duties on high tariff value products. While the majority of these occurrences have been focused on avoiding countervailing duty and anti-dumping orders, such as with honey, Customs has been investigating a significant problem with undervalued textile and apparel products coming from China. At present, Customs lacks the dedicated resources to go after this illegal trade in a comprehensive manner. The amount of duty evasion appears to be significant – a single case may total over \$50 million in lost duties – and this means that losses to the U.S. Treasury are steep and could total hundreds of millions of dollars. While it is next to impossible to physically examine every shipment that enters U.S. ports, systems could be set up to target goods that come in at abnormally low prices. Garments that are imported for less than the cost of the raw materials could be flagged for increased scrutiny. The textile industry would be happy to assist in such a project.

5. Customs does not have sufficient resources to effectively partner with foreign customs services, particularly free trade areas.

Customs could do a better job of investigating fraud claims if they were given the resources to partner with their fellow customs services. Improved coordination and sharing of data would shorten the length and scope of investigations, increase Customs ability to track shipments and locate importers of record and would send an important message to fraudulent producers that multiple sets of eyes are watching. While Customs has attempted to do training with FTA partners regarding custom textile enforcement, budget constraints have hampered their ability to do this in a comprehensive and effective manner.

A recent fraud issue regarding denim trousers from Mexico provides a good example. The Mexican textile industry has become increasingly concerned about large imports of Chinese denim going into Mexican maquiladoras. The maquiladoras are established solely for export of final products to the United States but U.S.

import statistics show that almost all goods coming from the maquiladoras are declared to be made of U.S. or Mexican denim fabric. This illegal trade has grown to be enormous with millions of pairs of denim trousers claiming NAFTA origin but which are actually made of Chinese denim fabric.

On top of this problem, conflicting information from U.S. export data and Mexican import data shows that importers are bringing in Chinese denim "in bond" from the port of Los Angeles/Long Beach and then declaring it as U.S. fabric when it is exported across the border. Because there is no shipment to shipment match or sharing of information between U.S. Customs and Mexican Customs on "in bond" goods, it is difficult for either branch to determine when and where fraud is occurring. Developing communication lines between our Customs official and our trading partners will help both sides to identify fraudulent activity and the fraudulent players.

6. The Justice Department discourages commercial fraud cases, and this discourages high publicity prosecutions that could send a strong message to bad actors

Currently, Customs the CBP sends cases to Immigration and Customs Enforcement (ICE) which are then referred to Department of Justice (DOJ). However, very few cases are ever prosecuted. ICE appears to lack the technical capability to thoroughly investigate these textile and apparel matters and the DOJ's clear lack of interest in prosecuting such cases further discourages investigation of high level cases.

Conclusion

It is vital to our industry, our workers, and the U.S. government that U.S. Customs and Border protection strengthen its commercial enforcement operations particularly with regard to textiles and apparel in order to increase revenue collection and more effectively manage our trade obligations in the Western Hemisphere and beyond.

Effective trade enforcement and facilitation is key to our economic security and to the livelihood of the U.S. textile sector and our workers. As you develop the Customs Reauthorization bill, we encourage you to look at the role of U.S. Customs and Border Protection in enforcing our trade obligations and its current activity in addressing the growing level of fraud occurring at our border.

I would welcome the opportunity to meet with you and your staff to identify areas in which we can be helpful.

Thank you.



**STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION**

ON

**ENFORCING AMERICA'S TRADE LAWS IN THE FACE
OF CUSTOMS FRAUD AND DUTY EVASION**

BEFORE THE

**SUBCOMMITTEE ON INTERNATIONAL TRADE,
CUSTOMS, AND GLOBAL COMPETITION
COMMITTEE ON FINANCE
UNITED STATES SENATE**

MAY 5, 2011

Chairman Wyden, Ranking Member Thune, 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 24,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 331 land, sea and air ports of entry across the United States.

Customs and Border Protection Entry Specialists, Import Specialists, Paralegal Specialists that determines fines, penalties and forfeitures, Customs Auditors and Attorneys and other trade compliance personnel are the frontline of defense against illegal imports and contraband. These employees enforce over 400 U.S. trade and tariff laws and regulations in order to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties, as well as stemming the flow of illegal imports, such as pirated intellectual property and counterfeit goods, and contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. CBP is also a revenue collection agency—collecting \$32 billion in duties and fees on imports valued at more than \$2 trillion in 2007.

Along with facilitating legitimate trade and enforcing trade and security laws, **CBP trade personnel are responsible for stopping illegal transshipments, goods with falsified country of origin, goods that are misclassified and for collecting antidumping and countervailing duties. According to a GAO report on Customs Revenue Functions (GAO-07-529), CBP collected nearly \$30 billion customs duties in FY 2006, but did not collect approximately \$150 million in antidumping duties alone in 2006. In addition, it is estimated that \$500 million in antidumping duties were left uncollected between 2001 and 2006 (See GAO-07-529, page 23 and pages 29-30.)**

Trade Enforcement and Compliance Staffing

When CBP was created, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade. CBP is responsible for collecting import duties and ensuring importers fully comply with applicable laws, regulations, quotas, Free Trade Agreement (FTA) requirements, and intellectual property provisions.

Customs revenues are the second largest source of federal revenues collected by the U.S. Government after tax revenues. This revenue funds other federal priority programs. NTEU is deeply concerned with the lack of resources, both in dollars and manpower, devoted to CBP's trade functions. Lack of sufficient focus and resources costs the U.S. Treasury in terms of customs duties and revenue loss and costs American companies in terms of lost business to unlawful imports.

Because of continuing staffing shortages, inequitable compensation, and lack of mission focus, experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving or have left the agency. Twenty-five percent of CBP Import Specialists will retire or be eligible to retire within the next few years.

When Congress created the Department of Homeland Security, the House Ways and Means and Senate Finance Committees included Section 412(b) in the Homeland Security Act (HSA) of 2002 (P.L. 107-296). This section mandates that “the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions . . . performed by the United States Customs Service . . . on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.”

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (P.L. 109-347.) Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied.

CBP satisfied this statutory requirement by freezing the number of many maintenance of revenue function positions at the level in effect on the date of creation of the agency in March 2003. As you know, CBP was created by the merger of the former U.S. Customs Service, the Immigration and Naturalization Service, and the Animal, Plant, Health Inspection Service. In March 2003, the number of commercial operations employees at the former U.S. Customs Service was significantly less than prior to 9/11 and significantly less than the need as stated in the U.S. Customs Service Optimal Staffing Levels Fiscal Years 2000-2002 (February 25, 2000), known as the Resource Allocation Model (RAM).

For example, according to the U.S. Customs RAM, in FY 1998, the optimal staffing level for Import Specialists at the U.S. Customs Service was 1,249 and, based on workload in FY 2002, the optimal staffing level for Import Specialists was 1,489 (pages 2, A-1 and M-1 through M-12.)

In actuality, in March of 2003 when CBP stood up, there were only 984 Import Specialists on-board. That is 265 Import Specialist positions less than the 1998 base total, and 505 less than the FY 2002 Import Specialists optimal staffing level. A significant reduction in the number of revenue maintenance function positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP stood up. Section 412(b) of the HSA reflected Congress’ concern regarding this diminishment in the number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fear that it would continue and be exacerbated by its merger into CBP.

Even though CBP complied with the letter of Section 401 (b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the “March FY 2003 Staff On-Board” numbers of revenue maintenance function positions (see Appendix I), including such vital trade facilitation and enforcement positions as Entry and Import Specialists, as a ceiling rather than a floor.

CBP's Resource Allocation/Optimization Model

CBP's adherence to the March 2003 Import Specialist employment number as a ceiling has become evident in the most recent iteration of the SAFE Port Act mandated Resource Allocation Model. Section 403 of the SAFE Port Act required CBP to complete a Resource Allocation Model (RAM) by June 2007, and every 2 years thereafter, to determine optimal staffing for commercial and revenue functions. It directed that the model must comply with the requirements of section 412(b) of the Homeland Security Act (HSA) of 2002 and required the CBP Commissioner, not later than September 30, 2007, to ensure that the requirements of 412(b) of the HSA were fully satisfied. The CBP positions covered by Section 412(b) include Entry Specialists, Import Specialists, Drawback Specialists, National Import Specialists, Fines and Penalty Specialists, Attorneys at the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial Systems Specialists.

The rationale for this provision arose from a Government Accountability Office (GAO) report (GAO-05-663) that stated, "as of June 2003, CBP has not increased staffing levels [at the POEs]" and "CBP does not systematically assess the number of staff required to accomplish its mission at ports and airports nationwide. . . ." Further, GAO observed that "not identifying optimal staffing levels prevents CBP from performing workforce gap analyses, which could be used to justify budget and staffing requests."

The former U.S. Customs Service's last internal review of staffing for Fiscal Years 2000-2002, dated February 25, 2000, shows that the U.S. Customs Service needed over 14,776 new hires just to fulfill its basic mission (U.S. Customs RAM, page 2 and A-1)—and that was before 9/11. Since then, the Department of Homeland Security was created and the U.S. Customs Service was merged with the Immigration and Nationalization Service and parts of the Agriculture Plant Health Inspection Service to create CBP. CBP was given an expanded mission of providing for both the first line of defense against domestic terrorism and making sure trade laws are enforced and trade revenue collected.

The first Section 403 RAM, dated July 6, 2007, stated that "CBP has over 8,200 employees that are involved in commercial trade operations. The Model suggests that to carry out these commercial operations and to adequately staff the needs for priority trade functions, the optimal level of staff in FY 2008 would be over 10,000 employees" (page 12 of CBP Report to Congress on Trade Resource Allocation Model.) According to the 2007 RAM, 1,100 Import Specialists would be needed for optimal performance in FY 2010, an increase of 116 over the HSA Floor (see page 16).

In 2009, CBP renamed the Section 403 Resource Allocation Model or RAM (the SAFE Port Act mandated Report to Congress). It is now called the Resource Optimization Model (ROM). The FY 2009 ROM reduces the FY 2010 optimal staffing levels for some revenue maintenance function positions, specifically the Entry and Import Specialist positions (see Appendix II). For example, the FY 2009 ROM puts the number of Import Specialist positions needed in FY 2010 at the HSA floor number of 984, rather than 1,100 as stated in the FY 2007 RAM.

Import Specialist Allocation Model (ISAM)

In 2009, CBP Office of Field Operations updated its Import Specialist Allocation Model (ISAM), “a decision support tool in the allocation of resources.” The number of Import Specialists allocated for staffing the ports of entry, however, was determined to be 984 prior to the compiling of the ISAM. The allocation model was done with the staffing number outcome already pre-determined.

In the ISAM, CBP states that the Office of Field Operations “manages a set allocation of 984 for Import Specialists, which is the minimum staffing requirement set forth by the Homeland Security Act of 2002.” Since the number of Import Specialist positions is frozen at 984 nationwide, CBP’s ISAM proposed a net reduction of 52 Import Specialist positions (from 179 to 127) at New York City area ports, shifting those positions to other ports (see Appendix III) in order to handle current workload. CBP plans to eliminate positions at the ports with the highest number of Import Specialists—primarily the New York City region—to fill needs in other ports. NTEU is concerned that the ISAM is a zero-sum model that does not address actual staffing needs.

Ports specialize in different areas of trade compliance and have different needs depending on the operation—air, sea, or land ports. Larger ports handle all areas of trade compliance whereas smaller ports might see a large amount of one type of commodity or only deal with a small range of trade compliance issues.

Because of these differences between the ports of entry, rather than using a one-size fits all metric to determine allocation of Import Specialists, the data elements and factors that CBP weighs in determining allocation of Import Specialists should be different for each port depending on what type of operation it is and what the prevalent trade issues are at that port. Then, staffing should be decided using a work to staff ratio based on a formula and weighting of the elements for that port specifically.

“Informed compliance” is not given any weight at all when determining Import Specialist staffing needs at individual ports. Authorized by the Customs Modernization Act (Mod Act), “informed compliance” plays a major role in CBP’s trade enforcement and compliance operations. Two new concepts that emerged from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with trade laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. Both the trade and CBP share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable CBP to properly assess duties, collect accurate

statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

It is the responsibility of the importers of record to make sure that what they submit to CBP is correct and it is the job of the Import Specialist, through informed compliance, to verify that what is being submitted is correct. Therefore, when considering Import Specialist staffing allocations at each port, the time the Import Specialist spends meeting with and educating the importing community should be part of the equation. NTEU believes that if done in this manner, CBP's Import Specialist staffing allocations would require increased Import Specialist staffing levels nationally.

Tariff Sharing

Last year, in response to an Import Specialists staffing shortage and pursuant to the 2009 ISAM, CBP is implementing at certain ports a tariff sharing scheme. For example, because CBP has frozen at 984 nationwide the total number of Import Specialist positions, CBP is in the process of reducing by 52 positions (from 179 to 127) the number of Import Specialists at the New York City area ports (see Appendix III) and shifting those positions to other ports. To address the loss of 52 Import Specialist positions at New York City area ports of entry (New York-Newark gains 3 Import Specialist positions, but JFK loses 55 Import Specialist positions), CBP has implemented tariff sharing between the port of New York/Newark and JFK airport. Until last year, each port (Newark and JFK) processed all types of entries and all types of commodities via the Harmonized Tariff Schedule (HTS). In other words, each port had full tariff coverage.

Because of this reduction in trade personnel, each port has now been assigned only parts of the HTS, not the entire HTS, and each port only processes only half the commodities entering its port. Tariff sharing presents a number of operational problems. Because the HTS will be split, each port will have half the number of commodities teams (staffed by Import Specialists) than they currently have. Certain kinds of merchandise will continue to be unloaded at the port of Newark, but the only commodity team that is trained to process it will be at JFK. And other merchandise will continue to be unloaded at JFK, but the only commodity team trained to process it will be in Newark. CBP has directed Import Specialists to, in these cases where there is no longer the appropriate commodity team present at the port to do a physical examination, take digital photos of the merchandise and email the photos to the other port. A digital photo cannot determine lead levels in toys or thread count in textiles. This is a short-sighted solution to an Import Specialist staffing shortage that will affect taxpayers, trade compliant importers, and the federal treasury.

Rather than hire additional Import Specialists at ports of entry where they are needed, CBP instead is shortchanging the New York City trade community. It is clear that the FY 2009 ROM, that states that only 984 Import Specialists are needed nationwide, does not

adequately reflect the optimal staffing levels for Import Specialists as evidenced by the need to implement a tariff sharing scheme at New York City region ports of entry.

Tariff Sharing and Anti-dumping Orders

Tariff sharing significantly affects Import Specialists' timely disposition of anti-dumping orders. The problems that arise from tariff sharing centers around the movement of entries between JFK and Newark. When liquidation orders are published in the Federal Register, CBP has six months to liquidate and process those entries. There is almost always a certain amount of lag time between when the liquidation orders are published in the Federal Register and when the Import Specialists on the commodity team associated with that merchandise are actually made aware of the liquidation orders. In actuality, the Import Specialist rarely has the full six month period to liquidate and process these order.

Prior to the Federal Register posting, the entries are kept in files with the commodity team that handles the merchandise. For example, under tariff sharing, the entry paperwork of commodities that are received at JFK, but are inspected by a commodity team at Newark, is supposed to be transferred to Newark and not filed at JFK. In many cases, however, when the liquidation order is issued, the commodity team in Newark goes through their files of anti-dumping entries. Frequently, there are JFK entries missing that were lost in transportation. At that point, Newark Import Specialists contact JFK to see if they can find the lost files. If the lost files can't be found, the Newark Import Specialist makes an inquiry to the Records Department to try and to retrieve these entries, which takes time.

Pressed for time, Import Specialists then call the broker to ask the broker to reconstruct the entries and send these reconstructed entries to the commodity team. The commodity team then reviews these reconstructed entries to make sure that the entry type codes are the correct type for anti-dumping entries and that the entries were put on hold and not previously liquidated. If this happens, CBP could lose its ability to liquidate at the anti-dumping rates that are applied via the liquidation order and the extra duties cannot be collected. Recently in Newark, CBP lost the extra duty on seventeen entries due to this very scenario. These liquidation orders encompass hundreds of entries. Conversely, JFK has the same problem on their end when they have anti-dumping entries to deal with. This same problem with disposition of anti-dumping orders is occurring at the ports of Detroit and Port Huron where CBP has also implemented tariff sharing.

Under tariff sharing, revenue from anti-dumping orders is being lost. Again, it is clear that the FY 2009 ROM, that states that only 984 Import Specialists are needed nationwide, does not adequately reflect the optimal staffing levels for Import Specialists that process anti-dumping orders.

Finally, NTEU has just learned that because the Import Specialists at the Ports of NY/NJ are overwhelmed with work due to the loss of the 52 trade positions (that has resulted CBP implementing tariff sharing at these ports), CBP has begun assigning audits to

Import Specialists at other ports, even though the majority of the merchandise and entries associated with the importer being audited come into the Ports of NY/NJ.

FY 2012 CBP Budget Request

Several years ago, pursuant to the provisions of the SAFE Port Act, there was a small increase in the number of CBP trade enforcement and compliance personnel. There was no increase in funding for CBP trade operations staffing in the FY 2010 DHS appropriations bill and again, the FY 2011 continuing resolution has no increase in full-time equivalents (FTEs) for CBP trade operations personnel.

In effect, there has been a CBP trade staffing freeze at March 2003 levels and, as a result, CBP's revenue function has suffered. The FY 2012 budget requests funding for CBP's enforcement program to "prevent trade in counterfeit and pirated goods, and enforce exclusion orders on patent-infringing and other Intellectual Property Rights violative goods." This request, however, includes no increase in CBP trade operations staff at the POEs to implement this trade enforcement program. **NTEU urges the Committee to authorize funding to hire additional trade enforcement and compliance personnel, including Import Specialists, at the POEs to enhance trade revenue collection.**

CBP Career Ladder Pay Increase

NTEU commends the Department for the recent increase in journeyman pay for CBP Officers and Agriculture Specialists. Unfortunately, many deserving CBP trade and security positions were left out of this pay increase, which has significantly damaged morale. The 23,450 armed, uniformed CBP Officers and uniformed CBP Agriculture Specialist will be eligible for the increase, but the approximately 2,000 non-uniformed CBP commercial operations employees will not.

NTEU strongly supports extending this same career ladder increase, from GS-11 to GS-12, to additional CBP positions, including CBP Entry, Import and Paralegal Specialists and CBP Seized Property Specialists. The journeyman pay level for the CBP Technicians who perform important commercial trade and administrative duties should also be increased from GS-7 to GS-9. These upgrades are long overdue and would show CBP trade personnel that Congress recognizes the high level of expertise that these employees possess.

Study of Dedicated Funding

In 2007, the total value of all imports into the U.S. was more than \$2 trillion. Processing these imports meant handling 22 million entry summaries by CBP Entry Specialists, Import Specialists and support staff. In addition to its security and trade missions, CBP works with over 40 federal agencies to help enforce a wide range of laws from consumer product and food safety, to environmental protection. It is clear that additional CBP commercial operations staffing and training funds are needed. Multiple proposals to increase customs fees are currently being promoted to support a great variety of proposed

programs. Security needs, along with important national trade policy goals, require additional financial resources. NTEU encourages the Committee to examine the setting, collection and utilization of these customs and user fees. This study should determine the relationship between current fees and monies allocated for CBP services and assess the need for additional fees.

Conclusion

Customs revenues are the second largest source of federal revenues that are collected by the U.S. Government. Congress depends on this revenue source to fund priority programs. The Committee should be concerned as to how much CBP trade enforcement staffing shortages cost in terms of revenue loss to the U.S. Treasury.

And most importantly, for the purposes of this hearing, **CBP trade personnel are responsible for stopping illegal transshipments, goods with falsified country of origin, goods that are misclassified and for collecting antidumping and countervailing duties. The ongoing freeze in the number of CBP trade compliance and enforcement staff undermines this mission.**

In order to prevent customs fraud and duty evasion, NTEU urges Congress to increase the number of trade compliance and enforcement staff responsible for enforcing antidumping and countervailing duty orders issued under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) and preventing the importation of merchandise in a manner that evades that antidumping and countervailing duty orders issued under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.)—a responsibility that falls solely on the shoulders of CBP Import Specialists.

NTEU supports Section 5 of S. 3725, introduced by Subcommittee Chairman Wyden in the last Congress, that addresses the allocation of CBP trade personnel, but believes that this provision should be strengthened to authorize the hiring of additional needed CBP trade staff to enforce the over 400 U.S. trade and tariff laws and regulations for which they are responsible, to end the current practice of tariff sharing at several major ports of entry, and to ensure full tariff coverage at all major trade ports of entries listed on the ISAM (Appendix III.)

The more than 24,000 CBP employees represented by the 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. Thank you for the opportunity to submit this testimony on their behalf.

Appendix I

U.S. CUSTOMS AND BORDER PROTECTION
REVENUE FUNCTIONS IDENTIFIED IN THE HOMELAND SECURITY ACT (HSA)

Original Revenue Positions cited in Section 412

<u>Revenue Function</u>	BASELINE		Current March 2006	
	March FY 2003 Staff <u>On-Board</u>	March FY 2003 Cost	March FY 2006 Staff <u>On-Board</u>	March FY 2006 Cost
Import Specialist	984	\$72,920,503	892 Future Hires - 111	\$84,715,650
Entry Specialist	409	28,217,005	408 Future Hires - 45	36,617,416
Drawback Specialist	37	2,850,599	31 Future Hires - 6	3,248,643
National Import Specialist	97	9,478,537	87 Future Hires - 10	10,895,376
Fine Penalty & Forfeiture Specialist	203	14,580,495	218	20,194,672
Attorney's - Office of Regulations and Rulings	90	8,980,271	85 Future Hires - 5	10,699,972
Customs Auditor	364	31,726,698	351 Future Hires - 16	37,541,977
International Trade Specialist	74	7,577,977	62 Future Hires - 12	7,721,266
Financial Systems Specialists and Other Misc. Specialists	5	491,169	9	1,053,873

Other trade, cargo and commercial activities

In addition to the specific revenue positions cited above, there are many other aspects of CBP, involving government and contractor personnel, that work in the trade, cargo and commercial environment described in Section 415 of the HSA, such as:

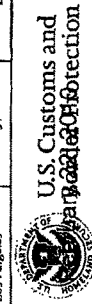
- CBP officers working in Free and Secure Trade (FAST) enrollment and processing centers to facilitate entry of commercial goods into the U.S.;
- Mail specialists processing mail to ensure proper collection of duties;
- An estimated 5,800 CBP officers screening, inspecting and processing cargo at sea, air and land ports of entry;
- IT specialists, client representatives and contractor personnel supporting ACS and ACE systems, which process the collection of customs duties, process cargo with respect to the assessment and collection of duties, enforce quotas, and collect import data;
- Laboratory scientists classifying merchandise for purposes of compliance with all applicable customs and trade provisions;
- Finance personnel and contractors supporting CBP bond and Continued Dumping Subsidy Offset Act responsibilities.

Note: Future hires represent hiring to backfill attrited positions and/or new hires.

Position Involved	Function	HSA Floor	FY08 (9.30.08)	FY08 (TRADE)	FY10	+/- FY08 Trade to FY10	Future Projected Needs range: from 1 to 2
1 Agriculture Specialist	OFO	N/A	2,276	1,366	1,550	184	1,581
2 CBP Officer (Cargo)	OFO	N/A	19,518	4,980	4,678	(202)	4,792
3 Chemist	OT	N/A	101	101	129	28	137
4 Customs Attorney	OR&R	90	90	90	5	5	103
5 Customs Auditor	OT	364	364	364	459	95	479
6 Drawback Specialist	OFO	37	40	40	42	2	43
7 Entry Specialist	OFO	409	455	455	359	(96)	359
8 Financial Systems Specialist	HQ	5	1	5	6	1	6
9 FP&F Specialist	OT	203	237	128	514	386	519
10 Import Specialist	OFO	984	996	996	984	(12)	975
11 International Trade Specialist	OT	74	132	132	198	66	203
12 National Account Manager	OT	N/A	41	41	79	38	80
13 National Import Specialist	OT	97	101	101	101	0	104
14 Seized Property Specialist	OT	N/A	135	80	99	19	99
Total		2,283	24,487	8,779	9,293	(310)	9,480
15 CBP Tech			985	493	1,097		1,111
	OFO (124)						
	OT 632						
	Oth 6						
	Tu 514						
Analytical Support Ratio (15:1)					54		56
Admin Support Ratio (15:1)					542		544
Total					10,986	(310)	11,191
							11,605

Results

Service/Area Port	Current Allocation	New Allocation	Change
Anchorage	7	7	0
Allentown	13	15	2
Baltimore	7	9	2
Blaine	14	14	0
Boston	15	18	3
Buffalo	50	40	-10
Champaign	28	39	11
Charleston	11	19	8
Charlotte	5	9	4
Chicago	50	37	-13
Cleveland	39	37	-2
Dallas	13	16	3
Denver	2	2	0
Detroit	59	58	-1
Dulles	2	1	-1
El Paso	21	23	2
Great Falls	2	3	1
Hamford	1	0	-1
Honolulu	2	2	0
Houston	15	22	7
Jacksonville	1	4	3
JFK	89	34	-55
Laredo	59	62	3
Long Beach	95	109	14
Los Angeles	37	20	-17



U.S. Customs and
Border Protection

Appendix III

Service/Area Port	Current Allocation	New Allocation	Change
Memphis	18	23	5
Miami	35	56	21
Milwaukee	1	-1	0
Minneapolis	2	7	5
Mobile	2	*** 5	3
New Orleans	7	*** 12	5
New York-Newark	90	93	3
Nogales	9	12	3
Norfolk	8	18	10
Ouy Mesa	20	19	-1
Perthma	15	18	3
Philadelphia	16	14	-2
Phoenix	2	-1	-1
Port Huron	7	12	5
Portland, ME	4	4	0
Portland, OR	5	7	2
Providence	1	-1	0
San Francisco	39	27	-12
San Juan	9	4	-5
Savannah	6	19	13
Seattle	15	18	3
St. Albans	8	8	0
St. Louis	2	4	2
Tampa	4	4	0
Virgin Islands	3	** 0	-3
Total	*** 965	987	+22

ISAM Presentation - 2009

Statement of

**Seaman Paper Company of Massachusetts, Inc.
35 Wilkins Road
Gardner, MA 01440**

Presented to the

United States Senate Committee on Finance

**Subcommittee on International Trade, Customs,
and Global Competitiveness**

In Conjunction with the Hearing:

***“Enforcing America’s Trade Laws in the Face of Customs Fraud
and Duty Evasion”***

May 5, 2011

Seaman Paper Company of Massachusetts, Inc. ("Seaman Paper") respectfully submits the following written comments in conjunction with the May 6, 2011 hearing before the United States Senate Committee on Finance's Subcommittee on International Trade, Customs, and Global Competitiveness, titled "Enforcing America's Trade Laws in the Face of Customs Fraud and Duty Evasion."

Seaman Paper is a family-owned manufacturer of lightweight decorative and gift wrapping tissue paper and crepe paper products, based in central Massachusetts. We employ nearly 300 employees in multiple locations across Massachusetts as well as operations overseas. We are the largest producer of our type in the United States, and our products are sold across the world.

In 2004, Seaman Paper and other U.S. producers were forced to file two antidumping cases at the same time – one against Chinese imports of decorative tissue paper products, and the second against Chinese imports of crepe paper and streamers. We filed these cases after Chinese imports aggressively entered the U.S. market, selling their products at extremely low prices. Over a period of just three years, by using unfair trading practices, imported Chinese tissue paper products increased their market share from less than 10 percent in 2001 to over 30 percent in 2003, badly injuring our company, our employees, and the entire industry.

It is important to know that before we filed our cases, China was – literally – the only source of imports into the United States. Given the way these products are used, to protect items, for gift-giving and for decorating, they must be high-quality. Making high-quality, lightweight tissue and crepe paper requires equipment that is very difficult to move, with ready access to a good supply of water, and skilled papermakers.

We were successful in both cases, and in December 2004 and February 2005, antidumping orders were issued by the United States Department of Commerce. The margins of dumping illustrated the extreme and unfair pricing behavior that had been used by Chinese exporters. All Chinese tissue paper products were assigned a dumping duty rate of 112.64 percent, and all imports of Chinese crepe paper and streamers were assigned even higher duty rate of 277 percent.

Our success in these cases, which required a very great investment of time and money by Seaman Paper, should have “leveled the playing field” by eliminating unfairly priced imports of these products from China.

Instead, tissue paper products – identical to the Chinese products that were dumped, and at identical pricing – started appearing from countries that had had no known production of these products or that never exported tissue before. These products were being imported into the United States with country of origin markings such as “Made in Vietnam,” “Made in Indonesia,” and “Made in Thailand.” This made no sense to us, because of the challenges involved in producing the quality of paper that customers demand.

Seaman Paper was forced to hire investigators, who confirmed our understanding that these products were not actually being produced in these countries. Our investigators obtained significant amounts of very high-quality evidence – including samples and photographs – documenting the illegal activities they had uncovered. We met with Customs and ICE on multiple occasions, and followed up with them as we learned more. Despite our best efforts to assist Customs and ICE, we saw no apparent action taken on the evidence we presented, and never heard that anything was done.

We then pursued costly anticircumvention cases against exporters who were shipping Chinese products through Vietnam and Thailand. In 2007, Seaman Paper obtained a favorable ruling against the Vietnamese subsidiary of a large Chinese producer, who was shipping Chinese tissue paper products from Vietnam.

In 2009, Seaman Paper obtained a second favorable ruling, against a Thai exporter who was shipping Chinese tissue products from Thailand.

In 2011, Seaman Paper obtained a third favorable ruling, against Max Fortune (Vietnam) Paper Products Co., Ltd., the Vietnamese subsidiary of another large Chinese producer, who was shipping Chinese tissue products from Vietnam. It should be noted that in 2010, the Vietnamese company’s Chinese parent, a company called Max Fortune Industrial Ltd., was shown to have submitted false data and fabricated and altered documents to the Commerce Department, over a period of five years, in order to avoid duties.

Apart from our continued efforts to defend our trade orders against such illegal activities, Seaman Paper has identified other cases of

circumvention involving companies in Indonesia, India, Malaysia and Taiwan, which we have not pursued at this time.

If the integrity of antidumping cases is to be preserved to protect the domestic industries involved, there have to be stronger mechanisms in place to protect the antidumping orders from unlawful circumvention and duty evasion, and to do so quickly when evasion is suspected. U.S. companies cannot be expected to be responsible for enforcing antidumping and countervailing duty orders. Customs, ICE and Commerce already have the tools, staff, and expertise to do this. We fully support legislation that gives these agencies the tools they may need to get the job done, and that implements clear and sensible requirements to bring about a higher degree of accountability and transparency. Above all, we need our government to stand behind and enforce the trade laws, and to take prompt, decisive, and above all effective action when foreign exporters and U.S. importers try to circumvent and evade their legal obligations.

Thank you very much for the opportunity to provide these comments. We will be happy to provide any additional information that you may require, and to answer any questions that you may have.



Southern Shrimp Alliance
P.O. Box 1577 Tarpon Springs, FL 34688
955 E. MLK Dr. Suite D Tarpon Springs, FL 34689
727-934-5090 Fax 727-934-5362

STATEMENT OF
SOUTHERN SHRIMP ALLIANCE
ON
ENFORCING AMERICA'S TRADE LAWS IN THE FACE OF CUSTOMS FRAUD AND
DUTY EVASION
BEFORE THE
UNITED STATES SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND GLOBAL
COMPETITIVENESS
HEARING DATE: MAY 5, 2011
SUBMISSION DATE: MAY 19, 2011

The Southern Shrimp Alliance (SSA) is a non-profit alliance of members of the shrimp industry in eight states committed to preventing the continued deterioration of America's domestic shrimp industry and to ensuring the industry's future viability. SSA serves as the national voice for the shrimp industry in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

SSA is grateful to the Subcommittee for focusing on the problem of customs fraud and duty evasion. The testimony to the Subcommittee from domestic industry and government witnesses described pervasive illicit activities that have cost the U.S. Treasury hundreds of millions of dollars each year while at the same time weakening trade relief granted to vulnerable domestic industries. The shrimp industry's experience with customs fraud and duty evasion is similar to that of many other domestic industries.

In December of 2003, through the Ad Hoc Shrimp Trade Action Committee, SSA filed petitions for relief from dumped shrimp imports from six countries. Antidumping duty orders were issued by the U.S. Department of Commerce (Commerce) in February of 2005. Today, antidumping duties remain in place on imports of frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam. Circumvention of trade relief began shortly after the initiation of

the antidumping duty investigations and has continued to plague the industry. SSA has identified, and U.S. government agencies have confirmed, circumvention schemes involving:

(1) transshipment of subject merchandise through non-subject countries; (2) systematic mischaracterization of imported merchandise as outside the scope of the antidumping duty orders; and (3) abuse of the “new shipper” provisions of antidumping duty law. Through rigorous monitoring of the trade in shrimp imports, SSA has additionally identified other apparent circumvention schemes and is currently working with U.S. government agencies to confirm these allegations. These unlawful activities involve exporters in multiple countries subject to antidumping duties, including China, and have proliferated – rather than abated – over time.

SSA submits these comments to supplement those provided by other domestic industry witnesses at the May 5th hearing based on the organization’s experience and to address particular issues raised by testimony during that proceeding. Specifically, SSA submits these comments to make the following four points:

- **Customs fraud and duty evasion have resulted in the non-payment of hundreds of millions of antidumping duties on shrimp imports alone.** Conclusions regarding the amount of monies involved are based on public declarations of government agencies and SSA’s own analysis of trade data.
- **Publication of information regarding enforcement actions taken by government agencies regarding customs fraud and duty evasion is essential.** Although the experiences of various domestic industries with circumvention are unique, common themes run throughout circumvention schemes. Further, because of the variety and complexity of the circumvention schemes employed, identification of the schemes confronted by government agencies is necessary to develop a comprehensive solution.
- **Customs fraud and duty evasion would remain a massive and growing problem even if a prospective duty assessment was implemented.** Fraudulent declarations that merchandise is not subject to antidumping duties occur irrespective of whether the assessment system is prospective or retrospective in nature.
- **Commerce has declined to use its authority and resources to meaningfully address circumvention of antidumping duties.** The U.S. Department of Commerce (Commerce) has elected to exercise its discretion to not investigate transshipment allegations and other concerns regarding customs fraud and duty evasion in administrative reviews. Commerce has stated that using its authority and resources would create too great a burden on the agency and has successfully defended its refusal to act in federal courts.

I. CUSTOMS FRAUD AND DUTY EVASION RELATED TO SHRIMP IMPORTS HAVE RESULTED IN THE NON-PAYMENT OF HUNDREDS OF MILLIONS OF DOLLARS IN DUTIES OWED TO THE U.S. TREASURY

Documenting the amount of money involved in circumvention schemes is a difficult exercise for domestic industries. Because customs fraud and duty evasion are by their nature unlawful activities, domestic industries are often forced to construct models based on assumptions about trade behavior in order to estimate the impact of these illegal practices. For parties that insist that customs fraud and duty evasion is a minor problem – despite overwhelming evidence to the contrary – such estimates are dismissed as lacking sufficient factual verification.

For these reasons, the shrimp industry has benefitted from publication of information regarding enforcement activities conducted by U.S. Customs and Border Protection (CBP) and other government agencies. These publications confirmed SSA's concerns regarding customs fraud and duty evasion and quantified amounts involved in some of these circumvention schemes.

For example, in a declaration submitted to the U.S. Court of International Trade (CIT) on March 9, 2006, Bruce W. Ingalls, then the Chief of Debt Management in the Revenue Division of the Office of Finance of CBP, described the uncovering of a massive illegal transshipment scheme that allowed Chinese shrimp to evade antidumping duties by being falsely labeled as product of Indonesia. Declaration of Bruce W. Ingalls, National Fisheries Institute, Inc. v. United States, Court No. 05-00683 (Mar. 9, 2006). Mr. Ingalls testified:

After initiation of the antidumping case, CBP noted substantial shifts in import patterns that suggest transshipment of shrimp to circumvent high tariffs on shrimp. CBP and U.S. Immigration and Customs Enforcement representative (ICE) from the Singapore Attaché office visited shrimp producers in Indonesia (a country not subject to antidumping) that appeared to be of high-risk for transshipment.

CBP confirmed that three producers commingled Chinese shrimp and exported the merchandise claimed as Indonesian to circumvent the payment of antidumping duties. Fifty-four importers were sourcing shrimp from three Indonesian producers during the time when Chinese shrimp was commingled. . . .

Customs has demanded \$65 million in antidumping duty cash deposits from all importers involved. The country-wide rate upon Chinese shrimp is 112.81%. To date \$756,000 has been collected.

This publicly-available declaration thereby provided: (1) a fulsome description of the circumvention scheme (the export of shrimp from China to Indonesia for transshipment to the United States); and (2) a quantification of the substantial amount of duties involved (\$65 million).

CBP has also publicized enforcement actions in reports and testimony to Congress. In his testimony to the Subcommittee, for example, Assistant Commissioner Al Gina observed that:

CBP recovered \$2.5 million in unpaid AD duties through a company audit on imports of frozen warm water shrimp transshipped from China through Indonesia, where it was commingled with Indonesian shrimp.

Separately, in a 2008 report to Congress ("Report to Congress on (1) U.S. Customs and Border Protection's Plans to Increase AD/CVD Collections and (2) AD/CVD Enforcement Actions and Compliance Initiatives" at 11 (2008)), CBP highlighted another successful enforcement operation:

Based on an allegation from the domestic shrimp industry, CBP conducted a special operation centered on cargo examination and lab analysis to determine whether imports of shrimp from China were being misdescribed as 'dusted' shrimp so that the shipments would fall outside of the scope of the AD order. CBP's operation confirmed the allegation. CBP determined that fourteen importers evaded the AD order, resulting in \$5 million in lost revenue. CBP recently completed this operation and has initiated procedures to collect the lost revenue

and issue penalties. Further investigations with ICE and penalty processing are underway.

The most complete description of CBP's anticircumvention enforcement efforts with respect to shrimp imports were published as part of a 2009 report on fraud in the seafood industry by the U.S. Government Accountability Office (GAO) that focused on the U.S. Food and Drug Administration (FDA). "Seafood Fraud: FDA Program Changes and Better Collaboration among Key Federal Agencies Could Improve Detection and Prevention," U.S. Government Accountability Office, Report to Congressional Requesters, GAO-09-258, at 14-16 (February 2009). The GAO Report publicized additional details regarding various enforcement actions taken by CBP and ICE. The relevant excerpts stated that:

For example, as part of their 2005 inquiry into an allegation of illegal transshipment of Chinese shrimp through Indonesia, the [National Targeting Analysis Group (NTAG)] staff reviewed information on the shippers of Indonesian shrimp before and after the antidumping duty order for Chinese shrimp was put in place. They found a sharp decrease in shrimp imports from China after the antidumping duty order was issued in early 2005 and a concurrent increase in shrimp imports from Indonesia, among other countries. The NTAG staff enlisted the support of ICE to investigate Indonesian shrimp exporters who they suspected were illegally transshipping Chinese shrimp. They found that some Indonesian firms were importing Chinese shrimp and then shipping them to the United States labeled as Indonesian shrimp. CBP found that, in 2005, approximately \$6 million worth of Chinese shrimp had been illegally transshipped through Indonesia to avoid antidumping duties;

On the basis of industry information and CBP and ICE investigations, CBP determined that Chinese shrimp was being transshipped to the United States through Malaysia. Due to this illegal transshipment, importers of Chinese shrimp were able to circumvent not only the 2005 antidumping duty but also FDA's recent import alert. In September 2007, CBP tested shipments of suspected Chinese shrimp illegally transshipped through Malaysia for the presence of unapproved drugs and found some contaminated shrimp. On the basis of CBP's information, in March 2008, FDA issued a new import alert requiring importers of shrimp from one Malaysian manufacturer to prove the absence of unapproved drugs prior to entering future shipments of shrimp into U.S. commerce;

[A] quick-response audit concluded in 2007 found that an importer did not pay approximately \$2.2 million in antidumping duties on imported Chinese shrimp that was transshipped through Indonesia;

and

In 2007, the NTAG that works on seafood fraud issues also helped identify another scheme importers were using in their attempt to evade antidumping duties on Chinese shrimp. Under this scheme, importers provided CBP with fraudulent information on the product type to evade antidumping duties. A precursor to breaded shrimp called 'dusted shrimp' was exempted by the Department of

Commerce from the antidumping duty order on imported Chinese shrimp. On the basis of allegations from the U.S. shrimp industry, CBP initiated an intensive examination and sampling operation to determine whether importers were bringing in shipments of falsely declared dusted shrimp to avoid the antidumping duties on Chinese shrimp. Over the course of a 90-day period, CBP found that of the 81 alleged dusted shrimp entries examined and sampled, approximately 64 percent of the shipments did not meet the criteria to qualify as dusted shrimp. The potential loss of trade revenue from these fraudulent dusted shrimp shipments was approximately \$5 million. Extrapolating back to when the antidumping duty order first became effective in 2005, CBP concluded that the importers caught importing these fraudulent dusted shrimp imported approximately \$117 million worth of potentially fraudulent dusted shrimp with a possible loss of trade revenue from the uncollected antidumping duties of \$132 million.

Thus, according to the GAO Report, CBP has documented the loss of millions in antidumping duties on shrimp imports through customs fraud and duty evasion and the agency has estimated that *one circumvention scheme alone* potentially resulted in the illegal evasion of payment of \$132 million in antidumping duties to the U.S. Treasury.

Although the GAO Report observed that CBP had confirmed allegations of transshipment of Chinese shrimp through Malaysia, the report does not provide an estimate of the amounts involved. SSA believes that this circumvention scheme has resulted in the evasion of hundreds of millions of dollars in antidumping duties.

After the filing of petitions for trade relief in December 2003, imports of frozen shrimp from Malaysia into the United States exploded (as shown in the table below):

U.S. Imports of Frozen Shrimp from Malaysia (2003-2009)							
	2003	2004	2005	2006	2007	2008	2009
Volume (lbs.)	2,645,182	27,326,865	37,543,323	44,689,332	50,123,938	66,179,725	40,379,527

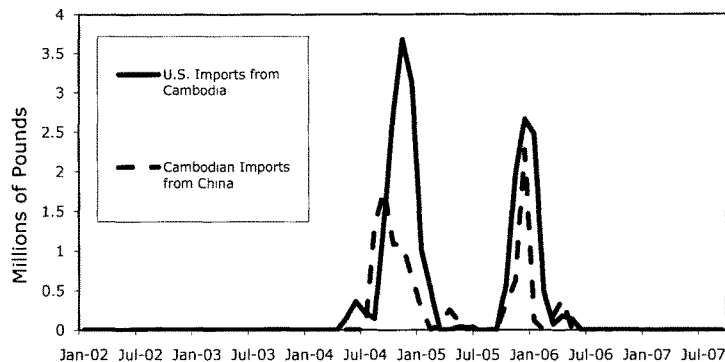
Source: U.S. International Trade Commission DataWeb

At the same time, imports of frozen shrimp from China into Malaysia also grew massively:

Malaysian Imports of Frozen Shrimp from China (2003-2009)							
	2003	2004	2005	2006	2007	2008	2009
Volume (lbs.)	10,562,347	19,614,527	24,621,225	26,188,712	36,197,699	66,482,600	40,368,845

Source: Global Trade Information Services

These trends were similar to what SSA saw with respect to shrimp imports from Cambodia – a country with no previous history of commercial shrimp exports to the United States – following the filing of petitions for trade relief at the end of 2003. As shown in the table below, the growth in imports of frozen shrimp from Cambodia into the United States closely corresponded to the increase of imports of frozen shrimp from China into Cambodia:



The volumes involved with respect to Malaysia are substantially greater than those regarding transshipment through Cambodia (and transshipment through Cambodia appears to have ended in the fall of 2006). To get some sense of the significance of transshipment through Malaysia, SSA developed estimates of the potential duties evaded by this scheme based on the following methodology:

First, SSA assumed that the highest volume level of shrimp exported from China to Malaysia prior to the antidumping duty orders represents an accurate picture of what Malaysian consumption demands are for Chinese shrimp (an assumption that may underestimate Malaysian demand but may also overestimate Malaysian demand as exports doubled between 2003 and 2004, after the petitions for antidumping relief were filed), meaning that Malaysian demand for Chinese shrimp would equal roughly 20 million pounds (19.6 million) per year.

Second, SSA reviewed Malaysian import statistics between 2005 and 2009 to estimate the differential between expected imports of Chinese shrimp and actual imports of Chinese shrimp into Malaysia (a difference of 95.8 million pounds).

Third, SSA calculated the average unit value of Chinese shrimp exports to the United States between 2005 and 2009 as \$2.58 per pound and noted that the China-wide antidumping duty assessment rate is 112.81%.

Based on these facts and assumptions, the volume of excess Chinese shrimp imports into Malaysia assumed to have been shipped to the United States would represent the evasion of roughly \$279 million in antidumping duties and over five years would represent evasion of, on average, \$56 million annually in duty payments. If *all* Chinese exports of shrimp to Malaysia are presumed to be eventually transshipped to the United States, SSA estimates that \$564 million in antidumping duties have potentially been evaded over the five-year period.

In addition to this generalized estimate, SSA has identified for CBP twelve Malaysian exporters of shrimp products that had no history of seafood exports prior to November of 2008

and appear to be transshipping Chinese shrimp. In two years, these twelve companies have shipped massive volumes of shrimp to the United States, potentially resulting in the evasion of \$131 million in antidumping duties.

In sum, with respect to shrimp imports alone, the amount of duties evaded through circumvention schemes is staggering and likely involves hundreds of millions of dollars.

II. PUBLICATION OF INFORMATION REGARDING ENFORCEMENT ACTIONS UNDERTAKEN IS ESSENTIAL

On one hand, the information published regarding CBP's and ICE's enforcement activities documents the extraordinary efforts undertaken by these agencies to address customs fraud and duty evasion with respect to shrimp imports. On the other hand, these publications also help to explain some of the frustration expressed by domestic industries in working with these agencies.

Publication of information regarding the enforcement activities quoted above was providential rather than systematic or intentional. The initial details regarding the ICE and CBP operations to address transshipment of Chinese shrimp through Indonesia were first made public in the case files of litigation not readily available to the general public. Similarly, CBP's annual reports to Congress regarding enforcement actions are not easily accessed by the general public nor do the reports provide a complete recitation of the full spectrum of enforcement activities undertaken by the agency. The GAO was able to make public additional information regarding particular enforcement activities through access to internal agency records and agency staff.

SSA strongly believes that routine and regular publication of enforcement actions by CBP and ICE would not only provide a better public understanding of the remarkable efforts of these agencies to combat customs fraud and duty evasion, but would also further document the massive scope of the problem faced by the Administration with respect to these issues. Claims that publication of such information may infringe upon trade secrecy protections or would otherwise violate the law are belied by the selective publication of information related to enforcement actions on an *ad hoc* basis. Moreover, the lack of routine and regular publication of enforcement activities, coupled with the variety and complexity of circumvention schemes employed, has retarded the ability to craft comprehensive solutions to a pervasive problem.

For example, in his testimony to the Subcommittee, Mr. Richard Adee of Adee Honey Farms discussed the substantial adverse impact of abuse of "new shipper" provisions on the domestic honey industry. Mr. Adee's testimony requested that the bonding privilege afforded to new shippers during the pendency of a Commerce review be eliminated permanently. SSA supports this request. However, when the bonding privilege was previously suspended, abuse of the new shipper provisions continued under a different guise. Specifically, exporters sought to obtain zero percent or low deposit rates through minimal commercial shipments engineered to be above or near normal value and, if successful, would ship large volumes of product to newly-created importers with no other business activities. If a subsequent administrative review on the significant commercial sales resulted in an increase of assessment rates, the importer would go bankrupt and substantial amounts of duties would be owed.

Similarly, in his testimony to the Subcommittee, Assistant Commissioner Al Gina flagged the enforcement problems created by U.S. importers that are not resident in the United States.

Since the imposition of the antidumping duty orders, the shrimp industry has witnessed a massive proliferation of fly-by-night importers, many of whom are not resident in the United States. When these importers engage in customs fraud and duty evasion, they are virtually judgment-proof. These importers appear to be created *with the intention* of defrauding CBP and may help to explain the extremely low penalty recovery numbers by CBP cited during the hearing.

SSA's experience further indicates that parties engaged in customs fraud and duty evasion with respect to shrimp products may also be involved in circumvention schemes involving other products subject to trade remedies. For example, importers that specialize in importing seafood products that are claimed to be just outside the scope of the antidumping duty orders on shrimp also tend to import seafood products just outside the scope of other antidumping duty orders on seafood products, such as whole crawfish from China or fish fillets claimed to be other than *pangasius* from Vietnam. Similarly, SSA has identified transshippers of Chinese shrimp through Malaysia that also export honey or preserved mushrooms or, most bizarrely, wooden bedroom furniture to the United States.

As the Subcommittee has heard and seen, customs fraud and duty evasion impacts a wide swath of American industries. The publication and distribution of information regarding CBP's and ICE's enforcement activities is essential to identifying common patterns of circumvention schemes and should provide invaluable assistance in the development of a comprehensive solution to a large and growing problem.

III. CUSTOMS FRAUD AND DUTY EVASION WOULD REMAIN A MASSIVE AND GROWING PROBLEM EVEN IF A PROSPECTIVE DUTY ASSESSMENT SYSTEM WAS IMPLEMENTED

The circumvention schemes described by SSA above and by both government and industry witnesses at the hearing occur without regard to whether the system for assessing antidumping and countervailing duties is retrospective or prospective.

In the written statement accompanying her testimony to the Subcommittee, Marguerite Trossevin, as the representative of the Retail Industry Leaders Association, stated:

For example, a foreign exporter with a low AD rate can reduce prices and increase exports and then disappear before the additional duties can be collected. This type of "hit and run" scheme is possible only in a retrospective system. Under a prospective system, CBP would immediately assess higher duties at the time of import if import prices declined; therefore collection rates for AD/CVD duties should be close to 100%, contributing to enhanced enforcement.

Importers are ultimately responsible for payment of antidumping duties. Thus, whether an exporter disappears after the assessment of duties is immaterial to whether duties are eventually collected. More importantly, most of the circumvention schemes identified involve the false designation of product at importation – either with respect to the description of the product, the country of origin of the product, or the producer of the product. If merchandise is falsely declared at importation to not be subject to antidumping duties, no amount of duties are collected on the entry (either as a deposit or as actual duties) regardless of whether a prospective or retrospective system is in place.

With respect to shrimp, imports fraudulently declared to be “dusted” shrimp, product of Malaysia or Indonesia or Cambodia, the product of an excluded company, or otherwise not subject to duties have meant that collection rates for AD duties on Chinese shrimp imports have not come close to approaching 100%. Indeed, the limited reporting available from CBP indicates that assessed duties on Chinese shrimp imports are more likely to be uncollected than collected.

One recent example, related to the antidumping duty order on frozen fish fillets from Vietnam, illustrates this point. The U.S. Government recently filed a lawsuit at the CIT (United States v. Country Flavor Corp., Court No. 11-00138) to recover nearly \$1 million in lost duties, penalties, and interest against Country Flavor Corp., a seafood importer located in El Monte, California, and the issuer of the Country Flavor’s surety bonds, International Fidelity Insurance Company. The lawsuit relates to 13 entries of imported fish fillets from Vietnam in May and June of 2006. As alleged in the Government’s Complaint, Country Flavor entered the imports described as “broadhead” and declared that these fillets were not subject to the antidumping duty order on *pangasius* fish fillets from Vietnam. A CBP laboratory in Long Beach, California conducted genetic tests on samples taken from each of the 13 entries and determined that the fish fillets had been falsely described. The genetic tests identified the fish species as *pangasius* and the imports were determined to be subject to antidumping duties.

According to the Complaint, CBP demanded payment of duty deposits on the entries and, later, the actual duties themselves. Country Flavor neither paid the deposits nor the duties. Instead, Country Flavor dissolved operations. As the bonds issued by the surety are limited in scope, the Government may recover, at most, thirty percent of the nearly \$1 million claimed owed.

Moreover, the shipments identified in the Government’s Complaint do not appear to fully encompass all of Country Flavor’s possible circumvention activities. A review of ship manifest data indicates that Country Flavor began importing “broadhead” fish fillets from Vietnam in October of 2005, bringing in over 1.6 million pounds of fillets described as “broadhead” prior to the May shipments identified in the Complaint. The ship manifest data also indicate that Country Flavor began to import *pangasius* fish fillets claimed to be from Cambodia following the imposition of antidumping duties on *pangasius* fish fillets from Vietnam in August of 2003.

Whether the assessment system was retrospective or prospective, the circumvention scheme allegedly undertaken by Country Flavor would be exactly the same and the outcome would be exactly the same: significant amounts of antidumping duties would go uncollected.

IV. COMMERCE HAS DECLINED TO EMPLOY ITS RESOURCES TO MEANINGFULLY ADDRESS CIRCUMVENTION OF ANTIDUMPING DUTIES

Discussions of CBP’s enforcement activities in response to circumvention underscore the challenges facing the agency. When CBP (and ICE) commit resources to investigating customs fraud and duty evasion and these investigations result in the discovery of unlawful activities, the nature of the importers involved (often without capital, created for the exclusive purpose of fraudulent importation) precludes duty collection. Thus, if CBP’s enforcement activities increase, then the amount of uncollected assessed duties increases as well. The Country Flavor example described above illustrates this point. Had CBP not investigated the importer’s fraudulent declarations, the amount of uncollected duties related to Country Flavor would be \$0. However, once the agency investigated the importer’s claims and found them to be fraudulent, the importer

went bankrupt, leaving CBP with a significant amount of assessed duties that have gone, to date, uncollected.

CBP had been criticized for both insufficient enforcement activities with respect to circumvention and for a poor record regarding the collection of antidumping duties. Because more enforcement leads to higher rates of uncollected duties, CBP has an incentive to *not* investigate customs fraud and duty evasion to avoid criticism regarding duty collection. Nevertheless, the agency has continued to commit significant amounts of limited resources to detecting and stopping circumvention of antidumping duties. For these reasons, SSA is particularly grateful for the agency's continued commitment to addressing circumvention.

In contrast, Commerce has elected to not commit resources to addressing unlawful circumvention of antidumping duties. Under existing law, Commerce has the ability to issue questionnaires directly to foreign exporters which would serve to: (1) more accurately identify exports of subject merchandise; (2) make it more difficult for importers to evade detection of false declarations; and (3) enhance identification of instances of customs fraud and duty evasion attempted by "new importers" (importing companies created specifically for the purpose of evasion). As noted by Deputy Assistant Secretary Ronald Lorentzen in his testimony to the Subcommittee, the law (19 U.S.C. § 1677f(b)(1)(a)(ii)) authorizes Commerce to "provide information received in the context of an investigation or administrative proceeding to CBP, to assist the U.S. Department of Homeland Security with an investigation into fraud and evasion."

Nevertheless, Commerce has declined to use the tools available to the agency – and fully within its legal authority – to address rampant circumvention of antidumping duty orders. Rejecting requests for assistance from beleaguered domestic industries, Commerce has stated that "evaluating and verifying additional information relating to a circumvention allegation creates an overwhelming burden in an administrative review." Certain Activated Carbon from the People's Republic of China, 76 Fed. Reg. 23,978, 23,980 (Apr. 29, 2011). In litigation challenging Commerce's inaction, the agency defended its decision to not investigate transshipment allegations in administrative reviews not on the grounds that the agency is without authority to conduct such inquiries, but that the statute *does not require Commerce to do anything*. Thus, the CIT has held that the "section of the statute governing Commerce's administrative reviews, 19 U.S.C. § 1675(a), does not obligate Commerce to investigate transshipment allegations." Globe Metallurgical Inc. v. United States, 722 F. Supp. 2d 1372, 1381-1382 (Ct. Int'l Trade 2010).

CBP is without the authority to query foreign exporters seeking more information regarding potential customs fraud and duty evasion schemes undertaken by importers. Commerce, in contrast, has both the authority and the ability to do so. To date, Commerce has declined to use its authority in a proactive manner to address the problem of blatant customs fraud and duty evasion where circumvention is rampant – including the antidumping duty order on shrimp from China. Instead, Commerce's position is that its resources are better allocated to other activities. This position is inconsistent with the urgent need to counteract customs fraud and duty evasion.

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SSA is grateful for the opportunity to present these comments to the Subcommittee. SSA looks forward to working with the Subcommittee to develop effective solutions to the problems of customs fraud and duty evasion.

