

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

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Hearing on Customs Enforcement Issues
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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.

ROGER B. SCHAGRIN

Roger Schagrin, a native of Florida, received his B.A. from Yale University, graduating magna cum laude with special honors in History, and he obtained his J.D. with a concentration in international law in 1981 from the University of Virginia. Roger practiced with the Washington office of Thompson, Hine and Flory from 1982 through 1984, when he left to start Schagrin Associates. Roger has become widely recognized in the international trade community, testifying on numerous occasions before committees of Congress, and he has published "Result-Neutral Efficiencies by the Department of Commerce in an Era of Budget Austerity," 25 L. & Pol'y Int'l Bus. 115 (1993). In June 2003, he was on the faculty of Dartmouth College's Tuck School of Business Washington Symposium on International Trade. In March 2005, he was asked to serve on the Trade Law Advisory Group of the U.S.-China Economic Security and Review Commission. The Chambers 2007 Legal Directory said "Roger Schagrin of Schagrin Associates is much in demand among petitioners. He is described as 'the current dean in the area' and 'a true scholar who is ahead of the rest.'" He is fluent in Spanish, French, and Portuguese and has worked in each of these languages.