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 <u>annual</u> 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