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U.S. Customs and Border Protection
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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.