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