

EFFECTIVE ENFORCEMENT OF U.S. TRADE LAWS

HEARING
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
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EFFECTIVE ENFORCEMENT OF U.S. TRADE LAWS

TUESDAY, SEPTEMBER 27, 2016

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:06 a.m., in Room 1100, Longworth House Office Building, the Honorable Dave Reichert [Chairman of the Subcommittee] presiding.
[The advisory announcing the hearing follows:]



WAYS AND MEANS

CHAIRMAN KEVIN BRADY

Chairman Reichert Announces Hearing on Effective Enforcement of U.S. Trade Laws

House Ways and Means Trade Subcommittee Chairman Dave Reichert (R-WA) announced today that the Subcommittee will hold a hearing on "Effective Enforcement of U.S. Trade Laws." The hearing will focus on U.S. Customs and Border Protection's enforcement of U.S. trade laws and the implementation of the *Trade Facilitation and Trade Enforcement Act of 2015*. **The hearing will take place on Tuesday, September 27, 2016 in 1100 Longworth House Office Building, beginning at 10:00 AM.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Tuesday, October 11, 2016**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at <http://www.waysandmeans.house.gov/>

Chairman REICHERT. Good morning. The subcommittee will come to order.

Welcome to the Ways and Means Trade Subcommittee hearing on executive—Effective Enforcement of U.S. Trade Laws.

I would like to extend a special welcome, warm welcome, to the Honorable Gil Kerlikowske. I think most members know that Gil and I were partners in the city of Seattle a number of years ago. Gil was the police chief in Seattle and I was the sheriff in King County, which is—Seattle is the county seat for King County. So we partnered on lots of things prior to coming to the jobs back here that we hold in Washington, D.C. So it's been a pleasure working with Gil and to have him here this morning. As you know, he is the commissioner of the U.S. Customs and Border Protection and brings a lot of experiences with him that helps him lead that team.

Today, we are going to talk about robust enforcement of our trade agreements and our trade laws. They are essential to ensuring that American businesses and workers are treated fairly by our trading partners. Strong trade enforcement goes hand in hand with the opening of new markets through trade agreements.

It is part of our commitment to the American people that we don't just sign trade agreements and let our manufacturers, farmers, service providers, and workers fend for themselves. If foreign competitors don't play by the rules and ignore their obligations, we will call them out.

U.S. Customs and Border Protection, CBP as its known, plays a key role in ensuring that our trade agreements and our trade laws are enforced, and that legitimate trade is facilitated. Customs serves as the nuts and bolts of trade and a strong customs service is vital to our competitiveness, safety, and security. Over the years, the volume and complexity of trade has grown and the challenges that we confront, such as stopping the evasion of antidumping and countervailing duties and protecting U.S. intellectual property rights, have grown as well. As we face increasing competition

around the world, we must keep legitimate trade flowing by focusing on our enforcement efforts of high-risk trade.

The Trade Facilitation and Trade Enforcement Act, or the customs bill, which became law earlier this year, was the result of many years of hard work and commitment by the members of this committee on both sides of the aisle. In it, we established the necessary balance between trade and facilitation and trade enforcement that will help American businesses succeed and keep us competitive. Streamlining legitimate trade will increase U.S. competitiveness in the global marketplace and create jobs here at home.

The customs bill reduces paperwork burdens for low value shipments by increasing the de minimis threshold where paperwork is not required from \$200 to \$800, as well as for the U.S. goods returned, and for residue of bulk cargo contained in tankers. These improvements save time and money for our small, medium, and large businesses that drive our economy.

The customs bill also modernizes and simplifies duty drawback, a popular job-creating export program in place since 1789. To increase accountability, the customs bill also strengthens and establishes reporting requirements for existing CBP trade facilitation programs such as the Centers for Excellence and Expertise, trusted trader programs, and the Automated Commercial Environment. These programs cut the red tape in government, reward businesses for good citizenship, and streamline trade.

The customs bill reporting requirements allow us to do our job as the committee of oversight of ensuring the CBP stays on track with these programs. Strengthening enforcement of U.S. trade laws is the other major pillar of this customs bill. Enforcing U.S. intellectual property rights and antidumping and countervailing duty laws prevents our competitors from gaining an edge by cheating.

The customs bill establishes tools for CBP and holds it accountable to clamp down on evasion of antidumping and countervailing duties, enhance targeting of high-risk shipments by requiring information from brokers, and strengthen internal controls over new imports. To protect intellectual property, the customs bill requires CBP to provide right holders with samples to help them determine if imported products are counterfeit.

I want to congratulate my fellow subcommittee members and thank them for their hard work on the customs bill, former Trade Subcommittee Chairman Pat Tiberi, who led our efforts together with Chairman Brady; Dr. Boustany for his tireless efforts on the Enforce and Protect Act and modernization drawback; Mr. Marchant for his work on reducing paperwork burdens for residue and instruments on international traffic; Mr. Young for his good work on his de minimis bill; Mr. Meehan for his efforts to require country of origin markings on certain goods, which is common-sense approach to increasing transparency; Mr. Jason Smith and Ms. Sánchez, who were also very constructive in working on the Enforce and Protect Act.

We also worked closely with Mr. Blumenauer, Mr. Kind, and others on the enforcement fund, and they joined several of our members in strengthening tools to combat forced labor. And Ranking Member Rangel was instrumental with regard to so many of the trade facilitation provisions.

Today, we will have an important discussion about CBP's efforts to implement this critical new law, which if carried out effectively, will enhance our global competitiveness, level the playing field for our businesses, and prevent our competitors from gaining unfair advantage.

Just on another note, Mr. Rangel, our witness today has to catch an airplane, and so we are going to be going to 3-minute questions. And I now yield to the Ranking Member for his opening statement.

Mr. RANGEL. Thank you, Mr. Chairman, for calling this hearing.

Commissioner, we recognize your tremendous responsibilities, and we are here for you to point out how we can be more helpful, especially during the crisis that we are going through. We all are concerned about the forced/child labor law. We understand that there hasn't been an enforcement over 60 years. Antidumping and intellectual property, the chairman has actually covered that. We recognize, in the event you have to leave, we will keep our questions short and hope that you might do the same with your responses to facilitate your departure. And we join with you in support of the hearing and how we can be legislatively helpful to the chairman.

I yield back.

Chairman REICHERT. Thank you, Mr. Rangel.

And as I said, today, we are joined by one witness, commissioner of U.S. Customs and Border Protection, Mr. Gil Kerlikowske. And as I said, we are going to limit questions to 3 minutes. He is going to shorten his opening statement.

And, Mr. Kerlikowske, you are recognized.

STATEMENT OF GIL KERLIKOWSKE, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. KERLIKOWSKE. Chairman Reichert and Ranking Member Rangel—

Mr. BOUSTANY. Check your microphone.

Mr. KERLIKOWSKE. Am I on? Okay.

Chairman Reichert, Ranking Member Rangel, Members of the Subcommittee, it is an honor to be here with all of you. And it is an honor to talk about CBP's role in enforcing what is an incredibly immense and complex area of U.S. trade.

We enforce 500 laws and regulations on behalf of 47 Federal agencies. After the IRS, we collect more money for the Federal Treasury than any other organization. And we understand and recognize the importance of our enforcement efforts, and enforcement has been my entire background before coming to CBP.

Illegal and fraudulent trade practices threaten our economic competitiveness, the livelihood of American workers, and consumer safety. I certainly want to thank the Members of Congress, and particularly this committee, for the Trade Facilitation and Trade Enforcement Act. CBP has been around since 2003 and has never been authorized. And now having the authorization and our regulations and rules all located in one place, along with our increased enforcement authority, is a huge milestone for us.

The numerous parts of the act are complex. We are very engaged in fulfilling every measure of the act and the number of reports that Congress has required. And during the entire time that this process went out, I think the collaboration and the cooperation of the subject matter experts that CBP has in trade would have been very important. We have prioritized the policy, legal decisions, changing resources within our organization to meet this law, and that's been very important to us also.

The chairman mentioned a number of the changes de minimis. The fact that you have approved a group of individuals that report to or work with the commissioner regularly that represent the trade stakeholders, and that has all been very important.

I certainly acknowledge, despite our best efforts, that we are delinquent in some areas of the deadlines on the act, but we are working diligently to put all of that into place and going from not having authorization in 2003 to having this is a great step forward. So thank you.

Chairman REICHERT. Thank you.

[The prepared testimony of Mr. Kerlikowske follows:]



TESTIMONY OF

R. GIL KERLIKOWSKE
Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security

BEFORE

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Trade

ON

"Effective Enforcement of U.S. Trade Laws"

September 27, 2016
Washington, DC

Chairman Reichert, Ranking Member Rangel, and distinguished members of the Subcommittee, it is an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP's) role in facilitating international trade and enforcing our Nation's trade laws.

As America's unified border agency, CBP protects the United States against terrorist threats and prevents the illegal entry of inadmissible persons and contraband, while facilitating lawful travel and trade. CBP is the second largest revenue-collecting source in the Federal Government, and our enforcement of U.S. trade laws significantly enhances America's economic competitiveness.

CBP's trade enforcement mission is highly complex. We enforce nearly 500 U.S. trade laws and regulations on behalf of 47 federal agencies, facilitate compliant trade, collect revenue, and protect the U.S. economy and consumers from harmful imports and unfair trade practices. Fraudulent trade activities, including the import of counterfeit and pirated goods, threaten America's innovation, economy, the competitiveness of our businesses, the livelihoods of U.S. workers, and, in some cases, national security and the health and safety of consumers.

Annually, CBP manages over 300,000 active unique importer-of-record numbers, accounting for 30.4 million commercial transactions, which represents approximately \$2.4 trillion dollars in imports and generates over \$40 billion dollars in duties, fees, and taxes. In addition to applying the multitude of tariffs and the processing of massive amounts of commercial shipments, CBP must also enforce complex U.S. Free Trade Agreement (FTA) commitments. The United States has existing FTAs with 20 countries, completed negotiations for the Trans-Pacific Partnership with 11 Pacific region countries, and is currently negotiating the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union (EU). These are important agreements that will promote U.S. international competitiveness, American jobs, and economic growth. In Fiscal Year (FY) 2015, FTAs accounted for over \$636 billion in U.S. imports.

The enactment of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA, or "the Act,"), Pub. L. No. 114-125, in February 2016, demonstrates that economic competitiveness and enforcement of our trade laws are among our Nation's highest priorities. This law is a major milestone for CBP, as it is the Agency's first Authorization since its creation within the Department of Homeland Security (DHS) in 2003. It supports CBP's efforts to ensure a fair and competitive trade environment, sending a strong message that CBP will effectively enforce U.S. trade laws, including safeguarding Intellectual Property Rights (IPR), combating Antidumping/Countervailing Duty (AD/CVD) evasion, and prohibiting the importation of forced labor-derived goods.

My testimony will discuss CBP's progress in some of our key trade enforcement and trade facilitation efforts, including implementation of the Act, and our path forward in securing and enabling international commerce and promoting the growth of the U.S. economy.

Enforcing U.S. Trade Laws

As the Nation's unified border agency, CBP is responsible for detecting and interdicting goods imported to, exported from, and transiting through the United States by means of fraudulent trade activities intended to avoid the payment of duties, taxes, and fees, or activities meant to evade U.S. legal requirements for international trade. Central to all of CBP's multi-layered trade

enforcement activities are the continuous enhancements to our targeting programs, the expansion of our trade intelligence, and our ability to identify and understand trade risks that may affect national security, U.S. business competitiveness, or the collection of revenue.

Trade Intelligence and Targeting

Enforcement of trade laws and interdiction of illegal cargo are based on trade intelligence and advanced risk-based targeting. Partnerships with other federal agencies and the trade community are essential to expanding CBP's trade intelligence. CBP works closely with U.S. Immigration and Customs Enforcement's Homeland Security Investigations (ICE HSI), the Department of Justice's Drug Enforcement Administration, the Department of the Treasury's Financial Crimes Enforcement Network, and the Departments of Commerce and Health and Human Services to promote information sharing and the exchange of trade intelligence.

Through collaboration with industry, CBP deepens its understanding of the way businesses and industries operate in the ever-changing global marketplace and leverages that information for risk analysis and targeting. A key element in CBP's trade intelligence and targeting efforts are the 10 Centers of Excellence and Expertise ("Centers"). The Centers redefine how CBP works collaboratively with industry members by aligning with modern business practices, focusing on industry-specific issues, and providing tailored support to unique trading environments. The Centers actively track trends, identify trade risks, support CBP's efforts to target the evasion of U.S. trade laws, protect the revenue of the U.S. Government, and ensure a level playing field for U.S. industry.

Depending on the specific pathway, CBP performs targeting activities throughout the import process—prior to departure from origin, before cargo arrives at a port of entry (POE), at the time of entry, and after the cargo is conditionally released. In accordance with the *Trade Act of 2002* (Pub. L. No. 107-210) and the *SAFE Port Act of 2006* (Pub. L. No. 109-347), carriers are required to submit manifest data containing an inventory of all goods, supplies, cargo, and persons on board a conveyance or container in advance of arriving at a POE for vetting through CBP's Automated Targeting System (ATS). ATS is a critical decision support tool that CBP uses to assess the risk of goods entering the United States. Incorporating information from CBP and other law enforcement databases, ATS provides a uniform screening of all its cargo transactions and identifies anomalies based on numerous risk factors.

Shipments matching ATS targeting factors are presented to CBP officers assigned overseas with the Container Security Initiative (CSI), officers at our numerous Advance Targeting Units (ATUs) located at our domestic POEs, as well as our seasoned experts at the National Targeting Center for Cargo Operations (NTC-C). Upon arrival of cargo at a POE, using targeting results to prioritize inspection of high-risk cargo, CBP has the authority to perform an examination of the goods; detain, and where appropriate, seize, or request re-export of the goods; or release the goods. In the post-entry environment, CBP assesses duties, determines statutory and regulatory compliance, and collects import statistics. Effective targeting not only enables CBP to detect and address potential risks before a shipment arrives at a POE, but it also enables CBP to separate low-risk and legitimate shipments from those that require additional scrutiny.

When it comes to targeting shipments for potential threats to consumer safety, the Commercial Targeting and Analysis Center (CTAC) is a CBP facility designed to streamline and enhance federal efforts to address import safety issues. Created in 2009, the CTAC facilitates information sharing amongst 11 participating government agencies,¹ while simultaneously developing, implementing, and streamlining cohesive import-safety enforcement procedures that drive further interdiction of harmful and inadmissible goods. Supporting CBP's unified trade targeting mission, the NTC-C has an assigned liaison to the CTAC for the purpose of reinforcing the connectivity between the participating government agencies' admissibility missions and the NTC-C's 24/7 operational capabilities.

The National Targeting and Analysis Groups (NTAGs) are CBP's primary national trade targeting entities.² Providing in-depth risk analysis for high priorities, the NTAGs work in concert with the Centers, and the NTC-C Tactical Trade Targeting Unit (T3U), to enhance trade targeting expertise. These entities work with the entire life-cycle of trade fraud enforcement—from information intake, to analysis, targeting, investigative case support, and operational assessments.

Each of these entities brings a particular targeting skillset to the table. For example, by virtue of the Centers' industry- and account-based knowledge, CBP can apply critical trade intelligence toward our enforcement efforts. Additionally, because of the NTAGs' expertise, CBP can better understand the overlapping risk areas within each industry sector. Integrating these knowledge areas is an enforcement priority for the agency. By creating a common operating picture that identifies risk within the trade arena, CBP can quickly act on fraudulent trade schemes. Moreover, by leveraging expertise within each targeting unit, CBP deepens its trade enforcement posture, resulting in more effective outcomes. For example, in FY 2015, referrals from the T3U resulted in 341 seizures with a Manufacturer's Suggested Retail Price (MSRP) value of over \$92.1 million.

Integration of these national targeting groups is crucial, as each provides support for our law enforcement partners, such as ICE HSI Agents assigned to the newly formed National Targeting Center for Investigations (NTC-I). Partnerships between T3U and NTC-I personnel provide more effective sharing of information and increased outcome-based enforcement actions. For example, in FY 2015, the T3U supported ICE HSI casework concerning goods worth an estimated \$179 million total MSRP, including 132 criminal arrests, 81 indictments, 65 convictions, 179 search warrants, and 3 administrative arrests.

¹ The 11 federal agencies that participate in the CTAC include: CBP; ICE HSI; U.S. Consumer Product Safety Commission; U.S. Department of Agriculture Animal Plant Health Inspection Service; U.S. Department of Agriculture Food Safety and Inspection Service; U.S. Environmental Protection Agency; U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration and National Highway Traffic Safety Administration; Food and Drug Administration; U.S. Fish and Wildlife Service; and the National Marine Fisheries Services.

² There are five NTAGs, each focused on a separate trade priority: Textiles, Trade Agreements, AD/CVD, IPR, and Revenue and Drawback.

Trade Enforcement Operations

In the performance of its trade enforcement operations prior to the passage of the Act, CBP identified several high-risk areas, designated as Priority Trade Issues³ (PTI) that could cause significant revenue loss, harm the economy, or threaten the health and safety of the American people. PTIs drive risk-informed investment of CBP resources and enforcement and facilitation efforts, including the selection of audit candidates, special enforcement operations, outreach, and regulatory initiatives.

For example, AD/CVD⁴ is a PTI because collection of these duties is critical to the U.S. economy and the competitiveness of U.S. businesses. While the vast majority of manufacturers, importers, customs brokers, and other parties involved in shipments of goods subject to AD/CVD orders accurately provide shipment information and pay appropriate duties, CBP has a core statutory responsibility to detect and deter the circumvention of AD/CVD laws and collect all revenue owed to the U.S. Government that arises from the importation of goods. CBP is constantly enhancing our AD/CVD detection and enforcement protocols, including advancing our targeting and analysis, streamlining our administrative processes, and utilizing all available authorities to meet the challenges posed by the increasing complexity of AD/CVD evasion schemes.

For instance, in FY 2015, entry summary reviews and cargo exams of solar panels resulted in the identification of \$56 million in potential loss of revenue of AD/CVD duties and the recovery of almost \$8 million in AD/CVD duties on shipments of solar cells and panels from the People's Republic of China and the Taiwan. Also, an audit of an importer of tapered roller bearings from China discovered a loss of revenue of \$36 million, most of which was antidumping duties. In another example, Import Specialists detected AD/CVD evasion on tires from China, with over \$7 million in AD/CVD duties identified, penalties imposed, and collection efforts ongoing. In FY 2016, CBP identified approximately \$7 million in AD/CVD discrepancies on Chinese steel plate shipments and, through CBP's Operation Flatline, recovered over \$800,000 in AD/CVD duties on imports of corrosion-resistant, flat-rolled steel products from China.

Since 2013, CBP has broadened the use of single transaction bonds and live entry⁵ to ensure additional protection when CBP has reasonable evidence that a risk of revenue loss exists. These measures have been very effective in protecting the revenue due to the U.S. Government and facilitating compliance with AD/CVD. Furthermore, in 2014, as part of our strategy to resolve AD/CVD debts, CBP started to build a team dedicated to AD/CVD collection. The creation of the AD/CVD Collections team will enhance CBP's technical expertise to deal with the unique

³ Prior to the enactment of the *Trade Enforcement and Facilitation Act of 2015*, CBP had identified five PTIs: Intellectual Property Rights; Textiles and Apparel; Import Safety; Trade Agreements and Preference Programs; and Antidumping and Countervailing Duties. The *Trade Enforcement and Facilitation Act of 2015* added Agriculture programs and Revenue to the list of PTIs.

⁴ Under the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that are sold in the United States at less than fair value ("dumped") or which benefit from subsidies provided through foreign government programs (which are ameliorated by countervailing duties). Under the law, the U.S. Department of Commerce determines whether the dumping or subsidizing exists and, if so, the margin of dumping or amount of the subsidy. The United States International Trade Commission determines whether there is material injury or threat of material injury to the domestic industry by reason of the dumped or subsidized imports.

⁵ A single transaction bond provides security for an individual import of merchandise. Live entry means that all entry documents and duties are required to be provided before cargo is released by CBP into U.S. commerce.

complexities of the AD/CVD process; enable CBP to identify earlier those importers unwilling or unable to pay outstanding duties; and provide deeper integration of the full AD/CVD processes to anticipate AD/CVD debts, rather than simply react to those debts after they are formally established.

CBP, in collaboration with ICE HSI and the Department of Commerce, has had increasing success in identifying, penalizing, and disrupting distribution channels of imported goods that seek to evade AD/CVD. CBP personnel refer many cases of AD/CVD evasion to ICE HSI for criminal investigation and work closely with ICE HSI to establish the evidence of criminal violations. A recent example of this effort is our enforcement of AD/CVD orders on steel products. In FY 2015, CBP, in coordination with ICE HSI, was able to successfully seize over \$900,000 worth of steel products that violated AD/CVD laws and assess \$45.5 million in penalties for AD/CVD violations on importers of steel products. In FY 2015, CBP also conducted over 7,200 entry summary reviews of steel imports for AD/CVD issues, and identified violations with a value of over \$970,000. CBP industry experts at the Base Metals Center of Excellence and Expertise are actively enforcing 160 AD/CVD orders on steel products. CBP works closely with our steel industry partners and the Department of Commerce to educate both CBP personnel and steel industry members through seminars that explain how AD/CVD enforcement can best be implemented in the current trade environment.⁶

CBP also enforces IPR, another PTI, by seizing or excluding products that infringe on U.S. trademarks, copyrights, and by enforcing exclusion and seizure orders of the International Trade Commission with respect to, among other things, products found to infringe U.S. patents. The theft of intellectual property and trade in fake goods threaten America's economic vitality and national security, and the American people's health and safety. CBP, in close collaboration with ICE HSI, protects businesses and consumers every day through an aggressive IPR enforcement program.

CBP uses technology to increase interdiction of fake goods, facilitates partnerships with industry, and enhances enforcement efforts through the sharing of information and intelligence. In addition to seizing goods at U.S. borders, CBP conducts post-import audits of companies that have been caught bringing fake goods into the United States, issues civil fines and, when appropriate, refers cases to other law enforcement agencies for criminal investigation.

Strong partnerships with our federal enforcement counterparts, effective targeting of high-risk shipments, and frontline interceptions of cargo at U.S. POEs produced more than 28,000 seizures of fake products in FY 2015, with an estimated MSRP of \$1.35 billion that could have cheated or threatened the health of American consumers. CBP also enforced 152 exclusion orders enforcement action in FY 2015. Also in FY 2015, CBP's collaboration with the ICE HSI-led National Intellectual Property Rights Coordination Center⁷ ("IPR Center") resulted in 538 arrests,

⁶ In FY 2015, CBP, in partnership with the U.S. steel industry, conducted five AD/CVD seminars for CBP personnel and customs brokers in California, Georgia, Illinois, New York, and Texas. In FY 2016, CBP and the U.S. steel industry conducted Steel Seminars in Laredo, Texas; New Orleans, Louisiana; Philadelphia, Pennsylvania; Long Beach, California; and Detroit, Michigan.

⁷ Working in close coordination with the Department of Justice Task Force on Intellectual Property, the IPR Center

with 339 indictments and 357 convictions.⁸ IPR seizures increased nearly 25 percent in 2015 from 2014, representing DHS's busiest year on record for IPR-related seizures.

For example, in recent months, CBP officers nationwide have seized record numbers of counterfeit self-balancing scooters, commonly referred to as "hoverboards."⁹ As of August 31, 2016, there have been 399 hoverboard seizures, totaling more than 107,975 pieces, with an estimated MSRP of \$23.9 million. Hoverboard seizures have been recorded in 54 different POEs. The seized hoverboards contained counterfeit trademarks and/or counterfeit certification marks. In most instances, the counterfeit marks were found on lithium ion batteries that were included with the hoverboards. In addition to the issue of counterfeit marks, the seized hoverboards presented safety concerns given that there have been reports of fires that appear to have been caused by the unauthorized lithium ion batteries imported with the hoverboards. The combination of counterfeit marks and exploding batteries vividly illustrates that counterfeits not only cause economic loss to the trademark owners whose marks are infringed, but also represent a threat to the health and safety of U.S. consumers.

Invaluable to the enforcement of all trade laws, CBP's Laboratories and Scientific Services Directorate (LSSD) has been part of U.S. trade enforcement since 1841. LSSD plays a key part in the enforcement of trade priorities, including AD/CVD, IPR, classification, value, and transshipment. In FY 2015, this division handled 1,035 samples relating to 294 entries of importations of suspect AD/CVD violations¹⁰ and 700 samples relating to 125 importations of suspect IPR violations.¹¹ LSSD analyzes a wide range of commodities, including honey, garlic, plastic carrier bags, steel, bearings, wax candles, paper, pasta, hardwood and decorative plywood, and mushrooms.

Partnerships with the trade community are critical to rooting out unfair trading practices and illegal trading activity. U.S. industry, trade associations, and importers provide critical insight to CBP on enforcement issues related to developments in AD/CVD, IPR, and other trade sensitive imports. CBP meets regularly with U.S. industry representatives to discuss circumvention schemes, and U.S. industry representatives share valuable market and product intelligence with us.

harnesses the tactical expertise of its 23 member agencies to share information, develop initiatives, coordinate enforcement actions, and conduct investigations related to intellectual property theft.

⁸ Intellectual Property Rights Seizure Statistics, Fiscal Year 2015, www.cbp.gov/sites/default/files/assets/documents/2016-Apr/FY%202015%20IPR%20Stats%20Presentation.pdf

⁹ CBP officers have seized hoverboards at ports in Chicago, Illinois; Houston, Texas; Buffalo, New York; International Falls, Minnesota; Miami, Florida; Charleston, South Carolina; Puerto Rico; Savannah, Georgia; Sterling, Virginia; Norfolk, Virginia; and at John F. Kennedy airport.

¹⁰ The commodities analyzed under various AD/CVD orders included: honey, garlic, monosodium glutamate, glycine, melamine, plastic carrier bags, polyethylene terephthalate film, manganese dioxide, potassium phosphate salts, stilbenic optical brightening agents, chlorinated isocyanurates, steel, steel pipe, line pipe, steel nails, steel wire hangers, steel threaded rods, stainless steel wire rod, petroleum wax candles, aluminum extrusions, aluminum tubing, electrolytic multilayered wood flooring, artist canvases, thermal paper, tissue paper, coated paper, paper clips, pencils, solar cells and panels, narrow woven ribbons, woven electric blankets, refined brown aluminum oxide, and magnesia carbon bricks.

¹¹ The commodities analyzed involving potential IPR violations included: integrated circuits, network routers, electronic memory media (compact flash, SD, USB drives, etc.), movie DVDs, wearing apparel, pharmaceuticals, smartphones, perfume, video game consoles, and food.

CBP's online referral process, e-Allegations, facilitates the process for the trade community to provide CBP with critical information. Since e-Allegations' inception in June 2008, CBP has received more than 11,500 commercial allegations. While the majority of e-allegations are IPR-related, nearly 10 percent are AD/CVD-related.¹² 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 HSI for further investigation. IPR holders can also use our web-based tool, e-Recordation, to record their trademarks and copyrights with CBP. Recordation makes information on protected rights available to CBP offices throughout the United States.

CBP's Trade Transformation

CBP recognizes its vital role in the economy and has embarked over the past several years on a "Trade Transformation," a series of initiatives that create efficiencies for U.S. businesses, the Government, and the consumer. In addition to enhancing the import process, CBP is working to modernize its export process in support of the President's National Export Initiative to streamline the export process and foster growth for U.S. companies, and the Export Control Reform Initiative to bolster competitiveness of key U.S. manufacturing and technology sectors. Even as trade volumes continue to rise, these initiatives strengthen CBP's capabilities and the Nation's economic competitiveness by lowering the cost of doing business, strengthening enforcement efforts, and leveling the playing field for U.S. businesses.

CBP's Trade Transformation initiatives not only seek to create efficiencies within the Agency's business processes, but also seek to develop a consistent "One U.S. Government" approach at the border. CBP, in collaboration with 47 Partner Government Agencies that have equities in the trade process, is working toward standardizing government procedures, streamlining processes, driving efficiencies through automation, and aligning and harmonizing with industry business processes.

The need for consistency and harmonization has been a driving force behind our transformation efforts. Currently, there are hundreds of paper forms being used to import and export goods. In February 2014, President Obama issued an Executive Order (E.O. 13659), *Streamlining the Export/Import Process for America's Businesses*, which, among other things, directs federal agencies with a role in trade to design, develop, and integrate their requirements into an electronic "Single Window," known as the International Trade Data System, by December 2016. CBP's cargo processing system, the Automated Commercial Environment (ACE), will ultimately serve as the "Single Window" and enable businesses to electronically transmit the data required by the U.S. Government to import or export cargo. Through ACE, manual processes will be streamlined and automated, paper will be virtually eliminated, and the international trade community will be able to more easily and efficiently comply with U.S. laws and regulations. ACE is being developed and deployed in increments, and CBP is on track to deliver all core trade processing capabilities in ACE by December 31, 2016.

Close collaboration with the trade community, and developing public-private partnership programs, is an essential component of CBP's Trade Transformation efforts. The Customs-Trade

¹² As of September 9, 2016.

Partnership Against Terrorism (C-TPAT) program is a public-private partnership program wherein members of the trade community volunteer to adopt tighter security measures throughout their international supply chains in exchange for enhanced trade facilitation, such as expedited processing. The C-TPAT program now has more than 11,000 members, with C-TPAT imports accounting for 54 percent (by value) of all imports to the United States. Additionally, in collaboration with the U.S. Consumer Product Safety Commission and the U.S. Food and Drug Administration, CBP is working to complete another important pilot, our Trusted Trader program, which unifies C-TPAT and the Importer Self-Assessment processes.¹³

The C-TPAT program continues to expand and evolve as CBP works with our foreign partners to establish bilateral mutual recognition of respective C-TPAT-like programs. Mutual Recognition as a concept is reflected in the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade, a strategy designed with the support of the United States, which enables Customs Administrations to work together to improve their capability to detect high-risk consignments and expedite the movement of legitimate cargo. These arrangements create a unified and sustainable security posture that can assist in securing and facilitating global cargo trade while promoting end-to-end supply chain security. CBP currently has signed Mutual Recognition Arrangements with New Zealand, the EU, South Korea, Japan, Jordan, Canada, Taiwan, Israel, Mexico, and Singapore, and is continuing to work towards similar recognition with China, Brazil, the Dominican Republic, India, and other countries.¹⁴

Another public-private partnership program that focuses on cargo entering the United States via air is CBP's Air Cargo Advance Screening (ACAS) program. This pilot, which currently has 51 participants, has been extended until July 2017, after which we look forward to identifying a path forward for permanent status. Additionally, CBP is implementing a multifaceted approach to e-commerce, particularly as it impacts sales and imports through the mail and express shipment environments. We are educating consumers and working with major e-commerce businesses to identify and prevent the sale and import of counterfeit or dangerous products, and look forward to continued partnerships with the trade community to help us evolve with the growth in e-commerce.

A hallmark of our transformation efforts is the implementation of the Centers,¹⁵ established in 2011 to increase uniformity across the POEs, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen our knowledge about industry practices to enhance our enforcement efforts. In 2015, four of the 10 Centers became fully operational, and, I'm proud to announce that, this past April, the remaining six became fully operational. These remotely-

¹³ Federal Register Notice, June 16, 2014. Announcement of Trusted Trade Program Test.

<https://www.federalregister.gov/articles/2014/06/16/2014-13992/announcement-of-trusted-trader-program-test>

¹⁴ CBP also has multiple Customs Mutual Assistance Agreements, which allow for the exchange of information, intelligence, and documents that will ultimately assist countries in the prevention and investigation of customs offenses. See <http://www.cbp.gov/border-security/international-initiatives/international-agreements/cmaa>.

¹⁵ The 10 Centers are: Pharmaceuticals, Health, and Chemicals - New York, New York; Agriculture and Prepared Products - Miami, Florida; Automotive and Aerospace - Detroit, Michigan; Apparel, Footwear, and Textiles - San Francisco, California; Base Metals - Chicago, Illinois; Petroleum, Natural Gas, and Minerals - Houston, Texas; Electronics - Los Angeles, California; Consumer Products and Mass Merchandising - Atlanta, Georgia; Industrial and Manufacturing Materials - Buffalo, New York; Machinery - Laredo, Texas.

managed Centers align CBP with modern business practices, focusing on industry-specific issues, and provide tailored support to unique trading environments.

Through the implementation of CBP's Trade Transformation initiatives we are working to increase the Nation's economic competitiveness by lowering the cost of doing business, removing barriers to trade facilitation, and leveling the playing field for U.S. businesses. Additionally, these transformative efforts help CBP strengthen trade enforcement efforts and address ongoing challenges such as AD/CVD collection, by improving and modernizing our trade processes.

The Trade Facilitation and Trade Enforcement Act of 2015

The Act strengthens CBP's existing trade enforcement capabilities and provides the Agency with new tools, capabilities, and collaborative efforts to better enforce U.S. trade laws. The Act emphasizes CBP's trade enforcement responsibilities in key areas, as described above, including the protection of IPR, AD/CVD evasion, and forced labor-derived goods.

For example, as part of our current AD/CVD enforcement efforts, CBP has responsibility for tracking and reporting allegations of evasion from initial receipt, vetting and enforcement actions, to final disposition of an investigation. Title IV of the Act, commonly referred to as the *Enforce and Protect Act of 2015*, or EAPA, strengthens CBP's enforcement efforts by establishing formal procedures for submitting and investigating allegations of AD/CVD evasion against U.S. importers. On August 22, 2016, CBP published an interim final rule in the *Federal Register*, effective immediately, establishing procedures for investigating claims of evasion of AD/CVD orders.¹⁶ CBP has already established a website to readily communicate resources and updates to the trade as they are developed.¹⁷ In addition, CBP also engaged COAC's AD/CVD subcommittee to provide comments on checklists that will assist the trade in filing EAPA allegations. Of note, the trade has already begun to file EAPA allegations.¹⁸

In addition to authorizing the IPR Center, the Act also enables CBP to build on our current IPR enforcement initiatives by strengthening our collaboration efforts with our international counterparts and with IPR holders. For example, the Act streamlines and enhances the process in which CBP communicates with IPR holders to determine IPR-infringing products. The Act requires CBP to share with IPR holders the unredacted images of any product that is suspected of infringing on copyright or trademark laws, when the shared image will help CBP determine if an infringement exists. Furthermore, in order to accommodate copyrights that are still pending registration at the Copyright Office, CBP is establishing a new process to ensure enforcement efforts do not cause delay upon entry. Additionally, in the travel environment, in accordance with the IPR outreach provisions in the Act, CBP revised Form 6059B, Customs Declaration Form, to include a warning to international travelers of the penalties associated with transporting IPR-infringing goods.

¹⁶ Federal Register, Interim Regulation, Investigation of Claims of Evasion of Antidumping and Countervailing Duties. August 22, 2016. <https://www.gpo.gov/fdsys/pkg/FR-2016-08-22/pdf/2016-20007.pdf>.

¹⁷ See <https://www.cbp.gov/trade/trade-enforcement/tfea/enforce-and-protect-act-eapa>.

¹⁸ "Wheatland Tube Files Duty Evasion Allegation," (Sept. 15, 2016) (available at <http://www.pnnewswire.com/news-releases/wheatland-tube-files-duty-evasion-allegation-300328695.html>).

CBP's enforcement of other illicit trade activities, such as honey transshipment, is also strengthened by the Act by requiring the establishment of a honey transshipment database. The Act also enhances CBP's revenue collection capabilities. As noted above, CBP has been broadening the use of single transaction bonds when a risk of revenue loss exists. The Act provides additional revenue-protecting provisions by authorizing increased bonding for high-risk imports.

The Act also eliminated the "consumptive demand" exemption for forced labor-derived imports, meaning that goods made with indentured, forced child, or other forced labor are no longer allowed into the country just to meet U.S. consumer demand. With this change, CBP is no longer legally required to weigh consumptive demand considerations to process information concerning forced labor. Since March 10, 2016, CBP has issued several withhold/release orders (WRO) based on reasonable suspicion that imported goods were made by convict or forced labor. Most recently, on September 16, 2016, I directed CBP frontline personnel to detain certain peeled garlic products believed to be produced in China with convict labor.

This past April, to harness the agency's collective trade enforcement expertise, CBP established a Trade Enforcement Task Force to focus on issues related to the enforcement of AD/CVD and the interdiction of imported goods produced using forced labor. The Task Force strengthens CBP's ability to detect high-risk activity, target illicit trade networks, and work with industry to disrupt evasion of U.S. trade laws. It will also serve as a focal point for coordination with other federal partners, including the Department of Commerce and ICE HSI. Since its creation, the Task Force has collected over \$3 million in AD/CVD payments and reviewed over 50 entities for potential AD/CVD evasion. Similarly, the Task Force's Forced Labor component has coordinated the detention of over 40 shipments suspected of sourcing using Forced Labor. These shipments represented over \$8.5 million in value.

Furthermore, this past July, the Customs Operations Advisory Committee (COAC) formally established a forced labor working group comprised of members representing the different aspects of this issue (companies, importers, nongovernmental organizations, etc.). This working group will focus on issues surrounding supply chain and compliance best practices, WRO issuance, and the process for evaluating information provided by importers seeking to have cargo released that has been held under a WRO. CBP will be working closely with the COAC working group as CBP updates its regulations to clarify the new consumptive demand provision, as well as the process through which we are notified of potential violations of forced labor laws, and the process for importers that wish to certify that their goods are not produced with forced labor. CBP is committed to working with the trade community and nongovernmental organizations to increase transparency, with the goal of fostering a predictable trade environment for legitimate importers, which have the responsibility to secure their supply chains.

In addition to strengthening enforcement efforts, the Act also authorizes several critical CBP programs and lays a strong foundation for many of our most vital initiatives. The law authorizes continued funding for operations and maintenance of ACE—the backbone of the U.S. Government's "Single Window." As we continue to drive toward the President's year-end 2016 goal for delivery of all core trade processing capabilities in ACE, this support will ensure that ACE and Single Window operations are sustained over the long term.

Supporting CBP's efforts in modernizing the way we work with the trade community and do business, the Act formally recognizes the Centers and their importance to modernizing and streamlining operations by industry sector, generating expertise that also improves CBP's enforcement capabilities. The Act also simplifies and modernizes the drawback process for duty refunds, making drawback more workable for CBP while increasing efficiencies for trade stakeholders. Furthermore, recognizing the value of our industry advisory committee in improving CBP's trade operations and policies, the Act enhances the role of the COAC within DHS, and increases involvement from our ICE HSI partners.

In the travel environment, the Act improves funding mechanisms and supports CBP's Preclearance efforts, better positioning us to push our security efforts outward and increase locations around the globe to meet our goal of processing 33 percent of U.S.-bound air travelers through Preclearance by 2024. In FY 2015, Preclearance allowed DHS to deny boarding to over 10,700 travelers (or 29 per day) before they could travel to the United States. We are currently negotiating with many of the 10 locations selected in May 2015 for potential Preclearance operations and are looking to expand this program. In May 2016, CBP announced a new "open season," running through August 1, 2016, for foreign airports to express interest in participating in the next round of preclearance expansion. CBP received 20 letters of interest and is currently in the process of evaluating each location.

The Act has a significant impact on CBP, both organizationally and operationally, and we are working aggressively to shift resources, collaborate with federal partners with trade equities, and develop processes to ensure swift and effective implementation of the numerous and complex provisions in the Act. We are establishing a Trade Remedy Law Enforcement Division and a dedicated NTAG for evasion within the Office of Trade. We are also drafting numerous regulations, covering a broad span of trade enforcement areas, including IPR information sharing with rights holders; allowing donations of certain equipment, training, and other support services from the private sector for enforcing IPR; and setting minimum standards for brokers and importers regarding importer identity verification.

As we move forward, CBP will work closely with this Subcommittee and with our trade partners to implement the provisions of the new law. For example, we will be collaborating with the private sector to ensure that participants of CBP's voluntary partnership programs, such as C-TPAT, are receiving significant and measurable trade benefits in exchange for their participation. We also look forward to working with our industry partners to educate the trade community about how to file allegations of trade violations with CBP. Since the Act was executed, CBP has hosted webinars, industry phone calls, and participated in events on a range of topics related to implementation of the numerous provisions in the Act. We look forward to continuing our strong dialogue and partnership with private industry and with this Subcommittee as we work to implement the Act's trade enforcement and trade facilitation provisions.

Conclusion

CBP recognizes and is committed to our vital role in supporting the U.S. trade agenda. We will continue to strengthen our enforcement capabilities and streamline trade for low-risk legitimate shipments. We will also continue to advance our risk-based targeting to enforce U.S. trade laws and interdict illegal cargo to ensure compliance with statutory and regulatory authorities and to minimize loss of revenue.

CBP is committed to working with our federal, international, and private sector partners to enhance our trade intelligence, detect and resolve unfair or unlawful trade practices, and develop solutions to facilitate legitimate trade and protect the U.S. economy.

Chairman Reichert, Ranking Member Rangel, and members of the Subcommittee, thank you for the opportunity to testify today. I am happy to answer any questions you may have.



Chairman REICHERT. And we will go to questions quickly. Just a couple from me.

The customs bill provides CBP with new tools to better enforce IPR, enhances opportunities for collaboration with rights holders in the United States, and expands CBP's seizure forfeiture authority to cover unlawful circumvention devices, and strengthens international partnership to stop counterfeiting at the source.

Can you tell us what CBP has been doing to implement these measures and how they are assisting you in your efforts to protect intellectual property rights?

Mr. KERLIKOWSKE. Well, I think the most important thing on the intellectual property rights, Chairman, is the fact that we co-chair or have the deputy's position in the intellectual property rights enforcement center that is run by Immigration and Customs Enforcement. Well over 20 Federal agencies sit in that one location and work very hard to target what may, in fact, be counterfeit or intellectual property rights violation.

I think the highlight that I saw over the Christmastime was, in fact, a very dangerous product, hoverboards. Certainly dangerous, I am sure, if you try to get on at my age and balance on one. But what I would really see is the fact that the underwriters' laboratories seal, they were in fact counterfeit seals. We saw well over 50 fires that have occurred as a result of these. Working with Consumer Product Safety, we worked very hard to make sure that kids didn't get those gifts that perhaps they were expecting. That is just one example.

I know there are a number of other examples where I would emphasize to you all that collaboration and a close working partnership with other Federal agencies is absolutely critical to us doing our job.

Chairman REICHERT. Could you also update us on the status of regulation on seized circumvention devices called for in Section 303 of the customs bill?

Mr. KERLIKOWSKE. So I know that that is under review. I know that we are working hard with members to produce, not just that information, but also the information that is certainly necessary for some of the other reports. And I would be happy to make sure that we provide an update to your staff on that.

Chairman REICHERT. Okay. And, lastly, you did mention that—you recognized that you are a little bit behind in some of the reporting requirements. Do you have any sort of plan to make sure that—because it is one of the ways that this committee stays sort of in touch with what is happening within your organization. We are interested in your work, in particular, you know, seeing these reporting requirements established and the customs bill—customs bill implemented. How have you progressed and proceeded forward with the policy that addresses that?

Mr. KERLIKOWSKE. So our office of trade put together a spreadsheet that actually shows all of the requirements that we have to meet, whether it is in reporting or rules that need to be promulgated, regulations, training, and information that needs to be—that needs to be communicated to Congress. When we not only put together that spreadsheet about where we were on each one of

these requirements, we also took a look at what are the most important, according to staff members and others, and triage those.

I will tell you that we are well on the way. A number of things have already been implemented and people have been shifted to deal with these responsibilities. But I would tell you that we are well on the way before the end of this calendar year to be able to have the majority of these reports, regulations, requirements in place, and we will be more than happy to keep your staffs aware of this, our progress.

Chairman REICHERT. Knowing you personally, I know that today we have your commitment that we will have those reports. Thank you.

Mr. Neal, you are recognized.

Mr. NEAL. Thank you, Mr. Chairman.

Commissioner, each day 125 Americans are dying from drug-related overdoses, and it is acute in parts of Massachusetts, particularly in the old cities. Many of these victims are succumbing to powerful synthetic drugs like Fentanyl, which are, as you and I both know, hundreds of times more potent than heroin. The toll these drugs are taking is alarming and unprecedented. And I joined Pat Tiberi recently to offer a bipartisan effort to hopefully stem this growing epidemic.

Stopping these drugs from coming through the borders, as you know, is a priority. The Synthetics Trafficking and Overdose Prevention Act is designed to stop dangerous synthetic drugs like Fentanyl from being shipped through our borders. Specifically, the bill would require shipments from foreign countries through our postal system to provide electronic advance data, such as who and where it is coming from, who it is going to, where it is going, and what is in it before they cross our borders. Having this information in advance will enable CBP to better target potential illegal packages and keep these dangerous drugs from ending up in the hands of drug traffickers who do great harm to our communities.

Commissioner, Congress wants to give you the tools to stop these drugs from crossing our borders. Would you agree that this bill perhaps could be very helpful and that there are more tools that you might suggest to us at this moment that can provide better help to get the job done and help fight now what has become a national issue?

Mr. KERLIKOWSKE. Congressman, I really appreciate the effort that Members of Congress—and I participated in three field hearings on heroin and Fentanyl issues around the country, so I know—from Arizona to Massachusetts, so I know that this is a significant issue.

As you know, from some of our reporting, our seizures of Fentanyl at the borders, particularly at the ports of entry, have increased dramatically, but we still have, of course, that unknown issue about the Fentanyl that is shipped from overseas and comes in through the air cargo. Having a manifest in advance to be able to target, rather than just the random selection that goes on now, and with the explosion in the increase in air cargo, that information would be very helpful.

And I will be happy to continue to work with you and with the Members of the Committee and the subcommittee to make sure

that if there are additional tools needed—you know, the difficulties with Fentanyl in both trying to detect it, also the dangers to enforcement personnel. I think Fentanyl is a tremendous threat, not only to the populous, but also to law enforcement personnel. So thank you very much for the work you are doing on that.

Mr. NEAL. A colleague recently said—and you could give us perhaps a quick answer. A colleague recently said that before Fentanyl is treated, that if a dog or a police officer were to sniff it in its rawest form, that it could kill them?

Mr. KERLIKOWSKE. Very much so. That is why we don't train K-9s, because of that. And also the fact that Fentanyl, when you look at it in the hospice—or the hospital setting, the Fentanyl patches are absorbed through the skin as very, very powerful painkillers. So raw Fentanyl that comes into contact either through nasal passages or through skin absorption can be very dangerous to personnel. So the more—and, of course, the other part is the Department of State working closely with the countries where we know that this is illegally manufactured and then shipped.

And we had some success, by the way, on synthetic drugs working with the Government of China a few years ago, when I had a different job in the administration. But Fentanyl, I think is—your recognition of the significant danger that you just mentioned is an important one for us to consider.

Mr. NEAL. Thank you very much.

Thank you, Mr. Chairman.

Chairman REICHERT. Yes, sir.

Mr. Smith, you are recognized.

Mr. SMITH. Thank you, Mr. Chairman.

Thank you, Commissioner, for being here today, and certainly thank you for the service of the men and women of Customs Border Patrol—Border Protection, I am sorry.

Obviously, the tasks in front of your agency are important from keeping us safe from terrorists to leveling the playing field commercially for U.S. industry to compete on a level playing field. So we thank you for your service.

You mentioned in your testimony that CBP enforces U.S. trade agreement commitments. So I would ask that with China currently negotiating the Regional Comprehensive Economic Partnership with 16 countries in the Pacific region, what would you say is at stake, from an enforcement perspective, should the U.S. fail to act on trade agreements moving forward?

Mr. KERLIKOWSKE. So one of the most important things that we recognize and do is that, frankly, on the trade enforcement issues, we are the pointy end of the sphere. When it comes to the negotiation and the discussion and the work with Members of Congress on trade agreements, we take the advice, although we have embedded someone with the USTR and Ambassador Froman's office. We try to judge all of the information that comes to us. As these discussions and negotiation occur, we try to make sure that our point of view, which is how is this going to be enforced and what are we going to be able to do to enforce it, is absolutely critical.

I mean, we have recognized that we not only have that border security responsibility, but we also recognize the economic security

responsibility that we have. And when the chairman and I were in Seattle and you would see that port, you knew how important it was to facilitate particularly exports of produce from Washington State to make sure that it got out.

So we will work closely with Congress. We will work closely with the USTR, who is the lead on this, along with the Department of Commerce, to make sure that the enforcement priorities are recognized and that we have the tools and the capacity to be able to do our job.

Mr. SMITH. Thank you. But do you see lost opportunity if we fail to take action on trade agreements moving forward?

Mr. KERLIKOWSKE. Well, it is kind of—it is a bit out of my portfolio and a bit out of my lane. We tell the people that—again, with Ambassador Froman in the USTR, we tell them what we need and what is important for us to be able to do the enforcement. We also let them know that we have to be able to be in a position to expedite cargo coming into the country safely and to expedite our export safely. But when it comes to that area for me that is more of the political decision, I am kind of out of the politics and I am in the enforcement business.

Mr. SMITH. All right. Thank you, Commissioner.

I yield back.

Chairman REICHERT. Mr. Blumenauer, you are recognized.

Mr. BLUMENAUER. Thank you, Mr. Chairman.

Welcome, Mr. Commissioner.

Mr. KERLIKOWSKE. Thank you.

Mr. BLUMENAUER. I want to follow up a little bit. You have alluded to the fact that enforcement is complicated. It involves numerous agencies. You have a piece of the pie, not all of it. I would note that this committee has been aggressive in trying to advance a trade enforcement trust fund so that there would be resources, at least on the House side. There is \$15 million to try and enhance that effort. I assume a portion of which could be made available to you if it were actually brought to bear. Is that your understanding?

Mr. KERLIKOWSKE. It is my understanding. And the working relationship, since the USTR oversees that part. But the working relationship with the USTR and their recognition of our needs is one that I believe they are well aware of, and the support that we have received from Ambassador Froman on these issues is very helpful in a variety of ways, and the money certainly would be helpful to some of our enforcement efforts.

Mr. BLUMENAUER. Mr. Chairman, I am hopeful that our subcommittee might be able to encourage that. The Senate is AWOL in terms of the additional enforcement resources, which I think we all agree is necessary to be able to make sure that we get full benefit of the trade agreements that we have.

One of the areas that is cloudy for me, I have spent a fair amount of time working on enforcement provisions dealing with illegal logging. And, again, you don't have full thrust with the Lacey Act provisions, but you folks are involved with some illegally harvested timber that is on its way to the United States, recently shipments that have been intercepted. Could you speak a little bit to how we are proceeding with that and what, if anything in addition, would help you with your piece of that responsibility?

Mr. KERLIKOWSKE. So one of the things that I think we have done pretty successfully as a result of the support of Congress, and I know there will be questions about this later, is ACE, the single window or the single portal when it comes to trade. But that has actually forced us to be a bit of the convener and the collaborator with all of those different Federal agencies. Because, frankly, with 60,000 employees, we have more boots on the ground than USDA and a number of the other enforcement provisions. You know, I am very familiar with the incident from last December involving the Peruvian lumber and the fact that—how that was brought to our attention. And I appreciate your recognition that USDA, in fact, is the primary enforcement authority. But with a number of people that we have at our ports of entry and the amount of information that we collect on cargo at our national targeting center, makes a huge difference.

So, one, we could not have had better cooperation and collaboration, whether it's on educating us about steel and the dumping of steel or the alleged dumping of steel and also on timber also.

Mr. BLUMENAUER. Mr. Chairman, I appreciate it. I see that my time expired very quickly. But this is an area that I hope that we again might explore. We have got several agencies that are struggling with making sure that a provision in the existing trade agreement is honored, and I am hopeful that we can continue to work with our witness and others to see if we can sort that out to make it work better.

Chairman REICHERT. Great. Thank you, Mr. Blumenauer.

Dr. Boustany, you are recognized.

Mr. BOUSTANY. Thank you, Mr. Chairman.

Welcome, Commissioner. You know, as we have sought American leadership in creating a rules based trading system, enforcement is clearly important, and, which is why I worked very hard over a number of years to give you the PROTECT Act, which provided a full array of tools so that you could be much more effective and aggressive in going after abuses.

But one my priorities was Section 605. I know you are aware of it. We have spoken about it before. And this was to undo a great injustice that came about because of inaction at Customs and Border Protection with respect to crawfish producers and other small producers across our country, honey, mushrooms, garlic.

Under the law, we have seen crawfish producers entitled to anti-dumping duties collected as a result of dump crawfish from China from 2000 to 2007, well over \$100 million in abuses and duties owed. But unfortunately, slow enforcement from CBP, unjustifiable delays from the insurance companies that post these bonds, these collections are still underway and going painfully slow.

We finally had a little breakthrough with \$6 million collected from one insurance company. And instead of turning over that money to these crawfish producers, who are going out of business, CBP chose instead to deduct 90 percent of that to pay self—pay itself interest.

Now, Section 605 was designed by myself and Senator Thune to stop that and to assure that these poor producers who are going out of business are paid what they are owed under American law. And yet I understand now CBP is simply ignoring this Section 605

as written and putting its own wishful analysis in place to continue to hold onto this interest. Frankly, I think that is just unacceptable, and I am not going to let up until this abuse is corrected.

Mr. KERLIKOWSKE. So a couple of things I mentioned on that. One, it wasn't until—in fact, the crawfish producers and the others came to Washington, D.C., asked to meet with me and we sat down that I had the recognition and the information, the fact that when we collect those interest duties—that the interest went back under the law, under the existing law then, that the interest went back to CBP. I said, you know, when I was the police chief, if you were the victim of a crime and the perpetrator had to pay a fine, the fine shouldn't go for the police department. The fine should go back to the victim.

That's been changed. And a lot of progress has been made. And I was proud and pleased to see the \$6 million. I would tell you there is another substantial amount of money that is in the work also to go back.

The one thing where I think there is certainly some disagreement, and I understand that it is in litigation right now, is how far back the understanding is that interest payments would be, in fact, returned to a victim. There is also a bit of a technological problem, because we have to figure out, in those fines and information collected, what was interest versus what was the penalty. And not all of our systems are, frankly, that accurate and that flexible to go back X number of years.

So if you think about where we were and the money coming to us instead of going to the victim, if you think about our interest now and working very hard—and, in fact, we have even gone to a collection agency to look at, is where a collection agency that could do a better job of trying to go after the money that we have been unsuccessfully attempting to get. So I think we are pretty close, but I understand your frustration, and I recognize it.

Mr. BOUSTANY. Thank you. I am going to stay on this. And we want as prompt an action as possible. This has to be resolved, because if America is going to lead in trade, we have to have enforcement of our laws and they have to be enforced with the intent that Congress lays out.

Thank you. My time has expired.

Chairman REICHERT. Thank you.

Mr. Kind, you are recognized.

Mr. KIND. Thank you, Mr. Chairman.

Commissioner Kerlikowske, first of all, I want to commend you. I worked hard to get included in the Trade Enforcement Act, shutting down this loophole on the exploitation of child or forced or slave labor. And since its enactment in February, you, under your leadership, the agency has brought four enforcement actions already against China on that front. And, you know, for 85 years, there was a prohibition against it, but because of the loophole, it was seldom enforced. And now you are taking that tool, you are running with it. I commend you for doing so.

My question is how pervasive do you think this problem is? How many more future actions? But before you answer that, can I also get your opinion, because it is my sense that in those bilateral, multilateral trade agreements that we have with other nations,

those countries tend to act like better actors when it comes to playing by the rules, not trying to cheat, you know, living up to the standards and values that were included in those agreements, as opposed to nations that we don't have any trade agreement with. Is that an accurate description of what you see out there?

Mr. KERLIKOWSKE. I think what I have seen is the leadership that the United States—and I lead the delegation to the World Customs Organization, 180 members. And what we have tried to communicate to customs organizations all over the world is that they need to have this recognition and understanding about the importance of facilitating lawful trade, but also the importance of doing enforcement.

I think in far—in too many countries that I have seen, the issue is always around how much money can customs collect, versus what is their enforcement posture. Because it costs—you know, takes people to do the enforcement and it costs money. So I would tell you that I think we have made some progress in that particular area.

It is hard for me to judge exactly on the forced labor and the child labor issues and prison labor, because one of the things that we did was to reach out and gather as many of the nongovernmental organizations who exist within those countries. They are frankly the eyes and ears on the ground, and we needed to make it easier and we needed to welcome the information that they would give us about what is a potential violation.

And as you know, there is only a reasonable suspicion standard. It wasn't a probable cause standard. We can take action on a less critical amount of information, and I have made it clear to everyone in our organization that we do need to take the action once we reach that threshold of reasonable suspicion.

Mr. KIND. What about the distinction as far as those nations that we have a trade agreement with versus those—the vast majority that we don't as far as compliance and playing by the rules?

Mr. KERLIKOWSKE. You know, I don't have an opinion. I have the list of the number of free trade agreements that we have, but I have never really given it the analysis about whether or not they are greater at playing by the rules. I am sure there are some real experts that can inform you.

Mr. KIND. Okay. Fair enough. Thank you.

Thank you, Mr. Chairman.

Chairman REICHERT. Thank you.

Mr. Paulsen.

Mr. PAULSEN. Thank you, Mr. Chairman.

And, Commissioner, thanks for being here. You know, a key component of the customs modernization is the completion of ACE, the Automated Commercial Environment, and ITDS, the International Trade Data System or that single window. These systems are going to help provide Customs Border Patrol, obviously, and other Federal agencies with the improved real-time information on imports and manual processes then get streamlined—they are automated in 200 different paper forms—end up being eliminated. I know that ACE has been in development for a long period of time, but I want to commend CBP, the Customs Border Patrol, for the great strides you have made in the last couple of years towards implementation.

I know, although your efforts are to be commended, there are some Minnesota businesses that I have had contact with that continue to express some concerns about the implementation process because large companies, of course, are able to be in a position where they can absorb large losses that may result from a shipment that gets held up at the border due to a technical issue with ACE. But the smaller companies that operate on a relatively thin margin, they don't have that same luxury.

So can I just have your commitment or can you chat a little bit about how you are going to continue to work with the trade community and partner with government agencies as that rollout goes forward to make sure it is smooth?

Mr. KERLIKOWSKE. Sure. Part of the fact that in our authorization that you have affirmed that there will be a standing committee that will report with or to the commissioner that represents trade stakeholders, freight forwarders, business people, importers, manufacturers, et cetera. We have had that in place for a number of years, but frankly, a change in administration could have done away with that. The fact that that is in the law now I think is one very helpful.

So four times a year for 2 days each we get direct feedback from the people that are doing the work, and we have had great participation in that. So I would commit to you two things. One is that we are very intent. And after all of the platforms that have been launched, that ACE will be a running viable commercial entity for both the private sector and also for government by the end of this calendar year. And we appreciate the support from Congress for all of the work.

And if you go back—you know, even when we were working through some the more difficult platforms, we ended up having daily phone calls with well over 100 participants, including the small business people, to make sure that they were getting their questions answered and to make sure that we were doing our job of telling them, well, where are we with the implementation. So thank you.

Mr. PAULSEN. Thank you, Mr. Chairman.

Chairman REICHERT. Mr. Pascrell.

Mr. PASCRELL. Thank you, Mr. Chairman.

American companies that invest in designing in marketing valid products are losing sales and seeing their brands tarnished by manufactured products that violate United States law.

I am pleased that the customs bill we passed earlier this year included several provisions to strengthen intellectual property rights enforcement at the border, including raising the enforcement priority for counterfeit products.

So we don't want open borders to people and we don't want open borders to products, yet that is exactly what is going on here in terms of products. Given this enforcement prioritization for counterfeit products, can you outline the screening process for packages marked as gifts, and can you share any new steps the CBP is taking to enhance enforcement in the area?

Mr. KERLIKOWSKE. I can. I think there are several things. I can't give you the specific information on the gift issue, and I think

you are mostly talking about that air cargo environment and the mail environment.

I will be the very first to admit to you that, given the explosion of e-commerce and air cargo, this is one that we're working on very closely. Having manifest information in advance is certainly going to be an issue that is critically important. Having enough people at the locations at FedEx and UPS and, frankly, at our international—our five international mail facilities is also important. And the fact that UPS and FedEx have been incredibly good partners in putting forward enforcement funds and, essentially, boots on the ground to assist us. The international—the intellectual property rights center for the targeting is very important. And about 2 weeks ago we cut the ribbon on the new national targeting center for CBP, which has been mentioned. So we are making progress.

Mr. PASCRELL. Thank you. I am very concerned about the staffing shortfall at CBP. That is very dangerous. You know, we have four borders. You would think, listening to the Congress, we only have one border, the Rio Grande River, that is it. We have ports in New Jersey that are facing increased wait times for incoming shipments.

The staffing, how would this impact staffing shortages that you have? And are these—are there things that you can do to address the shortfall?

Mr. KERLIKOWSKE. So we are very disappointed that, one, we haven't been able to hire with the money that Congress gave us a number of years ago after working closely with Members to show that when you put people on board at CBP, they actually help to make money for this country by speeding things through.

We are a law enforcement organization. We are not about to reduce our stringent hiring standards. And I haven't spoken to a local police chief or a sheriff or a Federal law enforcement official that has not expressed the difficulty of hiring. But we are working very closely. And I think the bright spot is one with the military, because we are now accepting—and I just was down at Fort Bliss to recruit people. We are now looking for people to leave one uniform and come into another uniform coming out of the military. And also reducing the amount of processing time, because there are a lot of jobs available for qualified people. And we have gone from over 400 days of processing time, way, way too long, down to about 160 days.

So we are making progress, and we are going to do our very best to use the appropriated funds that Congress has given us to hire up to the number that are authorized.

Mr. PASCRELL. Mr. Chairman, in conclusion, I would really, since we have worked very close on public safety issues, I would really ask you to take a look at the number of personnel that they have and the more responsibilities that have been given to them, now that we have discovered also that we have three other borders. We need to take a very extended look at this, and I would trust your judgment as to the conclusion. Thank you.

Chairman REICHERT. Well, Mr. Pascrell and I chair the Law Enforcement Caucus together, and as the commissioner said, sheriffs and police chiefs across the country are having the same prob-

lem that his agency is having, and that is finding, first of all, people who want to come into law enforcement positions; secondly, not only finding people who have the desire but who have the qualifications. And I commend the commissioner for making the statement that there is no way that he is going to lower his standards. And I think that should hold true for law enforcement agencies across the country.

So I appreciate your concern. And, yes, I look forward to working with you on this through the caucus.

Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman.

And thank you, Commissioner, for your long service to law enforcement. And I thank you for your efforts in working so quickly to help draft an interim guidance with respect to the Enforce and Protect Act. We are already seeing some cases that are being prosecuted or investigated, and I think that is very, very helpful. But as you know, we are getting a lot of activity on the part of those who find ways to circumvent the process.

When I was a United States attorney, we worked—and I am glad to hear you talk about collaboration with other partners. One of the most effective things that we had to use the Federal laws to enforce violations for things like qui tam laws and others, which invited the participation of interested parties and, actually, the investigative resources that we were then allowed and able to work with.

When I have looked at your efforts with respect to the drafting of the interim final rule, you narrowly defined the parties to the investigation more narrowly than I would expect it would be. Can you look at that and determine whether we ought not have a larger classification of those who can participate in as a, quote, “parties to the investigation”? I think we are going to have an awful lot of resources that could be available to help us get around this.

Mr. KERLIKOWSKE. Congressman, I appreciate your recognition, particularly of qui tam cases. And I meet regularly with U.S. attorneys, particularly the U.S. attorneys that are border U.S. attorneys. We are a huge part of their portfolio. And the qui tam cases are not—as a U.S. attorney, they are not always one—the one that is going to get any headlines. And, number two, they can be very labor intensive. So we have done a couple of things.

One is we have some real subject matter experts in these cases. And we want to be able to hand to an AUSA, an assistant U.S. Attorney, on a silver platter a case that is already put together and to make it easy for them.

The other thing that I have done is to call, whether it is the U.S. attorney in the Southern District of New York or the former U.S. attorney in Los Angeles, when they have made those kinds of trade cases, I have called them up to congratulate them and to tell them, you know, how much we appreciate their work. I will be happy to take—to go back and take a look at the recognition that you have—

Mr. MEEHAN. And I am—my time is limited, so I want to ask one more question with respect to specific importers.

Mr. KERLIKOWSKE. Sure.

Mr. MEEHAN. Part of the problem we see, particularly in the steel industry, is the ability for importers to go through third par-

ties, to dump into another country, and then to get that steel into the United States. And one of the problems with steel, but it can be any number of products, is the requirement that we go back more specifically and identify the country of origin. And it works against the ability to have more of a deterrent effect.

Can you see if there is any ability to drop the requirement for allegations to identify a specific importer to be able to police this kind of—you know, this kind of circumvention?

Mr. KERLIKOWSKE. Sure. I would be happy to look at that. I would also tell you that we have made significant improvements with our laboratory sciences division to be able to test steel, regardless of whether it comes from Mexico or Canada or another country, to be able to determine the country of origin. And, in fact, whether, as the Wall Street Journal just recently reported, on some allegations and concerns about aluminum and steel in Mexico, we are—our scientists are better at determining that country of origin now.

Mr. MEEHAN. Thank you, Mr. Chairman. I yield back.

Chairman REICHERT. Mr. Doggett.

Mr. DOGGETT. Thank you, Mr. Chairman.

And thank you, Commissioner. Commissioner, as I know customs is aware, 1 year ago today, 71 containers filled with Amazon rainforest timber, enough estimated to cover a number of football fields, almost 4 million pounds of timber, arrived from Iquitos, Peru, in the Port of Houston, Texas. And based on specific actual information, customs properly used its legal authority to exclude that shipment for 30 days. Did it not?

Mr. KERLIKOWSKE. Yes, we did.

Mr. DOGGETT. And that specific actual information came from the Peruvian environmental authority. After that, as you know, a coffin was carried through Iquitos with his name on it, and he was eventually fired by the Peruvians.

During the year, other than what the Peruvians did, what has Customs done? Have there been any other shipments of logs from Peru that have entered the U.S. since that time?

Mr. KERLIKOWSKE. Congressman, I am not familiar with any additional shipments of timber from Peru. I was very involved that weekend, as many of our personnel were, on making sure that we have the right authorities and the right people. Because if we don't allow that commodity then to come into the country and that commodity no longer makes a profit, that sends a powerful message back—

Mr. DOGGETT. So it is your belief that since that shipment arrived in Houston, that there have been no other shipments in the United States of Peruvian timber?

Mr. KERLIKOWSKE. I can't answer that, but I have not been—

Mr. DOGGETT. That is a question that I—I didn't want to surprise you with any questions today.

Mr. KERLIKOWSKE. Right.

Mr. DOGGETT. That was one of the questions that I sent you last week that your staff said that you could answer today.

Mr. KERLIKOWSKE. I am sorry. You know, I think I probably received about 120 different questions from different members. I am happy to take a look.

Mr. DOGGETT. Well, can you tell me, one of the other questions I asked was, during the 8 years that the Peru trade promotion agreement has been in effect, do you know how much Peruvian timber has been imported into the United States?

Mr. KERLIKOWSKE. I don't.

Mr. DOGGETT. Do you know the answers to any of the questions that your staff said you would be prepared to answer today?

Mr. KERLIKOWSKE. I do know, and I think I have been—I have done my very best to help make an understanding that with 60,000 people and 800 people—

Mr. DOGGETT. My only—I appreciate your testimony, but since I have 30 seconds, my question is can you answer any of the questions that I posed to you last week that your staff told me you would be ready to answer today? There were five of them.

Mr. KERLIKOWSKE. I think I did.

Mr. DOGGETT. You have not answered any of them yet. And I would just ask you, do you know when you can answer them, when you can provide an answer to those questions?

Mr. KERLIKOWSKE. I think I can provide an answer at the conclusion of the hearing.

Mr. DOGGETT. Great. Well, I would like to have had it before so we can discuss it. But you are aware of the percentage of that shipment in Houston that was illegal timber, are you not?

Mr. KERLIKOWSKE. I am aware of that shipment, having worked it all over the whole weekend with Ambassador Froman, the Department of Commerce, the Department of Agriculture. So it wasn't like anybody was asleep at the switch on that, and we—

Mr. DOGGETT. I think there is a question about indifference, but you know the specific percentage of that shipment of 4 million, almost 4 million pounds of timber, you know the specific percentage that was illegal timber, don't you?

Mr. KERLIKOWSKE. I don't know. I don't.

Mr. DOGGETT. Your office knows that information?

Mr. KERLIKOWSKE. Well, I think—and I would be happy to communicate right after—

Mr. DOGGETT. Yes, sir. But I had an opportunity to ask you about it today, and that is why I sent you the questions in advance that you have not answered, but thank you.

Mr. KERLIKOWSKE. Okay.

Chairman REICHERT. Thank you, Mr. Doggett.

Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

Commissioner, I represent one of the largest airports in the United States, the DFW airport. Could you share with us, please, the problems and the major challenges that you are presented with in enforcing the trade pact of 2015 as it relates to DFW airport and then specifically the larger airports in the United States?

Mr. KERLIKOWSKE. I need just a little bit of clarification. On trade or on the travel issues?

Mr. MARCHANT. On—

Mr. KERLIKOWSKE. Because we get a lot of air cargo that comes in.

Mr. MARCHANT. Yes.

Mr. KERLIKOWSKE. And so the inspections at air cargo, whether at DFW or Miami, when it comes to produce and other things, you know, we have our agricultural inspectors, many of whom will be graduating from a class, in fact, today down in Florida—in Georgia.

So we do a lot of inspections of those things, whether it is fresh produce or others, or people coming in that, in fact, have plant material that can harm our agriculture industry.

We get 112 million international passengers a year, so the challenges in an airport the size of DFW or JFK or LAX are pretty immense, but I think our folks do a very good job of trying to make sure that they are protecting the environment and protecting our agriculture industry.

Mr. MARCHANT. Thank you, Mr. Chairman.

Chairman REICHERT. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Thank you, Commissioner. I know you have to leave. Does your commission involve itself with the need of improvement in infrastructure? Would the improvement of infrastructure be of any assistance to you in the enforcement of laws?

Mr. KERLIKOWSKE. Yeah. The infrastructure improvements that were made to our ports of entry as a result of the American Recovery Act were immense. Many of those projects were already planned in the works—

Mr. RANGEL. Are you satisfied that we are keeping up with our infrastructure in order to support your efforts to enforce the law effectively?

Mr. KERLIKOWSKE. We have a number of plans to increase our ports of entry. The new JFK terminal with JetBlue, the work that has gone out at Houston Hobby and others.

Mr. RANGEL. How do you share your plans? Were they included in the omnibus bill where you had input?

Mr. KERLIKOWSKE. They are. We work closely with the interagency, with GSA and others, and we work closely with Members of Congress who have particular interest in trying to improve their facilities.

I couldn't agree with you more when it comes to an efficient, well-planned infrastructure for international air travel or cargo makes a huge difference in us being able to enforce.

Mr. RANGEL. Well, my point is, do you have an overall plan that you can present, rather than depending on Members, so that when we are talking to a President, no matter who she might be, about a plan for infrastructure, we could include your plan as a part of that overall plan as relates to commerce and interstate trade? Do you have that?

Mr. KERLIKOWSKE. We do have that—we do have that plan. We do work it through the interagency.

Mr. RANGEL. Could you share your commission's plan as it relates to improvement in infrastructure as it impacts on your job?

Mr. KERLIKOWSKE. I can.

Mr. RANGEL. And I might say, if you can recommend anything to this committee that you think could help you to enforce the laws that we have already passed, it would be helpful.

Mr. KERLIKOWSKE. I can.

Mr. RANGEL. I yield back.

Chairman REICHERT. Mr. Young.

Mr. YOUNG. Hello, Mr. Commissioner. Thanks for being here today.

Mr. KERLIKOWSKE. Thanks.

Mr. YOUNG. So it is no secret there is a major trade agreement that will soon come before Congress. And sort of outside the scope of this hearing, I have got major concerns about several provisions of that agreement, including intellectual property protections. But with that said, I am not confident that agreement will move forward.

There is a school of thought out there, however, that we should wait to consummate any trade agreements whatsoever until we fully enforce all existing trade agreements. And I feel very strongly, as do so many of my colleagues on both sides of the aisle, that we have to be very vigilant about enforcing trade agreements. This is why I and others have supported giving tools, a new Trade Enforcement Trust Fund, new legal options to those whose rights have been violated or intellectual property stolen. And your agency, Customs and Border Protection, we have given you new tools to go after those who would evade antidumping and countervailing duties provisions.

So my question is this: Though I know you have already reassured us that you will be vigilant, what impact do you think it would have on, say, Indiana manufacturers, Indiana ag producers, who want to sell to 95 percent of the world's consumers who are outside of the United States, if we waited until we fully enforced every existing trade agreement?

Mr. KERLIKOWSKE. So I think my answer on full enforcement is one that I am often asked in other settings, and that is on border security, also exactly what is border security and what are the numbers? We make a lot of seizures. We seize a lot of products that come in. We work very hard to be open and transparent with the agriculture and the manufacturing stakeholders. And I think you all have heard that repeatedly from the trade.

Full enforcement is probably one of those that's in the eye of the beholder. But I think the fact that we send a strong message to the rest of the world that we are going to work very hard to inspect and to seize and to enforce the laws that Congress has passed.

Mr. YOUNG. Yes. So in short, as the commissioner of Customs and Border Protection, do you believe that we can make significant improvements, stay vigilant, enforce our trade laws, while opening up foreign markets to Indiana manufacturing goods, food, fiber, et cetera?

Mr. KERLIKOWSKE. Yeah. I think we know very well the—

Mr. YOUNG. Yes?

Mr. KERLIKOWSKE. Yes.

Mr. YOUNG. Thank you.

I yield back.

Mr. DOGGETT. Mr. Chairman, I neglected to ask you for unanimous consent to insert into the record of the hearing my letter to the commissioner on September 23 with the questions that I referenced.

Chairman REICHERT. Without objection.

Mr. DOGGETT. Thank you.

[The information follows:]

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Commissioner R. Gil Kerlikowske
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW.
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Re: U.S. Customs and Border Protection Timber Enforcement

Dear Commissioner Kerlikowske:

In advance of your testimony before the Ways and Means Trade Subcommittee on Tuesday, September 27, I write to learn more about the import of Peruvian timber into the United States generally and to learn more about the status of a specific shipment that was subject to an exclusion order.

Specific to the shipment of Peruvian timber that arrived in Houston on the Yacu Kallpa on September 27, 2015, please provide answers to the following questions:

1. Is the timber still in Houston?
2. Is it still on the docks at the Port of Houston? If not, where is it?
3. Who is paying to store the timber?
4. Who are the importers and consignees of record?
5. Who paid the bond and who pays for the insurance on this timber?
6. What percentage of this timber was legally harvested?

I have been deeply troubled by reports that upwards of 90% of all timber leaving Peru generally is still being harvested illegally. In addition to the specific provisions included in the Forest Annex of the Peru Trade Promotion Agreement, the Lacey Act makes it illegal to import, export, transport, sell, receive, acquire or purchase any plant to be taken in violation of domestic or international laws.

I was disappointed to learn that U.S. Customs and Border Protection (CBP) does not include Lacey as one of its "Current Priority Trade Initiatives" and would urge you to use your discretion to add it. Please provide answers to the following questions:

1. In each of the almost eight years since the Peru Trade Promotion Agreement entered into force on February 1, 2009, how much Peruvian timber has been imported in to the United States?
2. What total percentage of this timber has been inspected to determine if it was harvested legally?
3. Since the discovery of the September 27, 2015 Houston shipment, how many additional shipments of Peruvian timber have been inspected to determine if illegal timber was on board?
4. How many total shipments of Peruvian timber headed for the US have ever been asked to provide proof that the timber was legally harvested?
5. What enforcement action(s) has any American entity taken to date against those who illegally imported timber?

I look forward to your prompt reply. Please contact me personally at 202-225-4865 with your answers or any questions.

Sincerely,



Lloyd Doggett

Chairman REICHERT. Mr. Tiberi.

Mr. TIBERI. Thank you, Mr. Chairman.

Mr. Commissioner, I recently introduced a bill with several of my colleagues called the STOP Act, Mr. Neal referenced to you earlier, to try to keep illicit drugs from entering our country through foreign posts. And just this last weekend in Cleveland, Ohio, seven folks died from overdoses of these drugs.

This bill would extend the same level of advanced electronic security screening to packages coming into the United States from overseas through the postal system, the U.S. Postal System, that currently applies to the same packages that come in through private carriers. Senator Portman has introduced it in the Senate on a bipartisan basis as well.

And last week, in the Senate in front of the committee, the assistant commissioner in the Office of Field Operations of CBF—CBP stated that having access to advanced electronic data would allow CBP to be more effective in targeting potentially illicit shipments. Do you believe that having access to advanced electronic data from these foreign shippers would help you all perform more sophisticated risk analysis in order to target these potential illicit shipments?

Mr. KERLIKOWSKE. I do. Just as the information that's been helpful in recognizing people that shouldn't get on an airplane because of advanced passenger information and the same way with cargo that comes into this country that is manifested, for instance, on a ship 72 hours in advance and even preloading, having that information so that we can do everything that we can based upon risk is important, and yes, I agree.

Mr. TIBERI. Thank you. Certainly, I appreciate your efforts in drafting an interim final rule on the Enforce and Protect Act. I was Trade chairman when that process began. And we were very clear that CBP was to operate under specific deadlines. The law created a mandatory deadline of 300 days to make a final determination, but in your interim role, sir, in the discussion section, CBP seems

to imply that these rules are aspirational. So in our opinion, there is no flexibility under the statute in these deadlines.

Can you clarify to the committee what plans you seem to want to follow in terms of timeline set in the statute by Congress?

Mr. KERLIKOWSKE. Well, we do want to obey and follow all of the timelines that have been set. And I wasn't aware of the kind of distinction that you were talking about, that the proposal may be more aspirational than fact based, and I am happy to spend a little time looking into that and finding out about that.

But, you know, we were given a lot of timelines with a lot of work, and I can assure you we are going to do our very best to meet those and we are going to do our very best to prioritize and triage those as the most important to the subcommittee and the committee as a whole.

Mr. TIBERI. I appreciate that. Thank you for your leadership, sir.

Chairman REICHERT. Thank you, Mr. Tiberi.

We moved through the questioning rather quickly, but I want to give the members who are still present here one last opportunity, if anyone has a burning question left, I would like to recognize that member.

Mr. Doggett.

Mr. DOGGETT. Thank you very much, Mr. Chairman.

Just continuing then, Commissioner, this action that you took in September of last year concerning this approximately 4 million pounds of Peruvian timber, had that ever been done before or since?

Mr. KERLIKOWSKE. We have seized lumber—I don't know about Peruvian timber, but we have seized lumber in the past and held it. Of course, it can be expensive and difficult when you are making those seizures, so—

Mr. DOGGETT. Yes, sir. When you do make those seizures, who is responsible for storing the timber?

Mr. KERLIKOWSKE. We ask that the private sector, that the party that was involved in this, that they bear the cost of that rather than the American taxpayer.

Mr. DOGGETT. And they are requested to provide a bond or insurance on the timber?

Mr. KERLIKOWSKE. We request that they make the payment, whether it is through a bond until a final determination is made, but we want that—we work very hard to try and get that money in advance on a seizure storage.

Mr. DOGGETT. With the information that has come out, that is still—a very significant portion of Peruvian timber is illegally harvest, does that not provide you specific actionable basis for holding each shipment that comes to the United States from Peru?

Mr. KERLIKOWSKE. I think it would provide, with the United States Department of Agriculture, under their authority, a great deal of information. As I said earlier in the testimony, we have a lot of boots on the ground in a lot of places where USDA or Consumer Product or others don't. That is why collaboration is really important.

Mr. DOGGETT. Well, they have authority. You have authority for the 30-day hold like that that you put—or the 30-day pre-

venting them from entering the United States that you utilized last September.

Mr. KERLIKOWSKE. And we need to make sure that we do it in conjunction with the information that they provide us. You are right.

Mr. DOGGETT. And you don't—you say you do not know how much Peruvian timber has come into the United States in the last 8 years?

Mr. KERLIKOWSKE. Congressman, I just don't have that right in my mind. It actually may be in the book with all of the information.

Mr. DOGGETT. All right. So I may be able to get it afterwards, as well as to find out how much of that has been inspected?

Mr. KERLIKOWSKE. I am happy to tell you that.

Mr. DOGGETT. And the 4 million pounds of timber, is it still sitting in Houston today, a year later?

Mr. KERLIKOWSKE. It was excluded from entry into the country.

Mr. DOGGETT. Does it sit in a ship? Has it gone back to Peru? Or what has happened to it?

Mr. KERLIKOWSKE. I know that it was excluded so that the profit that could be made of that timber coming into the United States could not be—could not go back to the illegal loggers.

Mr. DOGGETT. Is it being held in Houston?

Mr. KERLIKOWSKE. I don't believe it is.

Mr. DOGGETT. Okay. You think it is not anywhere within the boundaries of the United States, including our territorial waters?

Mr. KERLIKOWSKE. I don't believe it is.

Mr. DOGGETT. And are you able to identify to us the importers and our consignees of that timber?

Mr. KERLIKOWSKE. I believe we have protests filed by several different organizations so that some of the—over that seizure. So some of this is in litigation.

Mr. DOGGETT. What are the—

Chairman REICHERT. The gentleman's time has expired.

Mr. DOGGETT. Thank you.

Chairman REICHERT. Any other member have—wish to be recognized?

Well, I want to thank the commissioner for his testimony today. Thank you for answering the questions and also committing to providing us with follow-up information and the reports that we have requested.

Please be advised that members will have 2 weeks to submit written questions to be answered later in writing. Those questions and your answers will be made a part of the formal hearing record. Our record will remain open until October 11th. And I urge interested parties to submit statements to inform the committee's consideration of the issues discussed today.

With that, the subcommittee stands adjourned.

[Whereupon, at 11:09 a.m., the subcommittee was adjourned.]

Submissions for the Record

**TESTIMONY OF
THE
EXPRESS ASSOCIATION OF AMERICA
TO THE
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON: EFFECTIVE ENFORCEMENT OF U.S. TRADE LAWS
September 27, 2016**

This testimony is provided by the Express Association of America (EAA) on behalf of EAA members DHL, FedEx Express, TNT and UPS, the four largest express delivery service providers in the world, providing fast and reliable service to the U.S. and more than 200 other countries and territories. These four EAA member companies have estimated annual revenues in excess of \$200 billion, employ more than 1.1 million people, utilize more than 1700 aircraft, and deliver more than 30 million packages each day.

EAA strongly supports the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015 and worked hard over several years to assist its passage through both houses of Congress. TFTEA contains numerous provisions that will streamline the flow of goods across the U.S. border, improve the efficiency of our border clearance operations, improve security and enhance our ability to interdict non-compliant and counterfeit goods. EAA members work closely with U.S. Customs and Border Protection to achieve all these goals.

One of the TFTEA's most important measures is the increase of the so-called "de minimis" level from \$200 to \$800 to allow more low value shipments to enter the United States free of duty and tax. We believe this measure will be particularly beneficial to three groups:

- Small and medium companies who import proportionately more low value goods;
- Individual consumers receiving goods from overseas, who will see a cost savings due to the elimination of previously costly border clearance requirements;
- U.S. Customs and Border Protection (CBP), whose border clearance officers will have more time to focus on higher value activities such as interdicting smuggling and counterfeit goods.

The higher de minimis level will stimulate the expansion of eCommerce, currently a major force in the growth of the U.S. economy and increased job creation.

EAA believes the intent of Congress is that the higher de minimis level will apply to the maximum number of products crossing the U.S. border, so that the benefits of the new law will be realized by a broad cross-section of the U.S. economy. Congress also has indicated that the U.S. Trade Representative should leverage the higher de minimis level to encourage U.S. trading partners to increase their levels. This leverage will be diminished if a large number of low value shipments are determined to be exceptions to the higher de minimis level in cases where Partner Government Agencies (PGA) (agencies other than CBP) require an informal entry.

Therefore, in implementing Section 901 of TFTEA, the U.S. Government should ensure it is applied widely to the large majority of goods costing \$800 or less and that the number of exceptions to the law's simplified clearance provisions be minimized. Under the previous de minimis level of \$200, certain PGA with product safety and other border clearance responsibilities would require an informal entry on the products they regulate regardless of value. The number of such products considered exceptions to the de minimis law obviously will increase with the new level of \$800, which could work against the Congressional intent of applying the \$800 level as widely as possible. To embrace both the spirit and the letter of the new law, EAA recommends U.S. Government agencies with border clearance responsibilities take the following actions:

- Identify a list of products among those they regulate that are inherently higher risk and that would require informal entry and review by PGA personnel on a routine basis regardless of value. All other shipments under \$800 regulated by the PGA would be eligible for the simplified de minimis clearance process, with review of manifest information and periodic spot checks by CBP to ensure compliance with product safety laws.
- CBP currently discharges the border clearance responsibilities for the large majority of the more than 40 PGA that have import regulatory authority. All PGA should be required to identify the full range of inspection and clearance activities for products they regulate that can be carried out by CBP, which perhaps would require additional cross-training for CBP officers. This approach would be particularly important in 24/7 ports of entry where PGA personnel are not available at all times when CBP is clearing shipments.
- For low value products which the PGA determines will require informal entry and review by PGA personnel, the PGA must provide adequate staffing to discharge these responsibilities during the time the shipments are being processed for entry by CBP. This may require staffing at off hours, weekends and holidays. The U.S. border is becoming a 24/7 operation, and all government agencies must adapt to this reality or U.S. economic growth will be retarded. PGA personnel may not be required to actually be present in the ports of entries during these times, as many aspects of the border clearance process can be done virtually from any location through review of the information and documents accompanying the shipment.

The process for clearing de minimis shipments is referred to as a "Section 321" procedure, which the express industry has utilized successfully for many years. EAA members import more than 95% of the shipments eligible for Section 321 clearance. As outlined below, EAA members are suggesting a new approach to provide an automated capability to use the Section 321 procedure in all modes of transportation, while simultaneously satisfying PGA unique information requirements through a separate data submission. To implement this approach, CBP should develop the following capabilities in the Automated Commercial Environment (ACE):

- Develop a stand-alone "Section 321 module" for brokers that matches the data set in the current automated air cargo sets of data elements. This module should have two primary functions:
 - Allow brokers to request Section 321 manifest release for cargo regulated only by CBP, or by CBP and a Partner Government Agency where reporting requirements have been satisfied using an alternative method;

- Allow brokers to request Section 321 release while simultaneously submitting data to one or more regulating PGA's.
- Ensure automated targeting and mass release capabilities are available to CBP at all ports of entry for Section 321s, regardless of the mode of transportation or method of data transmission to CBP, either through manifest or a newly developed Automated Broker Interface (ABI) process.

The ability to file PGA data through ABI independently or simultaneously with a request for manifest release will facilitate the ability to file the Section 321 clearance off the manifest while also satisfying the PGA requirements.

EAA members appreciate the opportunity to provide testimony on this important issue. For further information or to answer any questions, please contact Michael Mullen at 703 759-0369 or michael.mullen@expressamerica.org.



October 11, 2016

The Honorable Dave Reichert
Chairman
Subcommittee on Trade
Committee on Ways and Means
1104 Longworth House Office Building
Washington, DC 20515

The Honorable Charles Rangel
Ranking Member
Subcommittee on Trade
Committee on Ways and Means
1139E Longworth House Office Building
Washington, DC 20515

Dear Chairman Reichert and Ranking Member Rangel:

Thank you for this opportunity to submit a statement for the record of the House Ways and Means Committee, Subcommittee on Trade's September 27th hearing on Effective Enforcement of U.S. Trade Laws.

I serve as the Executive Director of the International Wood Products Association (IWPA). Established in 1956, IWPA is the leading international trade association representing the North American imported wood products industry, with over 200 companies and trade organizations engaged in the import of hardwoods and softwoods from sustainably managed forests in more than 30 nations around the world.

During the course of the hearing Representatives Blumenauer and Doggett questioned U.S. Customs and Border Protection Commissioner R. Gil Kerlikowske about CBP's actions with respect to shipments of wood products from Peru that have been excluded from entry to the U.S. at the Port of Houston. Because several IWPA member companies have been affected by this exclusion, we appreciate this opportunity to provide additional background especially in light of Representative Doggett's suggestion that CBP hold every shipment of wood products that comes to the U.S. from Peru for 30 days.

In September 2015 several wood products importers sought to import certain wood that arrived in Houston on voyage 11 of the vessel Yacu Kallpa. The wood was held by U.S. authorities pending inspection and, on November 9, 2015, CBP deemed the wood excluded from the United States, stating that CBP had been "unable to discern whether the merchandise is admissible under the Lacey Act" (the law that prohibits the import of wood that has been illegally taken or transported). Additionally, we understand that another importer's wood that arrived from the Iquitos region of Peru separately was seized by U.S. authorities after arrival pursuant to a seizure notice that referenced the Lacey Act. The wood has been stored at the expense of the importers at a U.S. Customs location in Houston since September 2015. These companies remain in legal limbo, without either a complete explanation from the U.S. Government or supplemental information from Peru to confirm that the wood they imported was legal.

More generally and beyond the circumstances of the shipment in Houston, the impact of this action has put a general chill on all wood trade between the U.S. and Peru. In particular, U.S. wood products importers do not have current guidance from Peruvian authorities that would allow trade from the Iquitos region to restart. This is causing great difficulty and is effectively halting the trade in wood from this region, harming both the U.S. wood industry (and the thousands of customers it serves in the U.S. and elsewhere) and legal trade from Peru. This is especially concerning in light of the more than \$75 million in taxpayer resources spent to strengthen legality in the Peruvian forestry sector and promote trade.

IWPA recognizes and supports the significant effort Peru has put into reforming its forestry laws and developing new systems to support legal and sustainable forestry. We have worked closely with the Office of the U.S. Trade Representative, environmental non-governmental organizations, the Peruvian government, and Peruvian industry to find a path forward that supports the legal wood trade. IWPA is traveling to Lima next week to discuss the needs of the international wood products trade and identify opportunities for future cooperation such as Peru's National Pact for Legal Wood.

To be clear, we support the goals of the Lacey Act: to support the trade of legally-sourced wood products and prevent the sale of illegally-logged wood. However, we are concerned that the process used to exclude these shipments without providing any evidence of illegality inappropriately shifts the burden of proof from the government, which is tasked with enforcing the Lacey Act, to U.S. companies who have not been accused of any wrongdoing.

Compliance with the Lacey Act continues to be a challenge for U.S. businesses. The Lacey Act imposes a duty on the importer but does not specify what actions meet a due care threshold that would result in safe harbor for responsible actors. This has led to a situation in which companies working tirelessly to meet their obligations under the Lacey Act will never have any assurance they won't be subject to exclusion or an enforcement action.

For our part, IWPA is working to provide our members, who are largely small- and medium-sized family-owned companies, with the tools and resources to meet this requirement. By providing the tools to support legal trade we enable both sustainable forest management and sustainable communities.

We look forward to continued opportunities to work with House Ways and Means Committee Members and staff to promote legal and sustainable wood products trade with Peru. Please have your staff contact Joe O'Donnell, IWPA's Senior Manager of Government Public Affairs, by e-mail at joe@iwpawood.org or by phone at (703) 820-6696 if you have any questions or need additional information.

Sincerely,



Cindy L. Squires, Esq.
Executive Director



Honorable Dave Reichert
Chairman,
 Subcommittee on Trade,
 Committee on Ways and Means,
 U.S. House of Representatives
 1104 Longworth HOB
 Washington, DC 20515

Honorable Charles B. Rangel
Ranking Member,
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Statement of Mr. Tracy Brunner, President, National Cattlemen's Beef Association
Submission for the record to the
United States House Committee on Ways and Means,
Subcommittee on Trade
"Effective Enforcement of U.S. Trade Laws"
September 27, 2016

Chairman Reichert, Ranking Member Rangel and members of the committee, on behalf of the U.S. beef industry, I thank you for holding this hearing on the effective of enforcement of U.S. trade laws. My name is Tracy Brunner, and I am a cattleman from Ramona, Kansas. I am the president of the National Cattlemen's Beef Association (NCBA), the nation's oldest and largest trade association representing the U.S. beef industry and I am honored to share with you the pros and cons of trade that we have experienced as an industry over the years.

With ninety-six percent of consumers living outside of our borders it is critically important that the United States leads the world in establishing international terms of trade that promote the use of science and market demand as fundamental principles of free and fair trade. The cattle industry is deeply rooted in the merits of competition and as a result our ranchers produce some of the highest quality beef in the world. We believe in the quality and safety of our cattle and our beef, and even though we do not always have the opportunity to compete on a level playing field we still find a way to take market share from our competitors. What we do not support and will not support is the intentional manipulation of the market through government policies or the non-enforcement of trade rules that place U.S. beef at a competitive disadvantage. No government should be in the business of picking winners and losers, whether it be the United States Government or a foreign government.

The U.S. beef industry has been a beneficiary of fair trade and a victim of unfair trade, and that is why we strongly supported the passage of H.R. 644, the Trade Facilitation and Trade Enforcement Act of 2015, also known as the customs bill. This bipartisan agreement was the result of bicameral coordination to address our nation's customs enforcement needs as well as concerns surrounding currency manipulation. NCBA is a strong proponent of free trade and we believe that trade must also be fair for it to be sustainable. The customs bill updated our customs enforcement laws to enforce fair trade with our trade partners. For example, Section 602 of the customs bill reauthorized the Administration to re-instate retaliatory measures against countries, under certain conditions, if previous retaliatory action was terminated. This authorization is important to the U.S. beef industry in addressing the ongoing failure of the European Union to properly enforce the terms of the 2009 Memorandum of Understanding (MOU). Under the terms of the MOU, the United States temporarily suspended retaliatory tariffs on goods from the European Union (even though we are entitled to relief as established by the World Trade Organization) in exchange for duty-free access to the European Union for approximately 45,000 metric tons of beef from non-hormone treated cattle.

Unfortunately, the European Union has not honored the spirit of the agreement and has allowed other countries who were not part of the WTO decision to participate in the duty-free quota. These countries produce a lesser quality product at a much lower price and undercut U.S. beef in the European market. The lack of enforcement by the European Union caused the U.S. share of the quota to shrink to 32.6% in 2015, thus hurting the cattle-producing families who boldly invested in developing their ranches to support this specific niche market. If the problem persists, the only action may be to dissolve the quota and re-instate retaliatory tariffs on European products. This will cause economic pain in both economies, but we will not allow U.S. beef producers to be the only party to suffer from unfair trade practices.

The customs bill also enhanced the standards by which we observe and influence the behavior of other countries who are determining whether they want to pursue currency manipulation as part of their future or pursue trade access to the U.S. market. The customs bill includes language that empowers the U.S. Treasury Department to monitor currency behaviors of other countries and provide updates of their activities. The language also establishes criteria for the Treasury Department to observe and a timeline to address any country suspected of violations. If a country is found in violation of these criteria then their participation with the U.S. in a future trade agreement is in jeopardy. This encourages other countries to observe our rules on currency manipulation as an incentive to have greater access to the U.S. market. We share the growing concerns around currency manipulation by foreign countries, but we do not believe that currency policy and trade agreements should be bound together because it may restrict our nation's ability to address currency issues during times of crisis. That is why we support the wisdom of U.S. House and U.S. Senate leaders who determined to address the threat of currency manipulation under the customs bill instead of pursuing other options that could jeopardize the future of important trade agreements.

NCBA supports the ongoing collaboration of the United States Government and the Government of Canada through the Regulatory Cooperation Council and its effort to streamline binational trade by resolving many of the small and large differences in regulatory standards. We also applaud efforts of the U.S. Department of Agriculture (USDA) and the Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (SAGARPA) of Mexico to identify common regulatory goals and work to improve cross-border trade between our countries. For the U.S. beef industry, North American trade is a fundamental part of our bottom line because the North American Free Trade Agreement created two one-billion dollar markets for U.S. beef in Mexico and Canada. The cross-border trade of beef and live cattle continues to face many regulatory burdens and it is our hope that the United States will continue to work with Canada and Mexico to resolve these differences so that our industry will not be burdened by delays at the border caused by confusion in regulatory enforcement. Creating a safe and efficient cross-border trade environment is a mutual goal of the government and the industry, and we hope these efforts prove to be successful.

While the U.S. beef industry has suffered from unfair tariff and non-tariff barriers in other countries we applaud the U.S. government for making tremendous advances to eliminate those barriers. At the same time, we have growing concerns with some of the recent actions taken by the USDA regarding beef imports from Brazil and Argentina.

In December 2013, USDA's Animal and Plant Health Inspection Service issued a proposed rule to amend current regulations and allow the importation of beef from 14 states in Brazil. The congressionally-mandated GAO audit to evaluate the methodology used for approvals like this has not been completed. Despite this, APHIS pushed forward and implemented the rule in 2015 and recently approved plants to export beef. According to the USDA, the regulation changes would allow the importation of chilled or frozen beef while continuing to protect the United States from an introduction of foot-and-mouth disease.

However, there is concern stemming largely from whether Brazil is willing to put the protocols in place to ensure FMD never leaves their country. NCBA submitted comments to USDA/APHIS on April 22, 2014 urging them to withdraw this proposed rule.

On August 29, 2013, USDA published a notice announcing the FMD-free status of the Patagonia region of Argentina, which would allow for the importation of fresh and frozen beef, as well as live animals from this region. Also published was a proposed rule to allow for the export of fresh beef from northern Argentina to the U.S. Northern Argentina is a region that is not recognized as being free of Foot-and-Mouth Disease by APHIS as they still vaccinate against FMD. The risk analysis APHIS used to base the decision on the FMD-free status of Patagonia was found to have multiple flaws through a third party objective review. APHIS site visits to substantiate animal health data seemingly lacked an established methodology and management controls. NCBA remains concerned with the possible increased risk these decisions place on the health and well-being of the national herd.

We are not concerned with the imports of beef from Brazil and Argentina from a competition stand point, but we are concerned that USDA has decided to move forward with rules allowing imports when the Congressionally-mandated GAO audit has not been completed. FMD is one of the most economically damaging animal diseases in the world. It is highly contagious among cloven-hooved animals and an outbreak could ultimately threaten the entire U.S. economy. It is not a food safety concern, nor a threat to public health, but it permanently affects the health and productivity of infected animals, spreading rapidly. The disease inhibits the animal's ability to eat, as well as the overall health and well-being of the animal. Nearly 100 percent of animals exposed become infected and in order to control the spread of the disease from animal to animal and farm to farm, the infected animals must be quarantined and euthanized, and human and vehicle traffic around and within the outbreak area must be stopped.

The United States cattle herd has been free of foot-and-mouth disease since 1929 and the United States government should not place the health and safety of our herd at risk of exposure to future countries with an FMD history without establishing a strict, objective, and science-based protocol to ensure that the risk of exposure to FMD is as close to zero as possible. We realize that the U.S. Customs Service is responsible for the proper enforcement of trade laws and we need to make sure that all parts of the U.S. government are on the same page before imported product is allowed to flow in to the U.S. market and to make sure that trade laws and rules are effectively enforced.

We live in a global market and we must continue to engage with other countries to improve conditions of trade that will benefit American companies and consumers of American goods at home and abroad. We need a renewed focus on enforcement of existing trade laws and providing the necessary resources to enforce those laws to protect our companies and consumers from those who want to cut corners and undermine the quality and safety of goods and services in the market place. We are encouraged that you are willing to engage in this area and we look forward to working with you to improve the quality of trade through enforcement of our laws.

Sincerely,



Tracy Brunner, President





**STATEMENT OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION
EFFECTIVE ENFORCEMENT OF U.S. TRADE LAWS
BEFORE THE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
UNITED STATES HOUSE OF REPRESENTATIVES**

SEPTEMBER 27, 2016

Chairman Reichert, Ranking Member Rangel, 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 25,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 328 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—processing more than \$2.4 trillion in trade goods and collecting more than \$46 billion in revenue in Fiscal Year (FY) 2015.

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 collecting antidumping and countervailing duties.

TRADE ENFORCEMENT AND COMPLIANCE STAFFING

When CBP was created in 2003, 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 all 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, and revenue funds other federal priority programs. NTEU is deeply concerned with the lack of resources, both in dollars and manpower, being devoted to CBP's trade functions. Lack of sufficient focus and resources not only costs the U.S. Treasury in terms of customs duties and revenue loss, but also costs American companies in terms of lost business to unlawful imports.

As of January 2016, there are 2,463 CBP revenue occupations personnel onboard, 214 positions short of the CBP revenue staff authorized by Congress. These occupations include Import (935), Entry (434), Fines, Penalties and Forfeiture (291) National Import (79) and International Trade Specialists (122); Customs Auditors (327), Attorneys (104) and Chemists (123).

Also, in many locations, there continue to be Import Specialist vacancies. In St. Albans, Vermont alone there are as many Import Specialist vacancies as there are Import Specialists—four--some of which have been vacant for more than a year.

Continuing staffing shortages, inequitable compensation, and lack of mission focus, are the main reason why experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving or have left the agency. Further, 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.

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 was established. 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 fears that erosion in revenue functions would continue and be exacerbated in the future 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, including vital trade facilitation and enforcement positions as Entry and Import Specialists, as a staffing ceiling rather than a floor.**

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's 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 comply with the requirements of section 412(b) of the 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.”

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. In 2009, CBP renamed the Section 403 Resource Allocation Model to the Resource Optimization

Model (ROM). The FY 2009 ROM reduces the FY 2010 optimal staffing levels for some revenue maintenance function positions, specifically the Import Specialist position. For example, the FY 2009 ROM puts the lower range of Import Specialist positions needed in FY 2010 at the HSA statutory floor of 984, rather than 1,100 as stated in the FY 2007 RAM. And, in the most recent ROM for trade positions that CBP released on July 31, 2015, there is no increase in the lower range of the optimal staffing level of 984 for Import Specialists.

CBP did not even achieve that threshold number of Import Specialists positions in FY 2014. As stated in the FY 2015 ROM, the “Homeland Security Act threshold for import specialists is 984 positions; in FY 2014, there were 954 positions. The Model projects a range of 984 to 1,748 positions needed (between FY 2015 and FY 2022) for optimal performance”—an increase of 764 over the HSA floor. (See page 19 of ROM for Trade Positions, FY 2015.) In other words, **there has been no increase in the number of Import Specialists on board since 2003 even though inbound trade volume grew by more than 24 percent between FY 2010 and FY 2014.**

CENTERS OF EXCELLENCE AND EXPERTISE

In 2011, CBP established the Centers of Excellence and Expertise (CEEs)—10 industry-specific Centers that require significant changes to CBP trade operations employees’ workload and work practices. In 2014, four of the CEEs began operating at an accelerated level of processing and became fully operational. On March 24, 2016, the remaining six CEEs came on board.

The 10 Centers are:

Pharmaceuticals, Health and Chemicals - New York, NY
 Agriculture and Prepared Products - Miami, FL
 Automotive and Aerospace - Detroit, MI
 Apparel, Footwear and Textiles - San Francisco, CA
 Base Metals - Chicago, IL
 Petroleum, Natural Gas and Minerals - Houston, TX
 Electronics - Los Angeles, CA
 Consumer Products and Mass Merchandising - Atlanta, GA
 Industrial and Manufacturing Materials - Buffalo, NY
 Machinery - Laredo, TX

According to CBP, CEEs are virtually-managed with geographically dispersed teams. However, many operational and logistical challenges remain with the reorganization of commodity teams at the ports of entry. These challenges include issues associated with remote supervision; the inability of Automated Commercial Environment (ACE) to support the CEE initiative resulting in wasteful inefficient work-around practices; a lack of uniformity between the CEEs in terms of workload and work practices; catering to the trade at the expense of revenue

recovery; lack of clear guidance as to what is CEE work and what is port work; and insufficient training for both employees and supervisors.

Critical for supporting the CEE's virtually-managed and geographically dispersed workforce is the completion of the ACE. Now three years behind schedule and more than \$1 billion over budget, CBP began rollout of the ACE "single window" for industry filing electronic trade entries on March 30, 2016. According to industry users, the ACE rollout has been challenging with users experiencing network error and system-wide crashes.

Also, NTEU has learned that there are approximately 500,000 accounts that have yet to be distributed to the CEEs with 140,000 accounts pending at Consumer Products, 48,000 at Agriculture, 40,000 at Automotive, and 50,000 at Textile. Also, CBP has yet to decide which CEE to assign 60,000 accounts under Chapters 98 and 99 of the Harmonized Tariff Schedule and 50,000 multi-national accounts/multi-commodity importers.

Many NTEU trade operations members assigned to the newly created CEEs have asked NTEU to express their concerns to Congress. The concerns and recommendations of CBP employees assigned to CEEs can be found in the attached Appendix A.

FY 2017 CBP BUDGET REQUEST

In any discussion of CBP's budget, the House Ways and Means Committee must recognize first and foremost the role that user fees play for passenger processing, trade enforcement, and facilitation inspection services provided by CBP to international traders and travelers. **NTEU strongly supports increasing and indexing to inflation all user fees collected by CBP and depositing these indexed fees into designated user fee accounts to fund the hiring of additional CBP Officers as identified by CBP's FY 17 Workforce Staffing Model.** According to CBP's FY 2016 Congressional Justification for Salaries and Expenses, despite an increase in appropriated funding for the hiring of 2,000 new CBP Officers, **CBP still faces a staffing shortage of 2,107 CBP Officers in FY 2017 and beyond.**

For years, NTEU has maintained that delays at the ports result in real losses to the U.S. economy. According to the U.S. Department of the Treasury, more than 50 million Americans work for companies that engage in international trade and, according to a University of Southern California (USC) study, "The Impact on the Economy of Changes in Wait Times at the Ports of Entry", dated April 4, 2013, for every 1,000 CBP Officers added, the U.S. can increase its gross domestic product by \$2 billion, which equates to 33 new private sector jobs per CBP Officer added.

Customs User Fees

CBP collects Customs User Fees (CUFs) which include CUFs authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to recover certain

costs incurred for processing, among other things, air and sea passengers, and various private and commercial land, sea, air, and rail carriers and shipments. The source of these user fees are commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers and barge/bulk carriers.

COBRA fees are deposited into the Customs User Fee Account and are designated by statute to pay for services provided to the user, such as 100% of inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. Of the 23,775 CBP Officers currently funded, COBRA fees fund 2,859 full-time equivalent CBP Officers.

The Administration proposed in FY 15, FY 16 and again in its FY 17 budget requests, an increase of \$2 in COBRA user fees. **If enacted, a \$2 increase would fund the hiring of 840 new CBP Officers.**

Diversion of Customs User Fees

Any increases to the Customs User Fee Account should be properly used for much-needed CBP staffing and not diverted to unrelated projects. Indexing COBRA user fees to inflation would raise \$1.4 billion over ten years—a potential \$140 million per year funding stream to help pay for the hiring of additional CBP Officers to perform CBP's law enforcement, trade and travel facilitation missions.

Last year, Congress approved a highway bill that indexed CUFs to inflation, but diverted this funding from the Customs User Fees Account to the General Fund to pay for unrelated highway and infrastructure projects. Again, indexing CUFs to inflation and directing the additional funding to the Customs User Fee Account would support the hiring of new CBP Officers to address the current 2,107 CBP Officer staffing shortage. As enacted, CUF payers will now pay \$140 million a year in additional COBRA fees, but CBP does not receive one additional dime to fund much needed new CBP Officer personnel.

If Congress is serious about job creation, wait times, international tourism, trade enforcement and facilitation, Congress should reverse this decision and redirect the funds raised by indexing the COBRA portion of CUFs to inflation and use these increased fees to improve border security and processing.

Immigration User Fees

CBP collects immigration inspection user fees (IUFs) from air and sea passengers traveling to the U.S. Increasing and indexing the IUF will allow CBP to better align air passenger inspection fee revenue with the costs of providing immigration inspection services. Of the 23,775 CBP Officers currently funded, IUFs fund 4,190 CBP Officer positions.

According to CBP's FY 2016 Congressional Justification, IUF collections will remain stagnant in comparison to immigration costs. In FY 2015, IUFs raised about \$630 million, while CBP's actual costs to provide immigration inspections totaled about \$830 million—thereby allowing CBP to recover only 76% of total costs. IUF rates were last increased from \$6 to \$7 in November 2001. The FY 2017 budget requests a \$2 increase in the IUF. **The additional revenue generated by this \$2 fee increase would support over 1,230 new CBP Officers.**

CBP CAREER LADDER PAY INCREASE

NTEU commends the Department for the recent increase in journeyman pay for CBP Officers and Agriculture Specialists. NTEU strongly supports extending this same career ladder increase, from General Schedule (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 CBP and Congress recognize the high level of expertise that these employees possess.

CONCLUSION

In effect, there has been a CBP trade staffing freeze at March 2003 levels and, as a result, CBP's revenue functions are suffering. There is no increase in the FY 2017 budget request to hire additional CBP trade personnel who are responsible for stopping illegal and misclassified goods from entering U.S. commerce and for collecting import duties and ensuring importers fully comply with all applicable laws and trade agreements. **The stagnation in the number of CBP revenue staff and confusion with the full implementation of the CEEs undermines their mission.**

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 are costing in terms of revenue losses to the U.S. Treasury.

NTEU urges the Committee to authorize funding to hire additional trade enforcement and compliance personnel, including Import Specialists, to enhance trade revenue collection and to authorize a \$2 increase in immigration and customs user fees to fund the hiring of the 2,100 additional CBP Officers needed to end the current CBP Officer staffing shortage.

The more than 25,000 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 A:

NTEU Members' CEE Issues and Recommendations

- 1) **Remote Supervision and related issues:** The virtual environment has led to the involvement of multiple layers of CEE supervision in matters that were resolved in the past by one on-site supervisor; multiple CEE conference calls across time zones force employees to work through lunch or stay past, or come in before, their tours of duty; and create inefficient administrative and work related procedures. Also, because employees and remote supervisors frequently work in different time zones, there is limited time to coordinate work during core business hours. NTEU members are concerned that remote supervision will require significant changes to established hours of work to ensure nationwide office coverage. Many CBP employees have child care and other issues, and rely on the established work hours and schedules.

NTEU members recommend that CBP incorporate as much on-site supervision as possible. At the very least, CEEs should align supervision by time zones with at least one administrative supervisor in each time zone for each CEE or each CEE branch. Ports with 30 or more Import Specialists should include 10 teams. Each team should cover one of the 10 industry-specific CEE commodities, with a local supervisor for each team. In the small ports where remote supervision cannot be avoided, the remote supervision should be regional and in the same time zone.

- 2) **Lack of uniformity with regard to work practices and processes within each CEE:** The CEEs were established to "increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen critical agency knowledge on key industry practices." It has been the exact opposite when it comes to CBP dealing with its own employees. Each CEE handles issues differently when it comes to granting Alternative Work Schedules (AWS), leave, telework, religious observance policies and generally sharing information among CEE members. Across the country, there are differing levels of acceptance by managers of scheduling flexibilities allowable under law, such as telework. There are now situations where 4 or 5 employees at a local port are assigned to 3 or 4 different supervisors around the country. This creates a whole host of problems with regard to office coverage, leave, and telework, especially if there is a lack of uniformity with respect to scheduling policies across all ports.

NTEU members recommend that CBP, to the greatest extent possible, handle administrative and work process issues uniformly across all the CEEs.

- 3) **CEE vs Port work:** As much as CBP has tried to say that the CEEs will absorb all trade compliance functions, the local port structure is not going away. Appraisals of samples for seizure, exams, and first time importer walk-ins will continue to be done locally. On many occasions, the compliance staff has to physically examine a sample to make a determination. Also, paper protests are often worked by the receiving Port and also by a CEE after inputted into the new ACE protest module, which is duplicative.

NTEU members recommend that CBP develop uniform procedures to work within each CEE, to process work between CEEs, and to coordinate in some uniform manner with each Port. Furthermore, the CEEs need more frontline personnel—Import Specialists, Entry Specialists, and technicians—to make the concept functional.

- 4) **Lack of proper technology to support the program.** The development of ACE is still not far enough along to fully support CEEs, resulting in inefficient processes that include time consuming scanning of photos and emailing information to the CEEs only to have the CEEs send the work back to the ports.

CEEs need equipment and additional support staff to allow trade compliance staff to perform their actual enforcement duties and responsibilities. At the very least, every employee will need a scanner on their desk. Also, CBP Officers who are feeding product detention information to the CEEs need better camera equipment. CBP trade compliance staff need to train Officers on how to use the camera equipment and on what to take pictures of.

- 5) **Lack of training:** When the commodities were realigned to the new CEE structure, many employees switched lines of merchandise and are new to the commodity that they now handle. CBP has provided no training to those employees who switched lines of merchandise during the reorganization. Also, CBP is constantly rolling out new procedures and updates to meet deadlines without proper training. Employees are forced to learn as they go undermining their trade enforcement and compliance mission and resulting in a loss of revenue.

NTEU members recommend that each CEE conduct training at the CEE port on the particulars of the commodities handled by their CEE, including classification, appraisement and other agency requirements that might pertain to the commodities. Also, CBP should establish a process to solicit, evaluate and select interested private sector parties to assist in providing educational seminars to CBP CEE employees that would improve their ability to classify and appraise imported merchandise and improve the overall trade enforcement efforts of CBP.

- 6) **CEEs were supposed to be commodity driven, however they are account driven:** While the CEEs were supposed to be commodity driven, they are in fact account

driven. As an example, Home Depot, which brings in a variety of products was placed in the electronics CEE, and has been told that the electronics CEE will handle all of their merchandise regardless of what CEE it actually belongs too. If an Import Specialist in the electronics CEE doesn't know what to look for in a certain commodity outside of their CEE, they are to contact the CEE that handles that merchandise and ask questions. This a totally inefficient way of doing business and will also lead to less enforcement. Also, the internal alphabetical case assignment system often does not match up with the system-generated team assignments in ACE/ACS which are aligned geographically by numerical port code. This makes it very difficult to route work of all types and, because it is not transparent to the trade, follow-up inquiries for them is difficult.

NTEU members recommend that commodities be properly assigned to the CEE with trained personnel to examine that commodity. The team assignment on an entry should match with the actual CEE and CEE team that does that work. For instance, CBP should assign the various merchandise that Home Depot imports to the CEE that handles that merchandise.

- 7) **Commercial Operations Advisory Committee (COAC) needs changes:** The COAC is composed of private business interests from the importing community and customs law firms. There are no representatives of the CBP workforce who actually do CBP's commercial operations work on the COAC.

NTEU members recommend that CBP rotate high level personnel working with the COAC and the CEEs. At many agencies, high-level employees are given assignments with finite terms on advisory committees, so that regulators can't be unduly influenced. Also, it is past time that a representative of CBP frontline employees is appointed to the COAC.

- 8) **Lack of transparency from CBP with regard to the challenges and issues facing the CEEs:** NTEU has learned that CBP currently has two groups working to resolve CEE rollout issues, but CBP has not acknowledged this and NTEU has had no interaction with these groups.

NTEU members recommend that NTEU-represented frontline workers should be involved in every step of the process and participate as members of these work groups.



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**WRITTEN COMMENTS OF
THE SOUTHERN SHRIMP ALLIANCE
ON
EFFECTIVE ENFORCEMENT OF U.S. TRADE LAWS
BEFORE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES**

HEARING DATE: SEPTEMBER 27, 2016

SUBMISSION DATE: OCTOBER 11, 2016

The Southern Shrimp Alliance (SSA) is submitting written comments to the Trade Subcommittee of the Committee on Ways and Means to emphasize the importance of effective enforcement of U.S. trade laws to small and medium-sized family owned businesses throughout the United States. SSA is a non-profit alliance of shrimpers, dockside facilities, processors, retailers, distributors, and other industry participants committed to preventing the continued deterioration of America's warmwater shrimp industry and to ensuring the industry's future viability. SSA's membership spans the coast of the South Atlantic and the Gulf of Mexico, from North Carolina to Texas.

Illegal schemes to evade the payment of antidumping and countervailing duties substantially undermine the effectiveness of our trade remedy laws. The U.S. shrimp industry has direct experience with the efforts of several federal agencies – U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), Enforcement and Compliance of the International Trade Administration of the U.S. Department of Commerce, the Office of Law Enforcement of the National Oceanic and

Atmospheric Administration (NOAA) Fisheries, and the Office of Criminal Investigations of the U.S. Food and Drug Administration – to address the criminal networks that facilitate the evasion of antidumping and countervailing duties and related trade fraud. Since the imposition of antidumping duty orders on certain frozen shrimp imports in 2005, these agencies have successfully countered evasion of payment of antidumping duties through transshipment of Chinese-origin shrimp through Indonesia, abuse of the “dusted” shrimp exclusion from trade relief by rampant misclassification, and, most recently, the transshipment of Chinese-origin shrimp through Malaysia. These agencies have also investigated and identified the participants in past evasion schemes, such as the transshipment of shrimp subject to antidumping duties through Cambodia. At the same time, the U.S. shrimp industry has worked with these agencies to address related evasion schemes used for other products, including widespread mislabeling of fish fillets from Vietnam in order to evade antidumping duties and multiple illegal strategies to import honey from China without payment of antidumping duties.

The *Trade Facilitation and Trade Enforcement Act of 2015* enacted a number of amendments to existing law that hold the promise of substantially augmenting the capacity of CBP, along with its partner government agencies (PGAs), to effectively address and prevent the illegal evasion of antidumping and countervailing duty orders. SSA is grateful for this Committee’s continued focus on the effective enforcement of our trade laws. Criminal endeavors, such as the illegal evasion of antidumping and countervailing duty orders which endanger the livelihoods of thousands of Americans cannot be tolerated.

For the U.S. shrimp industry, what matters now is what CBP will do with the new authorities granted to the agency by the *Trade Facilitation and Trade Enforcement Act of 2015*. The regulations promulgated by CBP, along with other actions taken by the agency, in response to the new law will have a determinative effect upon whether evasion of trade remedies, and trade fraud generally, will be more effectively countered. Commissioner Kerlikowske’s written testimony to this Committee touched upon several aspects of the *Trade Facilitation and Trade Enforcement Act of 2015* that will improve trade enforcement, including the development of administrative procedures for investigations under the *Enforce and Protect Act of 2015* and the elimination of the “consumptive demand” exemption for imports produced through forced or child labor. However, in addition to these provisions, there are several other portions of the *Trade Facilitation and Trade Enforcement Act of 2015* that should, if meaningfully implemented, substantially augment CBP’s enforcement capacity. We set out a brief overview of these provisions below.

Use of Trade Data for Commercial Enforcement Purposes- Section 111(c) of the *Trade Facilitation and Trade Enforcement Act of 2015* amended Section 343(a)(3)(F) of the Trade Act of 2002 (19 U.S.C. § 2071 note) to expand the information available to CBP for use in its commercial risk targeting operations and analysis. The amendment maintained the prohibition on the use of such information for “commercial enforcement purposes,” but nevertheless provided CBP with access to data that will substantially improve the agency’s ability to target problematic shipments before their arrival at U.S. ports. This provision must be implemented by CBP in a manner consistent with the amendment’s intent.

Establishment of Importer Risk Assessment Program- Section 115 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires CBP to establish a program “to adjust

bond amounts for importers, including new importers and nonresident importers, based on risk assessments of such importers conducted by U.S. Customs and Border Protection, in order to protect the revenue of the Federal Government.” The U.S. Government Accountability Office (GAO) recently estimated that about US\$2.3 billion in antidumping and countervailing duties owed to the U.S. government were uncollected as of mid-2015 and that CBP was only able to collect about 31% of the dollar amount owed on antidumping and countervailing duty bills the agency attempted to collect (GAO 16-542; July 2016). The GAO found that roughly half of the \$2.3 billion in unpaid antidumping and countervailing duties could be traced to twenty importers. The GAO further identified a number of characteristics relevant to nonpayment risk, suggested a metric by which to develop risk scores, and specifically observed that the utilization of such risk scores could inform bond demand requirements. These recommendations should inform any risk assessment program developed by CBP.

Importer of Record Program- Section 114 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires CBP to establish an importer of record program to assign and maintain importer of record numbers. In developing the program, CBP is to ensure that sufficient information is collected to allow CBP “to identify linkages or other affiliations between importers that are requesting or have been assigned importer of record numbers” The importance of obtaining such information was further underscored in the recent GAO report, as that agency observed that an importer owing US\$169 million in antidumping duties (the second highest of any importer) was believed by CBP to “have subsequently incorporated under a different name, enabling it to resume importing as a new entity.” Accordingly, the program developed by CBP in response to Section 114 must significantly improve upon the information already collected by the agency regarding importers of record in order to prevent importers from simply closing down and reopening under a new name whenever faced with significant outstanding debt.

Customs Broker Identification of Importers- Section 116 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires CBP to promulgate regulations “setting forth the minimum standards for customs brokers and importers, including nonresident importers, regarding the identity of the importer that shall apply in connection with the importation of merchandise into the United States.” Any such regulations should further bolster CBP’s ability to identify linkages between entities acting as importers of record.

Report on Security and Revenue Measures With Respect to Merchandise Transported in Bond- Section 113 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires the Secretary of Homeland Security and the Secretary of the Treasury, no later than December 31, 2016, to jointly submit a report to this Committee and the Committee on Finance of the Senate “on efforts undertaken by {CBP} to ensure the secure transaction of merchandise in bond through the United States and the collection of revenue owed upon the entry of such merchandise into the United States for consumption.” SSA has repeatedly raised concerns with CBP regarding apparent abuse of “in bond” entries as a vehicle for evasion of antidumping duties on shrimp imports. CBP has been responsive to these concerns but the amount of information collected and evaluated by the agency with regard to such entries appears to be limited. In identifying entries that “remain unreconciled,” a required element per Section 113(b)(7), any report should attempt to explain the reasons, as identified by CBP, for the lack of reconciliation for such entries.

As the trade community monitors and evaluates CBP's implementation of the various provisions of the *Trade Facilitation and Trade Enforcement Act of 2015*, the role of the U.S. Department of Treasury in effective enforcement of U.S. trade laws should be explored further. By regulation (19 C.F.R. § 0.1(a)) and agency order (Treasury Order 100-16 (May 15, 2003; reaffirmed Sept. 8, 2011)), the Department of Treasury has maintained "sole authority to approve any regulations concerning . . . the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto." Accordingly, in the promulgation of regulations, CBP's efforts to implement the *Trade Facilitation and Trade Enforcement Act of 2015* must ultimately be approved by Treasury. Oversight of CBP's implementation and administration of the new provisions necessarily includes the Department of Treasury.