

Additional Views - H.R. 4418

Earlier this year, the Customs and Border Protection Agency admitted that it had failed to collect more than \$130 million in duties owed on imports, largely from China. An investigation showed that one reason for this \$130 million problem was a loophole applicable to so-called “New Shippers” of goods subject to antidumping (AD) and countervailing (CVD) duties. There are variations on this loophole, but basically, one version of the loophole allows these “New Shippers” to post bonds for the unfair trade duties they owe, rather than paying the estimated amount owed. Established importers do not enjoy this benefit of being able to post bonds for pennies on the dollar, but must pay the estimated duties.

In what appeared to be a pattern, importers failed to pay the full amount of duties, leaving CBP with recourse to the bonds. To the extent that the bonds were collectible, they were insufficient to cover the full amount of the duties owed. In other cases, CBP was unable to collect on the bonds. This problem contributed to CBP’s failure to collect more than \$130 million worth of duties owed; America’s fair trade laws were flouted and the U.S. Treasury was deprived of a substantial amount of revenues that it was due. A large number of the importers taking advantage of the loophole were importing products from China; in some cases, it appears that Chinese firms subject to AD/CVD duties set up shell companies to take advantage of the “New Shipper” process. In a related problem, it appears that CBP has been unable in a number of cases to collect the full amount of a duty owed, even when “New Shippers” were not involved and cash deposits were paid.

These failures reflect poorly on CBP. It has repeatedly, and in a variety of contexts and circumstances, failed to ensure that U.S. trade laws are enforced as provided by law. These serious and repeated failures have denied American workers, farmers and businesses benefits to which they are entitled under U.S. law. These lapses involve failure to follow procedures established under U.S. law and failure to utilize due diligence in enforcing U.S. law.

In response to Congressional inquiries and criticisms, CBP recently proposed a series of reforms to address aspects of these problems. We have serious concerns not only about CBP’s ability to implement the proposed reforms, but also with whether the reforms would in fact eliminate the problems. We believe that a more comprehensive approach involving changes to current U.S. law is necessary. Steps that we recommend taking include ending the special treatment allowed for “New Shippers.” In particular, “New Shippers” should be treated like other importers – they would have to pay estimated duties with each entry, and would not be allowed to post bonds.

This step would be fully consistent with our international obligations, which authorize the United States to “request guarantees to ensure that ... duties can be levied retroactively to the date of the initiation of the review.” Clearly, the “guarantees” in the form of bonds have not ensured that the duties could be levied as provided in Article 9.5 of the Antidumping Agreement of the World Trade Organization. To do so requires collecting cash deposits. We would be prepared to consider other alternatives, including a more reliable bonding requirement, at some future date, were it to be proposed by CBP, and were it to ensure the ability of the United States to levy duties retroactively to the date of the initiation of the review.

In addition, we believe that the requirement that importers of goods subject to antidumping or countervailing duty actions post continuous bonds with a higher level of coverage should be statutorily mandated – and not left to CBP’s discretion. CBP’s record in implementing laws that allow for discretion has not always been consistent with Congress’ expectations in the past, underscoring the need for Congress to provide exact and specific direction.

We will continue to raise this issue as the legislation moves forward. We are supportive of the authorizations for these agencies, and of other provisions in the legislation. That said, the failure to enforce U.S. trade laws is a serious one, and one that deserves action from this House.

Office of the U.S. Trade Representative

Section 201 of the H.R. 4418 authorizes appropriations for USTR for FY2005 and FY2006 at \$41.5 million per year. This amount is \$2 million over the Administration’s budget request.

We believe that additional direction should have been included to ensure that some portion of this additional \$2 million is used to ensure our trading partners are living up to their international trade obligations. The current legislation does not require this outcome. Instead, as this bill is currently drafted, the additional \$2 million can be used entirely for free trade agreement negotiations, administering U.S. trade preference programs (like AGOA, CBI and ATPA), and coordinating inter-agency trade policy.

During the Full Committee markup, Congressman Levin offered an amendment that directed USTR to use some part of the additional \$2 million for staff to, among other activities, investigate, prosecute, and defend cases before the World Trade Organization and under trade agreements to which the United States is a party, and to address foreign government barriers to United States goods and services, particularly with respect to the People’s Republic of China. The amendment was rejected on a straight party line vote.

The decision by the Republican Members of the Committee to reject the amendment is unfortunate. In 2003, the goods trade deficit set a record high of \$549.4 billion. We are losing ground even areas, like advanced technology products, where the United States has dominated. In 2003, our deficit in advanced technology products climbed 65 percent, and total goods exports were down \$58 million from 2000. Unfortunately, the trade deficit is on track once again this year to set a new record.

We will continue to work for inclusion of specific direction to USTR on this issue, so that USTR starts producing results for American workers, farmers and businesses.

Compilation of Additional Views

Democratic Members of the Committee were provided only a half working day to respond to the Committee views, which, without prior notice, contained comments on a number of tangential points. Further, the Majority provided the Democratic Members of the Committee

with notice at approximately 6:45 in the evening that this legislation would come to the Floor the next day under the Suspensions Calendar. As a consequence, many of the Democratic Members of the Committee have been deprived of the opportunity to review, consider and sign these Additional Views. We hope that in the future more adequate notice can be provided so that the Majority and Minority can work more collaboratively whenever possible.

Additional Views on H.R. 4418

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