

Committee on Appropriations
Subcommittee on Homeland Security
United States Senate

*Strengthening Trade Enforcement to Protect American
Enterprise and Grow American Jobs*

Statement for the Record for Ronald Lorentzen, Deputy Assistant Secretary
Enforcement and Compliance, International Trade Administration
U.S. Department of Commerce

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The Department of Commerce (Commerce) appreciates the opportunity to submit a statement for the record on the critical issue of trade enforcement and to provide the Subcommittee with an update on Commerce's commitment and efforts to enforce the trade remedy laws.

Enforcement and Compliance (E&C), within Commerce's International Trade Administration (ITA), has responsibility for administering the antidumping duty and countervailing duty (AD/CVD) laws. These laws provide business and workers with a transparent mechanism to seek relief from the market-distorting effects of injurious dumping and unfair subsidization, and provide them with the opportunity to compete on a level playing field.

While this statement focuses on the important matter of trade remedy law enforcement, it is important to note the other activities that E&C and ITA undertake to provide America's businesses and workers a fair opportunity to compete in commercial markets worldwide and to grow American jobs. In addition to AD/CVD law administration, E&C also has the statutory authority for leading a program to monitor trade agreement operation and to seek foreign government compliance with their trade agreement obligations. Through the *Trade Agreements Compliance Program*, E&C's staff works to break down trade and investment barriers abroad and proactively monitors foreign government compliance with trade agreement obligations. We now have a comprehensive range of tools and expertise to help U.S. firms and workers confront foreign trade barriers and unfair trade practices in their quest for global growth and increased employment and profitability at home. These include our coordination of the *Trade Agreements Compliance Program*, administration of the U.S. AD and CVD laws, and leadership of other efforts to monitor and address how foreign governments' use of trade-distorting subsidies and trade remedy measures may harm U.S. export interests.

As part of the Trade Agreements Act of 1979, the Congress transferred from the Department of the Treasury to Commerce the responsibility for administering the AD/CVD laws. And, then, in the late 1980s, the Congress gave Commerce additional authority, under section 781 of the Tariff Act of 1930 (Tariff Act), to deal with the potential circumvention of AD and CVD orders. In exercising this authority, and as a matter of daily business, we cooperate with U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and other Department of Homeland Security (DHS) agencies, as appropriate, in a variety of ways to try to

counter and stop various duty evasion schemes that can thwart the purpose and effectiveness of these important laws. We also work in close cooperation with CBP, ICE, and the Department of Justice (Justice) to assist them in enforcing the customs laws and ensuring that our border measures are effective.

Commerce conducts AD and CVD investigations and administrative reviews to determine whether imported merchandise is dumped (that is, sold in the United States at less than fair, or normal, value) or subsidized by foreign governments. If our investigation finds that imports have been dumped or unfairly subsidized, and if the International Trade Commission finds that a domestic industry has been injured as a result of the unfairly traded imports, we issue an AD duty or countervailing duty order. When that happens, we instruct CBP to require importers to pay cash deposits whenever they import merchandise subject to that order. Thereafter, on an annual basis, we will normally conduct an administrative review of the entries of subject merchandise from the past year to determine the actual level of dumping or subsidization during the prior one-year period.

Commerce's role in detecting and deterring the circumvention of AD and countervailing duties is addressed in Section 781 of the Tariff Act. Pursuant to those provisions, Commerce may conduct circumvention inquiries when: (1) it is alleged that minor alterations have been made to subject merchandise in order to evade AD/CVD orders; or (2) it is alleged that merchandise subject to an order is completed or assembled in the United States or other foreign countries from parts and components imported from the country subject to the order. Commerce can also find under these provisions that later-developed merchandise may be included within the scope of an existing order.

If it is determined that an order is being circumvented, Commerce may, after taking into account any advice provided by the International Trade Commission, direct CBP to suspend liquidation of the entries and require a cash deposit of estimated duties on all unliquidated merchandise determined to be circumventing the order.

In 2006, E&C's predecessor, Import Administration, formally established a Customs Liaison Unit, which falls under the direction of our Deputy Assistant Secretary for AD/CVD Operations. The Customs Liaison Unit serves as our primary staff-level liaison with CBP and ICE on many of the fraud/evasion matters related to our AD/CVD measures. The members of this staff meet regularly with personnel from CBP and ICE to discuss enforcement issues, share information and coordinate our interaction to address potential fraud and evasion of AD and countervailing duties in a timely manner.

In February 2010, the AD/CVD Case Reference File within CBP's commercial trade tracking system—the Automated Commercial Environment, or ACE—went “live.” The ACE AD/CVD Case Reference File has allowed Commerce to maintain much more efficient and effective communication with CBP in the implementation and application of the AD and countervailing duty rates.

For example, ACE enables the application of AD/CVD rates on a per-unit basis, as opposed to the typical *ad valorem* rates. The application of a per-unit amount is important to counter

situations where companies regularly understate the value of their imported merchandise. Cash deposit rates are typically calculated *ad valorem*, *i.e.*, as a percentage of the entered value of the imported merchandise. By undervaluing the merchandise, importers avoid paying the full duties owed. To forestall such activity, we have resorted to the use of per-unit rates in several AD cases including crawfish, honey, activated carbon, and garlic from China, as well as fish fillets from Vietnam. As an illustration, where Commerce has imposed a cash deposit rate of a specific dollar amount per kilogram for an exporter's entries of a particular product, even if the value of the merchandise is undervalued upon entry, the full amount of the duties owed is being applied because it is being applied against the kilogram quantity of imports, not the underdeclared value.

Commerce recently amended its regulation governing the certification of factual information submitted to Commerce by a person or his or her representative during AD/CVD proceedings. The amendments aim to strengthen the current certification requirements by mandating that the party submitting the documents: 1) identify to which document the certification applies, 2) identify to which segment of an AD/CVD proceeding the certification applies, 3) identify who is making the certification, and 4) provide the date on which the certification was made. These new requirements will better ensure that parties and their counsel can be held legally responsible for the authenticity of specific documents and are aware of the consequences of certifying false documents.

In the course of our proceedings, particularly our annual administrative reviews, our staff occasionally discovers or is made aware of information indicating the possible evasion of AD/countervailing duties. When Commerce uncovers information that indicates possible evasion of the AD/CVD laws, we have the statutory authority to provide that information to the DHS. Between January 2012 and the present, Commerce has referred 30 evasion allegations to CBP. Upon examination of the information provided, authorities at the appropriate DHS agency may initiate an investigation which can result in the imposition of civil or criminal penalties and fines on parties involved in the evasion scheme. Once a fraud/evasion investigation involving an AD/CVD case is initiated by ICE (whether based on a referral from Commerce or CBP/ICE's own findings), Commerce is frequently asked by CBP/ICE agents or the Assistant U.S. Attorney prosecuting the investigation to provide assistance. Since early 2012, Commerce has taken action to assist CBP, ICE, and/or Justice in approximately 20 investigations of possible fraud or evasion with respect to proceedings covering more than 12 AD/CVD orders.

Commerce also uses its own authority to enforce the AD/CVD laws and ensure their effectiveness. Some of AD/CVD orders under which Commerce has recently taken action to address enforcement concerns include, among others, the AD/CVD orders involving honey, garlic, shrimp, solar cells, and certain steel products.

For example, Commerce has made use of its authority to address circumvention of AD/countervailing duties to enforce the order on honey from China. In August 2011, Commerce received a complaint from domestic honey producers that Chinese exporters were evading the AD duty order on honey by mixing honey with rice syrup and then claiming the resulting product was not subject to the duties due on imports of honey from China. After reviewing all of the facts, Commerce issued a final determination finding that blends of honey and rice syrup were,

in fact, circumventing the order and began collecting duties on entries of honey and rice syrup blends from China, regardless of the percentage of honey in the blend.

Commerce has also taken several steps to ensure that Chinese exporters and U.S. importers of garlic do not engage in activities designed to avoid the payment of duties. As noted above, Commerce now applies a specific duty rate to ensure that duties are not evaded through the undervaluation of imports. Most recently, Commerce discovered during an administrative review that a Chinese garlic producer was using its individual, relatively low AD rate to export other producers' garlic, thereby evading a significant portion of the actual AD duties owed. After uncovering this scheme, Commerce revoked this producer's individual duty rate and instructed CBP this past June to collect duties on all imports from this producer at the higher, country-wide duty rate.

In 2012, while conducting an administrative review of the AD order on frozen warmwater shrimp from China, Commerce received information that one of the Chinese exporters, Hilltop International, had been supplying false information to Commerce over a multiyear period. Commerce rapidly assimilated vast amounts of information in order to directly investigate the matter. Ultimately, Commerce concluded that Hilltop made false statements in response to Commerce's first probe and, given the seriousness of the matter, Commerce reopened prior administrative review results regarding Hilltop. Upon re-examination of the information, Commerce found that Hilltop engaged in the same pattern of behavior in the prior reviews. As a result, the AD duties due from Hilltop grew from zero, a finding which had been supported by false information, to likely over \$100 million.

With regard to the AD/CVD orders on solar cells from China, due to concerns over potential evasion, Commerce, working with CBP, established a certification requirement for U.S. importers who claim that the solar modules they import are not subject to the orders. This procedure requires U.S. importers and Chinese exporters who claim that their modules do not contain solar cells produced in the PRC to certify as to the accuracy of that representation, and to acknowledge that failure to maintain the certification or substantiate their claim will result in application of the country-wide AD and CVD cash deposit rates. A subsequent benefit from this program has been Commerce's ability to monitor imports of solar cells and modules from China. In April 2013, Commerce analyzed CBP import data covering solar modules, which suggested that some importers may either be improperly declaring merchandise as not subject to the orders, or understating the entered value of the subject imports to reduce their duty liability. We are working with CBP to collect additional documentation and have requested additional information from certain companies to monitor and ascertain compliance with Commerce's certification requirements.

Commerce also works with CBP in other ways to mitigate the undercollection of duties. In January of this year, in response to concerns raised by domestic producers in the garlic, crawfish tailmeat, honey, and canned mushroom industries, Commerce undertook a survey of completed administrative reviews to determine if all appropriate liquidation instructions had been issued for companies' whose merchandise came into the United States under bond during specific periods. Commerce identified the relevant liquidation instructions and provided a chart to CBP identifying the exporter, relevant period, and the applicable liquidation instructions. CBP was

able to use this information to look for uncollected AD duties and countervailing duties with unexhausted surety bond coverage and to collect the duties or refer the issue to Justice for litigation before the statute of limitations for collecting on those bonds expires.

It is important to note that the flow of enforcement-relevant information between Commerce and CBP goes both ways. Late in 2011, CBP contacted Commerce with information suggesting that a party was attempting to circumvent the AD order on steel threaded rod from China by slightly altering the chemical make-up of the steel. This slight alteration could have resulted in these products being treated as a new product for which no AD duties would have been due. Commerce subsequently initiated an anticircumvention inquiry into this matter and found that these minor alternations to the merchandise did not make the altered product a new class or kind of merchandise distinct from that covered by the order. As a result, these products are subject to AD duties.

Cooperation among Commerce, CBP, ICE, and Justice has resulted in indictments, convictions, and prison sentences for evaders of AD/CVD orders. For example, our work with CBP, ICE, and Justice resulted in the arrest and 2010 indictment of German nationals involved in a massive transnational series of arrangements to import Chinese honey into the United States without paying the proper AD duties. The information recovered following those arrests led to further arrests, sentences, and deportations as late as 2012, all for having fraudulently skirted the payment of AD duties.

The examples provided above illustrate the close and expanding relationship between Commerce, Justice, ICE, and CBP with regard to addressing circumvention and countering duty evasion. Commerce is committed to strict enforcement of the unfair trade laws, and will continue to work intensively and actively with our fellow enforcement agencies to minimize circumvention and evasion of AD and countervailing duties.

We thank the Subcommittee for its interest in these critical issues, and we are grateful for the opportunity to comment for the record.