

CUSTOMS AND BORDER PROTECTION

**STATEMENT OF
ASSISTANT COMMISSIONER ALLEN GINA
CBP, OFFICE OF INTERNATIONAL TRADE
REGARDING A HEARING ON
PROTECTING AMERICAN JOBS: HOW TO STRENGTHEN
ENFORCEMENT OF ANTI-DUMPING TRADE LAWS
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON HOMELAND SECURITY**

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Senate Dirksen Office Building 124

Introduction

Chairman Landrieu, Ranking Member Coats, and Members of the Subcommittee, it is an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) trade enforcement role, specifically in detecting and preventing the circumvention of antidumping and countervailing duties (AD/CVD) on imported goods.

My name is Al Gina, the Assistant Commissioner for CBP's Office of International Trade. I have been with CBP and its legacy agency, the U.S. Customs Service, for 29 years. While I am new to my role as Assistant Commissioner, Office of International Trade, I am very committed to ensuring that the AD/CVD laws are vigorously enforced and that those who would try to evade those laws are identified and dealt with appropriately. Thank you for this opportunity to appear here today.

My testimony will highlight CBP's enforcement stance, provide examples of actions and initiatives performed in support of U.S. antidumping and countervailing duty laws, and present some of the challenges we face while enforcing those important laws.

AD/CVD Evasion

CBP and U.S. producers have a common interest in preventing the evasion of AD/CVD duties, which undermines the vitality of U.S. industry and the integrity of our trade remedy laws. We take all indications or allegations of evasion very seriously, and in coordination with U.S. Immigration and Customs Enforcement (ICE), employ all available methods in accordance with the law to address these matters. Recent publicized arrests and convictions by ICE and the Department of Justice, with significant CBP assistance, are evidence of this. However, the increasing complexity of the strategies employed by parties to evade AD/CVD duties poses a significant challenge.

CBP has a statutory responsibility to collect all revenue due to the U.S. government that arises from the importation of goods. In FY 2010, CBP collected \$310 million in AD/CVD duty

deposits on \$5.4 billion of goods subject to AD/CVD orders. CBP's main challenge in all areas of trade enforcement, including AD/CVD enforcement, is to identify the small minority of non-compliant shipments amid the universe of compliant shipments.

CBP's ability to fulfill its statutory responsibility to collect all revenue due to the U.S. government that arises from the importation of goods has been affected by companies that willfully circumvent the provisions of the AD/CVD laws in order to avoid paying AD/CVD duties. As evidenced by Senator Wyden's Staff Report on Duty Evasion, it is not difficult for an importer to find and collude with a producer to avoid paying dumping duties. Many of the parties identified in the Wyden report were able to hide their identity as part of the import transaction process.

Evasion takes several forms and often involves the collusion of several parties, including the manufacturer, shippers, and the importer. Several schemes may be employed at once, further complicating an already challenging task:

- **Illegal transshipment** involves the manipulation of documents and shipping logistics to disguise the true country of origin of a product. Transshipment is often built into production by design, with false markings and packaging devised to purposefully mimic legitimate production in other countries. Determining a product's country of origin through visual inspection or through verification of shipping documents can be very difficult, especially if cargo has been manipulated prior to import, completely masking the connection back to the true source country.
- **Undervaluation** involves the intentional falsification of documents and declarations to reduce the amount of AD/CVD duty a company must pay. Beyond the suspicion of undervaluation, it can be difficult to sufficiently prove that it is occurring, especially if there is collusion between the producer and importer to create false values.
- **Failure to manifest** (i.e., smuggling) is when a company does not declare goods on its entry documents in order to avoid paying AD/CVD duties.

- **Misclassification** includes improperly declaring goods with the proper duty classification, or mis-describing the goods to avoid suspicion of dumping. This is easier to detect and address than other schemes, but is often used in combination with another scheme such as transshipment, so that it may still appear to fall outside the scope of an AD/CVD case.
- Other schemes that exist include taking advantage of loopholes related to administrative reviews, product engineering to fall outside the scope of a case, employing shell companies as a primary means of avoiding payment, or the use of foreign businesses outside the reach of CBP authorities.

Despite these challenges CBP, in partnership with ICE, has been increasingly successful in uncovering instances of illegal transshipment and penalizing those in the United States responsible for this fraud. Our recent enforcement activities include:

- Special operations attacking illegal transshipment of Chinese steel wire garment hangers through Vietnam, Korea, and Mexico, concluding with the assessment of \$13.1 million in AD/CVD duties and the arrests of two Mexican citizens.
- An ongoing CBP/ICE operation on illegal transshipment of Chinese citric acid resulting in the identification of \$17 million in unpaid AD/CVD duties. Additional revenue recoveries are expected as the operation continues.
- A joint CBP/ICE operation on uncovered mattress innerspring units from China that concluded with the assessment of \$5.3 million in unpaid AD/CVD duties.
- Using multiple investigative techniques including lab analysis, CBP and ICE detected that Chinese honey had been transshipped through Russia, India, Indonesia, Malaysia, Mongolia, the Philippines, South Korea, Taiwan, and Thailand. This operation has led so far to the indictment and arrest of multiple corporate officers.
- CBP recovered \$2.5 million in unpaid AD duties through a company audit on imports of frozen warm water shrimp transshipped from China through Indonesia, where it was commingled with Indonesian shrimp.

A Layered Approach

CBP focuses its trade enforcement actions and resources around priority trade issues (PTI) that pose a significant risk to the U.S. economy, consumers, and stakeholders. In FY 2003, AD/CVD enforcement was granted PTI status because of its importance to the U.S. economy.

CBP utilizes a layered approach to trade facilitation and enforcement, which employs numerous efforts in the pre-entry, entry, and post-release environments to prevent, address, and deter AD/CVD duty violations and promote compliance.

In the pre-entry environment, CBP works with U.S. industry and foreign customs agencies to share information prior to arrival, monitor the import process, verify compliance, and evaluate risk. At the border, CBP uses risk assessment to target and focus resources on high-risk security, admissibility, and health and safety issues for further review, while working to expedite compliant trade across the border. In a post-release setting, verifications and audits are performed to ensure the process functions properly and to refine risk assessments based on outcomes. Throughout this process, CBP personnel work with agents from ICE and staff from the Department of Commerce, the administering authority for AD/CVD determinations under U.S. law, on potential enforcement action. This comprehensive approach is a dynamic response to the nature of today's international trade environment.

We meet regularly with U.S. industry representatives to discuss AD/CVD circumvention schemes, and U.S. industry representatives share valuable private sector intelligence with us. In order to facilitate the process of providing us with this critical information, we created an online referral process called e-Allegations. Since e-Allegations' inception in June 2008, CBP has received more than 4,000 commercial allegations via www.CBP.gov. Nearly 10 percent of these allegations are AD/CVD-related. Every allegation submitted through e-Allegations is reviewed and researched to determine the validity of the trade law violation(s) being alleged. Some are reviewed and resolved internally within CBP, and some are referred to ICE for further investigation.

When CBP suspects that AD/CVD circumvention violates criminal laws, we work closely with ICE to pursue these violations. ICE has certain authorities and resources, such as its global network of attachés, that complement CBP's own civil authorities and limited international capabilities to address AD/CVD circumvention. Last year ICE, working with a foreign government, assisted in that government's seizure of multiple containers of Chinese honey that had been destined for the United States.

CBP carries out its AD/CVD enforcement by targeting AD/CVD circumvention at the national and port level. When targeting criteria alone cannot address all AD/CVD circumvention – it will not in many instances of transshipment – CBP will initiate an operation to coordinate actions across the country to determine if a violation is occurring and to determine its scope. In the last two years, 10 AD/CVD-focused national operations and several local operations have been completed. Additionally, in the last five years, CBP has conducted 215 AD/CVD related audits and has recommended \$42.2 million in recoveries to the Department of Commerce.

New Approaches to AD/CVD Enforcement

CBP is constantly developing new approaches to AD/CVD enforcement to meet the challenges posed by complex AD/CVD circumvention schemes. CBP is working with U.S. industry, ICE and our international partners to develop new sources of information to identify AD/CVD circumvention. CBP also takes a comprehensive and integrated view of security and trade enforcement, and is creatively using other civil authorities to stop AD/CVD circumvention. We are exploring many options that will give us additional information and new tools to protect U.S. revenue and identify those who would use our system for illicit gains.

As you know, under the current retrospective system, there can sometimes be substantial increases in AD/CVD duty rates several years after the initial finding by the Department of Commerce. The bonding system is a key tool in our administration of the import process. We must pay particular attention to the risk of non-payment or evasion posed by non-resident importers of record. For example, we can use our existing regulations to levy Single Transaction

Bonds against any importer when we suspect a risk to revenue and I have directed my staff to develop internal guidance to ensure that Single Transaction Bonds are required whenever we suspect that a risk of revenue loss exists.

CBP shares industry concerns about the importance of countering AD/CVD circumvention. We also understand that U.S. industry wants more transparency in CBP's AD/CVD circumvention efforts. We are examining ways to timely release information to the public about our enforcement activities. At the same time, there is necessarily information that we cannot make public when there is a criminal case under development. Such cases usually require time to develop as CBP, in cooperation with ICE, fully investigates and prosecutes the parties that are not properly paying their AD/CVD duties. Such public prosecution sends a very strong message worldwide about the U.S. government's AD/CVD enforcement efforts. All of this notwithstanding, we are taking all necessary steps to find ways that will allow us to release information to petitioners to make our process more transparent.

One of our biggest challenges, as I outlined earlier, is with transshipment where the normal documents available to us are not the complete set that would trace the goods back to the original country of origin. This was a problem we faced with textile transshipment and we found a good deal of success with Textile Production Verification Teams that, under the auspices of an agreement with the host country, would allow teams of CBP and ICE experts to determine the production capability of individual factories. CBP is looking at the possibility of conducting similar visits to ensure that goods are actually produced in the country claimed as the country of origin with our colleagues in the Executive branch.

Some of the activities we are undertaking are:

- Working with the Department of Justice to develop a task force to concentrate resources on the most complex cases just as we have with Intellectual Property Rights;
- Working with the Department of Commerce on release of information that will help us verify the legitimacy of goods suspected of transshipment and to tighten the “new shipper” requirements; and

- Clarifying the responsibility of customs brokers when executing powers of attorney, to verify the both the identities of their principals and their eligibility to be importers of record.

The Jones Act

CBP also enforces many navigation and shipping laws intended to protect the U.S. maritime industry. One of these laws is the “Jones Act,” which provides in part that a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States, either directly or via a foreign port, unless the vessel is wholly owned by citizens of the U.S. and has been issued a certificate of documentation with a coastwise endorsement by the U.S. Coast Guard or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

Transportation in this context occurs when there is a lading of merchandise at one U.S. point and an unloading of the same merchandise at a different U.S. point. Penalties are assessed for violations of the Jones Act, typically in the amount of the value of the merchandise illegally transported.

CBP has a process whereby it issues rulings concerning the Jones Act and the other coastwise statutes. After issuance of its rulings, CBP publishes them in an electronic database where they can be reviewed by the public. CBP occasionally receives requests for waivers of the Jones Act, which are granted by the Secretary of Homeland Security if he/she determines that it is necessary in the interest of national defense and after consulting with the Maritime Administrator (MarAd) in the Department of Transportation, as to qualified U.S. vessel availability and receiving advice from the Department of Defense and Energy about whether to grant the waiver. CBP Headquarters frequently interacts with and provides advice to its field offices concerning the enforcement of the Jones Act.

In addition to focusing on strong enforcement of the Jones Act, CBP also conducts significant outreach to industry in order to increase compliance prevent violations of the Jones Act.

Conclusion

Senator Landrieu, Members of the Subcommittee, thank you again for the opportunity to testify today, I will be happy to answer your questions.

Office of International Trade Organizational Information

Assistant Commissioner's Biography and About the Office of International Trade

Allen Gina Assistant Commissioner

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On March 15, 2011, Mr. Allen Gina was appointed Assistant Commissioner, Office of International Trade (OT), U.S. Customs and Border Protection, Department of Homeland Security (CBP, DHS). Prior to that, he served as Assistant Commissioner, Office of International Affairs (INA) – a position he assumed on November 9, 2008. From October 2007 to November 2008, Mr. Gina was the Deputy Assistant Commissioner for the Office of Intelligence and Operations Coordination (OIOC). From June 2004 to October 2007, Mr. Gina was the Executive Director overseeing the Container Security Initiative and Secure Freight Initiative offices. From February 2003 to May 2004, Mr. Gina was detailed to the Directorate of Border and Transportation Security to help setup the new Department of Homeland Security (DHS). While at DHS he served as Director of Agency Coordination. Mr. Gina is currently a career member of the Senior Executive Service.

Mr. Gina began his career in 1983 as a Customs Inspector for the U.S. Customs Service. Throughout his career, Mr. Gina has held numerous managerial positions including Supervisor and Chief Inspector, Program Manager of the Anti-Smuggling Division, Director of the Industry Partnership Programs, Director of the Outbound Programs and Director of the Office of Border Security.

Mr. Gina holds a Bachelor of Arts degree in Communication Arts and Sciences from Queens College, New York, New York. Mr. Gina is also a graduate of the Office of Personnel Management Executive Potential Program and the Harvard - Kennedy School of Government Senior Executive Fellows Program.

In 2008 the President of the United States conferred the rank of Meritorious Executive on Mr. Gina for relentless commitment to excellence in public service.

About

The Office of International Trade (OT) consolidates the trade policy, program development, and compliance measurement functions of CBP into one office. The Office provides uniformity and clarity for the development of CBP's national strategy to facilitate legitimate trade and manages the design and implementation of results-driven strategic initiatives for trade compliance and enforcement. It directs national enforcement responses through effective targeting of goods crossing the border as well as strict, swift punitive actions against companies participating in predatory trade practices. Through coordination with international partners and other U.S. government agencies it directs the enforcement of intellectual property rights, the identification of risks to detect and prevent the importation of contaminated agricultural or food products and the enforcement of free trade agreement eligibility. By promoting trade facilitation through partnership programs, the Office of Trade will streamline the flow of legitimate shipments and foster corporate self-governance as a means of achieving compliance with trade laws and regulations. A risk-based audit program is used to respond to allegations of commercial fraud and to conduct corporate reviews of internal controls to ensure importers comply with trade laws and regulations. Finally, the Office of Trade provides the legal tools to promote facilitation and compliance with customs, trade and border security requirements through: the issuance of all CBP regulations, legally binding rulings and decisions, informed compliance publications and structured programs for external CBP training and outreach on international trade laws and CBP regulations.

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