

**OVERSIGHT OF TRADE FUNCTIONS:
CUSTOMS AND OTHER TRADE AGENCIES**

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED TENTH CONGRESS
SECOND SESSION

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JUNE 24, 2008
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CONTENTS

OPENING STATEMENTS

	Page
Baucus, Hon. Max, a U.S. Senator from Montana, chairman, Committee on Finance	1
Grassley, Hon. Chuck, a U.S. Senator from Iowa	2

WITNESSES

Basham, Hon. W. Ralph, Commissioner of Customs, Customs and Border Protection, Washington, DC	3
Myers, Hon. Julie L., Assistant Secretary, Immigration and Customs Enforcement, Washington, DC	5
Skud, Timothy E., Deputy Assistant Secretary, Tax, Trade, and Tariff, Department of the Treasury, Washington, DC	7
Pearson, Hon. Daniel R., Vice Chairman, International Trade Commission, Washington, DC	8
Maruyama, Warren H., General Counsel, Office of the U.S. Trade Representative, Washington, DC	10

ALPHABETICAL LISTING AND APPENDIX MATERIAL

Basham, Hon. W. Ralph:	
Testimony	3
Prepared statement	27
Responses to questions from committee members, with attachments	35
Baucus, Hon. Max:	
Opening statement	1
Cantwell, Hon. Maria:	
Prepared statement	62
Grassley, Hon. Chuck:	
Opening statement	2
Prepared statement	63
Maruyama, Warren H.:	
Testimony	10
Prepared statement	65
Responses to questions from committee members	67
Myers, Hon. Julie L.:	
Testimony	5
Prepared statement	72
Responses to questions from committee members	94
Pearson, Hon. Daniel R.:	
Testimony	8
Prepared statement with attachments	97
Responses to questions from committee members	114
Skud, Timothy E.:	
Testimony	7
Prepared statement	117
Responses to questions from committee members	122

OVERSIGHT OF TRADE FUNCTIONS: CUSTOMS AND OTHER TRADE AGENCIES

TUESDAY, JUNE 24, 2008

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:06 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Stabenow, Salazar, Grassley, Snowe, Bunning, and Roberts.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; Demetrios Marantis, Chief International Trade Counsel; Hun Quach, International Trade Analyst; Ayesha Khanna, Detailee; and Russ Ugone, Detailee. Republican Staff: Stephen Schaefer, Chief International Trade Counsel; and Claudia Poteet, International Trade Policy Advisor.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order.

On July 4, 1789, President Washington signed into law what the newspapers heralded as the Nation's second Declaration of Independence. This second act of the first Congress authorized the collection of import duties to help the nearly bankrupt Nation generate revenues to pay off its debts. Four weeks later, the fifth act of Congress established our first Customs agency in its ports of entry.

For the next 125 years, customs revenues funded virtually the entire Federal Government. Remember, there was no income tax, and customs revenues financed much of the Nation's early growth and infrastructure. They bankrolled the Louisiana Purchase, the transcontinental railroad, they built the Nation's lighthouses, the U.S. military and Naval academies, and our capital city. In 1835, customs revenues alone had reduced the national debt to zero.

Import duties remain a significant source of Federal revenue today, but the mission of our customs agencies has expanded exponentially. In addition to collecting revenue, our customs agencies must now secure our borders. These responsibilities are shared between two of the agencies before us today: Customs and Border Protection, or CBP, and Immigration and Customs Enforcement, or ICE. They serve as our Nation's first line of defense against illegal drugs, hazardous imports, weapons of mass destruction, and potential terrorists.

We meet today for the second of two hearings on customs reauthorization. We heard testimony earlier this year from the business community, and we will hear testimony today from the customs and trade agencies themselves.

At the last hearing, witnesses questioned whether our customs agencies are focused on their new security mission at the expense of their historical trade mission. Witnesses questioned, for example, whether proposed new security measures at American ports could unduly delay shipments. They questioned whether those delays could lead importers to divert their shipments to Canadian or Mexican ports, which could damage the competitiveness of U.S. ports and the jobs that depend on them. The witnesses questioned whether our customs agencies have sufficient people on the ground to ensure robust trade enforcement and facilitation.

I have questions about whether CBP has devoted sufficient resources to the northern border. At the port of Sweet Grass, MT, more than 300 trucks cross the border every day. Now, 300 trucks does not sound like a lot, but hundreds of small- and medium-sized Montana businesses rely on those trucks and the cross-border trade that comes with them. Yet, CBP has failed to fill the dozens of vacant positions in Sweet Grass, and we need to facilitate that trade.

I also have real questions about CBP's responsiveness to this committee, particularly CBP's Office of International Trade. We established this office as part of the Safe Port Act in 2006 to prioritize CBP's trade functions, but they failed to consult this oversight committee before releasing significant new policy proposals, notably the First Sale policy. They often fail to address committee inquiries in a timely manner. We have to find a better way of working together.

And I have questions about whether two of the other agencies before us today, the International Trade Commission and the Office of the U.S. Trade Representative, have the resources that they need to fully enforce our trade laws and trade agreements. I look forward to hearing answers to all these questions. I look forward to introducing legislation in the coming weeks for reauthorization of the agencies before us today. And I look forward to rededicating the attention of our customs agencies to their revenue collection and trade facilitation mission, the mission that our founders established more than 200 years ago.

Senator Grassley?

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM IOWA**

Senator GRASSLEY. We have distinguished witnesses who are going to help us answer a lot of questions and will be of tremendous help as we proceed with our bipartisan effort to reauthorize customs and trade functions. These functions are more important than ever because of the necessity now of being more concerned about our economic security. The proper administration of our customs and international trade laws is essential to maintaining the competitiveness of U.S. businesses in the global economy.

We have many important issues to cover. One of the most important implementation issues is the status of the Automated Commercial Environment (ACE) and its interface with the Inter-

national Trade Data System (ITDS). This system will serve as a central data collection point and improve communication and cooperation among trade-related agencies. It is essential that we get the international trade data system fully implemented as soon as possible. There are also a number of technical issues that we must be concerned about.

The proposed elimination of the First Sale rule has generated some controversy, as evidenced by the chairman already bringing it up. This proposal appears to counter an established practice of 2 decades on the part of Customs, yet the agency did not consult this committee before proposing a change of such magnitude, and that is not acceptable.

In fact, it led Congress to legislate in a recently-enacted Farm Bill. As a result, I understand that Customs will take no action to implement this proposal until 2011 at the earliest, and not until there has been adequate consultation with committees of jurisdiction.

Another technical issue that we need to review is the implementation of the 10+2 initiative, particularly with respect to 24-hour advance submission of data. But more broadly, I am interested in hearing from the Commissioner on how the agency is managing and prioritizing commercial mandates.

Congress established by law an Office of International Trade within the agency. How is the Commissioner utilizing the office? Are there any additional steps that Congress can take to ensure that our vital economic interests are fully met by the Customs and Border Protection agency?

I am going to put the rest of my statement in the record, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

[The prepared statement of Senator Grassley appears in the appendix.]

The CHAIRMAN. I would now like to welcome our panel. We begin with Ralph Basham, Commissioner of Customs at Customs and Border Protection in the Department of Homeland Security. Next, Julie Myers, Assistant Secretary of Immigration and Customs Enforcement, Department of Homeland Security. Third, Timothy Skud, Deputy Assistant Secretary, Office of Tax Policy, Department of Treasury. The fourth witness is Daniel Pearson, Vice Chairman of the International Trade Commission. Finally, we have Warren Maruyama, General Counsel, Office of the U.S. Trade Representative.

Commissioner, why don't you proceed? Our standard procedure here is 5 minutes of testimony, and your written statements will be automatically included in the record.

STATEMENT OF HON. W. RALPH BASHAM, COMMISSIONER OF CUSTOMS, CUSTOMS AND BORDER PROTECTION, WASHINGTON, DC

Commissioner BASHAM. Chairman Baucus, Ranking Member Grassley, and members of the committee, it is an honor to appear before you today to discuss Customs and Border Protection's trade functions and enforcement efforts.

Today I would like to focus on the progress we have made since our last authorization hearing before this committee in 2006. I specifically want to focus on aspects of law enforcement, which are so vital to both our economy and to the health and well-being of our citizens.

Let me begin with 10+2, our attempt to get more information earlier in the process. We are currently working to finalize the Importer Security Filing rulemaking. As required by the Safe Port Act, we work closely with our advisory committee, the Commercial Operations Advisory Committee, or COAC, to develop this rule. The trade helped us identify the data elements we would need to increase the transparency of the global supply chain and to improve the overall targeting process for containers destined for U.S. ports.

On the subject of First Sale and our proposed interpretation of the rule, let me say first of all, we could have done a much better job in consulting with the stakeholders in advance of this rule, and I know the committee and the Congress have both acted on this matter in the Farm Bill.

We are not going forward with any further action to implement this interpretive rule or otherwise change the interpretation of First Sale before 2011. We will also comply with the provisions of the Farm Bill, including the requirements of data collection and coordination with the International Trade Commission.

Since the last authorization, we also created the Office of International Trade within CBP in October of 2006. This office consolidates the trade policy, regulatory, and enforcement functions of CBP into one office. It makes us better able to promote compliance with trade and border security requirements, and it allows us to better serve our trade partners.

This office provides important legal tools and coordinates with international partners and other U.S. Government agencies to enforce intellectual property rights and free trade agreements, and prevent contaminated food products and other unsafe imports from entering our country.

By promoting programs such as Account Management and Importer Self-Assessment, the Office of International Trade also helps streamline the flow of legitimate shipments and fosters compliance with trade laws and regulations among companies.

Similar to our security strategy, our audit program is risk-based and helps us respond to allegations of commercial fraud. It also assists us in reviewing a company's internal controls to ensure that importers are complying with trade laws and regulations.

The face of trade has changed over the last few years, and this new trade landscape has presented us with new challenges, such as free trade agreements, changes in the textile industry that eliminate quotas on all World Trade Organization countries and establish new quotas on China, new laws on bioterrorism and wood-packing material, and concerns about potential avian flu epidemics. These new threats have also caused CBP to reevaluate the way we deploy our resources, as well as the way we equip our Import Specialists and other trade personnel to address these issues.

In compliance with the Homeland Security Act and the Safe Port Act, CBP has developed staffing models to analyze workload and

threat levels to determine optimum staffing. We are also developing a national trade strategy that directs actions and resources around trade issues posing the greatest risk.

Mr. Chairman, my staff and I look forward to working with you and the committee on the reauthorization bill that supports our trade functions. We appreciate this opportunity to come before you today, and I would be happy to answer any questions.

The CHAIRMAN. Thank you very much, Commissioner.

[The prepared statement of Commissioner Basham appears in the appendix.]

The CHAIRMAN. Ms. Myers?

STATEMENT OF HON. JULIE L. MYERS, ASSISTANT SECRETARY, IMMIGRATION AND CUSTOMS ENFORCEMENT, WASHINGTON, DC

Ms. MYERS. Thank you very much. Good morning, Chairman Baucus and distinguished members of the committee. It is my privilege to testify before you here today.

As the largest investigative agency of the Department of Homeland Security, we have a critical role in enforcing trade functions. Today I will focus my remarks on ICE's efforts to keep dangerous and substandard products out of the United States marketplace, to protect intellectual property rights, and the numerous ways in which we target schemes designed to circumvent lawful trade mechanisms.

To give you just one example, in 2007 ICE learned of an individual who was exploiting our trade system with potentially lethal results. The pharmaceutical industry alerted ICE that Kevin Xu, a citizen of the People's Republic of China and owner of Orient Pacific International, was allegedly involved in the distribution of counterfeit lifesaving drugs.

An investigation followed, and last July Xu was arrested by ICE agents when he arrived in Houston, allegedly to personally replace the packaging, lot numbers, and expiration date on an order of counterfeit and misbranded drugs ordered by ICE's undercover agents. Working together with SEA, we secured a nine-count indictment alleging that Xu and others conspired to export counterfeit drugs from the PRC for distribution into the United States.

This case was extraordinary in that thousands of dosages of counterfeit drugs entered the legitimate supply chain in the U.K. and were dispensed to patients. Xu's successful insertion of counterfeit pharmaceuticals into that legitimate supply chain there resulted in three Class I recalls of counterfeit cardiac, cancer, and psychiatric drugs.

Cases like this really remind us that these criminals are motivated only by greed. This is one reason why, last November, ICE initiated Operation Guardian, a targeted initiative to combat the rise in the importation and distribution of harmful products manufactured in the PRC and in other locations. Guardian combines the expertise of ICE, Customs and Border Protection, the Food and Drug Administration's Office of Criminal Investigations, and the Consumer Product Safety Commission.

Even now, just a few months into this initiative, Guardian investigations have resulted in a number of arrests and indictments, as

well as a seizure of unapproved counterfeit pharmaceuticals, CPSC regulated items, narcotics, and counterfeit merchandise, including shipments of tainted shrimp and honey and counterfeit circuit breakers.

Beyond working to protect the public from harmful or dangerous products, ICE also plays a leading role in protecting the rights of trademark holders. The ICE-led National Intellectual Property Rights Coordination Center, or IPR center, stands as a key post in the fight against the importation and trafficking of counterfeit goods. The IPR center offers one-stop shopping for both law enforcement and the private sector to address the growing economic transnational threat of counterfeit merchandise.

Our approach is working. In one initiative alone, involving large quantities of counterfeit Cisco Systems network components, ICE actually opened 28 investigations in 17 different field offices; 8 of these were worked jointly with the FBI and several with the RCMP in Canada, a key partner that provided much of the initial information about the scheme.

So far, ICE investigations have accounted for 115 seizures of counterfeit Cisco products with an estimated retail value of over \$20 million. CBP seizures also accounted for more than \$52 million in counterfeit Cisco Systems products, with the FBI accounting for more than \$3.5 million as well. Thus far, our combined work has led to six indictments and four felony convictions. Thanks to technical assistance from Cisco and the good work of our law enforcement partners in this and many other cases, we are succeeding in protecting the rights of trademark holders.

In other cases it is not the goods themselves that pose the major problem as much as it is the attempt to circumvent lawful trade mechanisms to avoid duties on goods, or simply to attempt to illegally bring them in to the United States marketplace through trade-based money laundering and commercial fraud.

One way that ICE is targeting these schemes is by developing Trade Transparency Units with foreign trading partners. These TTUs allow both countries, for the first time, to actually see the import and export of commodities entering or exiting their countries, and by identifying anomalies in this data we are now uncovering broad fraudulent trade schemes, black market peso exchange money laundering, and irregular import-export transshipments more than ever before. In fact, just last week I was down in Mexico announcing the start of our TTU with our Mexican counterparts.

Of course, these are but just a few highlights of our work. I want to thank the chairman and the entire committee for the opportunity to speak with you today about ICE's role in these efforts and for your continued support. I look forward to answering your questions.

The CHAIRMAN. Thank you, Ms. Myers.

[The prepared statement of Ms. Myers appears in the appendix.]

The CHAIRMAN. Mr. Skud?

STATEMENT OF TIMOTHY E. SKUD, DEPUTY ASSISTANT SECRETARY, TAX, TRADE, AND TARIFF, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. SKUD. Mr. Chairman, Ranking Member Grassley, members of the committee, thank you for the opportunity to discuss the Treasury Department's responsibilities for Customs' revenue functions and for the International Trade Data System (ITDS).

The Secretary of Treasury has authority for Customs' revenue functions that involve taxation and regulation of international trade for economic purposes, which have an important effect on our economy. Authority for enforcing Customs revenue loss is delegated to the Department of Homeland Security, but the Treasury Department has retained sole authority to approve regulations on a wide range of these functions. We also review CBP rulings that constitute a change in practice.

In addition to these specific responsibilities, we work closely with CBP on particular concerns. One such concern is simplification of the duty draw-back rules. At the request of congressional staff, we recently provided technical advice on draft draw-back legislation and look forward to continuing to work with you on this important matter.

Another concern has been the problem in collecting antidumping and countervailing duties. The Treasury Department provided Congress a report on this issue last year. Overall, CBP collects over 99 percent of duties due, but for antidumping duty obligations that result from retroactive increases after entry, that figure drops below 50 percent. The problem is how to secure duties when they are assessed several years after entry.

Another important area where the Treasury Department works closely with CBP is the International Trade Data System. Today, traders report separately to numerous government agencies, sometimes on paper, sometimes electronically. Would it not make sense to have a single electronic report and data distributed by computer to all relevant agencies? This is the ITDS vision, and CBP, working with 43 other agencies, is building that vision as part of the CBP base program.

When I testified before this committee 2 years ago, I reported that many agencies with an international trade role were not participating in ITDS and that performance had been uneven. This year, however, I can report an improved situation. Most important has been the Safe Port Act mandate that any agency requiring documentation for clearing imports or exports must participate in ITDS. When the Act was passed, there were 31 agencies in ITDS, now there are 43. The Office of Management and Budget (OMB) has also joined the ITDS board of directors.

In addition, agency participation was spurred when a cabinet-level Import Safety Working Group recognized ITDS as a key component of improved import safety. Moreover, OMB directed compliance with the Import Safety Group's recommendations for accelerating ITDS, and OMB is also tracking each agency's ITDS performance.

To some extent, however, ITDS has become a victim of its own success. Fixed program resources must be spread among more agencies, so ITDS still faces challenges. Take, as examples, two rec-

ommendations of the Import Safety Group. First, although ITDS agencies are already able to obtain much detailed information, they are unable to access other data CBP already collects electronically. The Import Safety Group recommended making this data quickly available. That data is not yet available, but the Automated Commercial Environment (ACE) team is looking for ways to make it available with as little impact as possible on the current program schedule.

Second is implementation of global standards for customs data, the World Customs Organization Data Standards. Today, traders dealing with different countries must use a different computer format with each country. The cost to traders would be reduced if they only had to maintain one messaging program. Furthermore, governments could more easily share information about risky shipments if they used standardized data formats.

ITDS is aligning data requirements with these standards, but there is not yet a firm schedule for implementing them in ACE. Nonetheless, overall we are very pleased with the progress on ITDS. We look forward to working with Congress to ensure that progress continues.

Mr. Chairman, that concludes my oral remarks. Thank you for the opportunity to testify. I'd be happy to take any questions.

The CHAIRMAN. Thank you, Mr. Skud.

[The prepared statement of Mr. Skud appears in the appendix.]

The CHAIRMAN. Next, Mr. Pearson?

**STATEMENT OF HON. DANIEL R. PEARSON, VICE CHAIRMAN,
INTERNATIONAL TRADE COMMISSION, WASHINGTON, DC**

Mr. PEARSON. Good morning, Chairman Baucus, Ranking Member Grassley, and members of the committee.

Chairman Aranoff very much wished that she could be here. She is necessarily absent. However, I have with me three other commissioners, Commissioners Okun, Lane, and Williamson. Given the fact that we work for the Finance Committee, among other things, we like to show up when you have interest in our activities.

The CHAIRMAN. That is very foresightful. [Laughter.]

Mr. PEARSON. In a nutshell, the ITC does four basic things: we enforce U.S. trade laws with respect to antidumping, countervailing duties, and safeguards; we enforce intellectual property rights under section 337; we conduct trade-related economic studies for Congress and for USTR; and we maintain the harmonized tariff schedules of the United States.

Let me review the circumstances of the past 3 years. We were running a significant budget surplus in fiscal 2005, so in May of that year the Commission met and determined that we should advise the appropriators to reduce our fiscal year 2006 appropriation because we have no year funds and carry the surplus over from one year to the next.

So we wrote to the committees, to the appropriators, with that request—the letter to Senator Shelby is included in your materials—and our appropriation was reduced \$2.75 million, as we had asked. There were a couple of decisions on top of that. But we were finally all right in 2006 because of our large carry-over.

However, in 2007 it changed because then we had no carry-over, we had a frozen appropriation—frozen relative to the 2006 appropriation, which was artificially low. So we were in a world of hurt in 2007, with \$1.3 million less in available funds than we had the previous year, and we had to absorb the personnel cost increases that come with a pay raise.

So we managed that as best we could, which was by doing two things. One was to postpone all of our IT and security projects that could be postponed, and the second thing was, we just simply did not hire people unless it was absolutely necessary. We ran our vacancy rate up to 16 percent. It is now down just a little from that at 14, but we are at an unsustainably high vacancy rate.

We have managed under those circumstances, in part, by trying to use people really well through management reforms. We have done a lot of cross-training of people from multiple jobs; we have shifted folks from one office to another where there was an acute need; we have hired term employees; we have hired some temporary workers; we have brought in co-op employees; we have brought economics professors in to help on specific projects; and we have used career interns and presidential management fellows. So we have scrambled, and we have managed to cover all the bases so far.

There was a further complication late in fiscal 2007. We had been in discussions for 15 months with the General Services Administration regarding the re-negotiation of our 10-year lease. Our building is owned by Boston Properties. We are now in our third 10-year lease on that property, and GSA manages that negotiation for us. GSA had led us to believe that our rent would be increasing about 15 percent, which seemed in line with what we understood to be happening in the commercial market.

A week before we were to sign a letter committing ourselves to a new 10-year lease, GSA advised us, oops, 38 percent, not 15. So there is \$1.3 million out the door as we were getting into fiscal 2008. So the way we managed that in 2008 was, once again we have postponed all of our IT-related projects and security-related work and we have focused on trying to rebuild staff, because that, we believed, was by far the highest priority.

While all this was going on, our workload was climbing. Let me focus particularly on the section 337 intellectual property cases, where this year we have had more new cases filed than in any previous year, and it is only June. We have 3 months left of the fiscal year. So, our entire process has been over-stressed.

What we have done because of that is make a revised appropriation request, and we believe the appropriators are likely to consider it favorably, but we are looking for an additional \$1.5 million to augment our section 337 process. I can elaborate on that in the questions if you want.

The biggest concern I have right now is, what happens to us if we have to deal with an appropriations freeze in fiscal year 2009? The only way we could handle that would be to run our vacancy rate up again, either through a reduction in force, which we could do if we knew soon enough that we would be frozen, otherwise we will need to take furloughs of perhaps 15 to 30 days next year. Ei-

ther a reduction in force or furlough is going to leave us in a position where we are not able to accomplish our mission effectively.

With that, I will turn it over to Mr. Maruyama.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Pearson appears in the appendix.]

The CHAIRMAN. Mr. Maruyama, you are next.

**STATEMENT OF WARREN H. MARUYAMA, GENERAL COUNSEL,
OFFICE OF THE U.S. TRADE REPRESENTATIVE, WASHINGTON, DC**

Mr. MARUYAMA. Chairman Baucus, Senator Grassley, members of the committee, I appreciate this opportunity to discuss the Office of the U.S. Trade Representative's 2009 budget.

At USTR, our job is leveling the playing field for American workers, farmers, companies, and entrepreneurs. We accomplish this goal by negotiating agreements to open new markets for American goods and services and by ensuring that our trading partners live up to their commitments.

At USTR there is no line of demarcation between negotiation and enforcement. We know that a trade agreement that is not being enforced is a broken promise to the American people. USTR is a lean, efficient, and effective organization. We currently have about 226 full-time equivalents to cover the full range of U.S. trade policy, negotiations, and enforcement.

Our role is expanding. Last year, trade accounted for 40 percent of U.S. economic growth. When President Bush took office, the United States had free trade agreements enforced with three countries. Today, we have FTAs with 14. After last year's May 10th agreement with the House and Senate leadership, we have strengthened the labor and environmental chapters of our FTAs. In the last decade, the amount of WTO enforcement litigation has exploded, and the intensity and importance of the disputes continues to rise.

The USTR budget is labor- and travel-intensive. The heart of our organization is our staff. Of the \$45.2 million we spent in fiscal year 2007, \$33 million, or 73 percent, went to payroll; travel accounted for \$5.6 million, or 12 percent. That left only 15 percent to cover everything else, including our WTO mission in Geneva, Switzerland, a trade officer based in Brussels, and a new USTR office that we just opened in Beijing, China.

In fiscal year 2008 our payroll will increase to \$35 million, primarily due to a COLA, or almost 80 percent of our current appropriation. As you know, the cost of everything is going up, especially the cost of fuel, which translates into higher airline fares and travel.

Let me briefly describe our agenda, what we have accomplished, and what we seek to finish in the months ahead. As General Counsel, a major part of my job is ensuring that trade agreements are enforced. In the last 17 months we have launched four WTO cases against China: we have challenged China's prohibited export, and import, substitution subsidies, its failure to adequately protect intellectual property rights, and its barriers to copyrighted American

entertainment products—movies, home videos, DVDs, and sound recordings.

This March, we requested WTO consultation on Xinhua's use of its regulatory authority to restrict foreign financial information to providers. Last November, we successfully settled the prohibited subsidy case on very favorable terms, with China agreeing to eliminate all of its WTO illegal subsidies effective January 1, 2008. We are very optimistic about our China auto parts case, where a WTO panel is scheduled to announce its final public decision in July.

Our WTO challenge to the European Union's launch aid subsidies to Airbus is in its final stages. Last month, along with Japan and Taiwan, we initiated a major case, challenging how the EU classifies—or in our view misclassifies—high definition displays, multi-function printers, and set-top boxes under the WTO's Information Technology Agreement.

During the last year, USTR has initiated two arbitrations challenging Canadian actions under the U.S.-Canada Softwood Lumber Agreement.

Free trade agreements with Colombia, Panama, and South Korea await congressional approval and remain high administration priorities. Virtually all Colombian products already enter the U.S. duty-free under the Andean Trade Preferences program. The Colombia FTA would level the playing field by converting one-way free trade into two-way free trade, as well as strengthening our relationship with a key U.S. regional ally.

USTR continues to work toward a successful WTO Doha Round. Despite its fits and starts and missed deadlines, the round offers the potential to boost economics in the United States and around the world, and lift millions out of poverty.

More broadly, the United States must be a strong, active leader on global trade in order to safeguard U.S. interests. If we walk away, our workers, farmers, and entrepreneurs would lose out on new opportunities that are created by an expanding global economy.

Mr. Chairman, American taxpayers get an exceptional return on their investment in USTR. We are a lean and efficient organization with capable staff and a strong sense of mission. We are committed to making sure our trading partners live up to their commitments or face the consequences.

I will be happy to answer any questions you may have. Thank you.

The CHAIRMAN. Thank you very much, Mr. Maruyama.

[The prepared statement of Mr. Maruyama appears in the appendix.]

The CHAIRMAN. Mr. Basham, at your confirmation hearing in 2006, I had one basic question. That is, I was concerned whether you would strike the right balance between CBP's historical responsibility of facilitating international commerce with its new responsibility of securing our borders. I am not yet convinced that you have struck that right balance yet.

I, frankly, believe that you generally are not paying sufficient attention to the commerce side of your responsibilities. I thought I would give you a chance today to explain to American businessmen and women who are trying to do their best to import and export—

especially import products, when it comes to the United States—that you are paying sufficient attention and doing a really good job of addressing those American business concerns.

What can you state to them? What can you say here today that is persuasive?

Commissioner BASHAM. Mr. Chairman, I fully recognize the importance of striking the balance between security and facilitation of legitimate trade and travel. I can assure you that there is not a discussion that we have at CBP that relates to security, where at the same time we are not discussing how it will impact our ability, this country's ability, to allow trade and travel to continue unimpeded. Since 9/11, some of the initiatives that were put into place by my predecessor at U.S. Customs were focused, yes, on security, but recognizing that, if we shut our borders down, if we closed our borders to legitimate trade and travel—

The CHAIRMAN. Those are nice-sounding words, but what can you quantify? How can you show to Americans that you are paying sufficient attention to the commerce side? It is one thing to say “we are doing a good job.” Can you give us evidence? Can you quantify it? Do you have goals, do you have benchmarks to show that what you are doing is a good job here?

Commissioner BASHAM. Yes, we can show benchmarks.

The CHAIRMAN. Well, I am just curious. Here is your opportunity.

Commissioner BASHAM. Well, quite frankly, I think in the areas of security that we have implemented—such as radiation detection monitors, such as non-intrusive imaging equipment—we now have that equipment located around the country, around the world in ports overseas, to make sure that we have the ability to focus on those issues that may be threats to our security, and at the same time to facilitate movement of that trade.

If we can lower and reduce the size of the haystack by getting more advanced information, which we are doing, by establishing the national targeting center for cargo, which is new since I spoke to this committee, those areas that we are focusing on as trying to identify where the threats are also allows us to move trade more quickly with less inspections.

The CHAIRMAN. Do you keep a record of concerns or complaints from U.S. businesspeople? Like, airlines have a customer complaint ratio. What is yours?

Commissioner BASHAM. We have no limits on the number of issues that are brought to our attention.

The CHAIRMAN. No. But your goal is to work them down. So what is your goal and your benchmarks on working those down so there are fewer complaints?

Commissioner BASHAM. To bring the complaints down?

The CHAIRMAN. Yes.

Commissioner BASHAM. I would absolutely agree with you.

The CHAIRMAN. So what is your complaint ratio right now? What number do you have?

Commissioner BASHAM. I am not sure that I can quantify that right now, but I can get back to you.

The CHAIRMAN. Do you not think it is good to quantify? I do not mean to give you a hard time, but I just think that, the more you can quantify things and have benchmarks, then you would know

whether you are doing a good job or not, and we know whether you are doing a good job or not.

Commissioner BASHAM. I will provide you with that information. I do not have the percentage or production number.

The CHAIRMAN. But do you have a goal to get to a lower level by a certain date?

Commissioner BASHAM. I do not have a particular—but on that point, what I will say is that for the first time we are working on a strategic plan of trade. I have asked Ann Baldwin in the Office of International Trade to come up with a strategic plan that is transparent to the trade, and that we will work on with the trade, we will work on with this committee and other partners, stakeholders, to develop this strategy.

The CHAIRMAN. I appreciate you giving this committee some kind of plan.

Commissioner BASHAM. We will.

The CHAIRMAN. What your dates are.

Commissioner BASHAM. We are working on that, and I will provide it to you.

The CHAIRMAN. And I also understand that you are about 2,000 people short along the northern border. Is that correct?

Commissioner BASHAM. I believe the original staffing plan on the northern border or for the entire Office of Field Operations was about 2,200. We are working to improve on that number. In fact on the northern border we have increased the Border Patrol by something like 50-some percent.

The CHAIRMAN. But it is probably true, though, that a partial answer to this question is more staff.

Commissioner BASHAM. We recognize that our staffing plan calls for additional—

The CHAIRMAN. And when are you going to get your staff?

Commissioner BASHAM. When are we going to get the staff?

The CHAIRMAN. Yes. Yes. To get the job done.

Commissioner BASHAM. We are working very hard, Mr. Chairman, on accomplishing that.

The CHAIRMAN. Do you have a date by which you plan to get it?

Commissioner BASHAM. Right now, Mr. Chairman, quite frankly, the doubling of the size of the Border Patrol is pretty much eating up our entire resource pool to get those folks on board. However, having said that, we have increased the number of staff on the northern border. Percentage-wise, I would say it is something like 20, 30 percent over the past 2 years. We have asked for additional staffing, and we will be getting additional staffing in 2009.

The CHAIRMAN. And I apologize for the interruptions, but I have a time constraint here.

Commissioner BASHAM. That is all right.

The CHAIRMAN. My time has expired. Thank you very much.

Senator Grassley?

Senator GRASSLEY. Thank you.

Commissioner, I am concerned about the fact that Customs has recently taken steps to alter longstanding administrative practices without consulting the committee. I think that these actions have broad repercussions within the trade community. Why has your agency not engaged us with those issues? Do you consider it part

of your agency's mission to keep the Finance Committee very fully informed on such matters?

Commissioner BASHAM. Are we talking, Senator, about First Sale particularly here or just in general?

Senator GRASSLEY. In general, but First Sale is the one I mentioned in my opening statement.

Commissioner BASHAM. Well, I would agree, Senator, that on the First Sale, the interpretive rule, that we did not, in fact, do the proper consultation. I have said that to COAC, the Commercial Operations Advisory Committee, and I say that to you here in this committee, that we learned a lesson.

Although I will say that the NPIR, the interpretive rule—we had thought that would start that dialogue, and we obviously did not realize what kind of complications that it was going to present. But we will, in the future, make sure that, if we are going to propose a change of that magnitude, that we will consult with the committee prior to putting those sorts of rulings out.

Senator GRASSLEY. To you, again. How are you utilizing the International Trade Committee that we established in the Safe Port Act? How regularly does the committee convene, and how has the committee helped you in leading the agency?

Commissioner BASHAM. How has this committee helped me in leading—

Senator GRASSLEY. No, the International Trade Committee that was set up in the Safe Port Act.

Commissioner BASHAM. Yes.

Senator GRASSLEY. Does it meet regularly, or how regularly? Has the committee helped you in leading the agency?

Commissioner BASHAM. Absolutely it has helped in terms of—let me just ask a question. [Pause.]

I just asked Dan Baldwin. But we have worked very closely with them in terms of developing ACE, the Automation and Modernization Act requirements. We have worked with them very closely on, as I spoke a few moments ago, developing a trade strategy and a plan as we move forward. We have worked with them on human capital, on staffing issues. So, it has been a consultive process and very helpful.

Senator GRASSLEY. How regularly does that committee convene?

Commissioner BASHAM. Every month, Senator.

Senator GRASSLEY. What is the current status then of ACE? Have sufficient resources been authorized for its implementation, and are ACE resources being diverted to any other purposes? When can we expect it to be up and completely running?

Commissioner BASHAM. We are on course with ACE, and we expect to be fully implemented by the year 2011. We have sufficient funding to meet that requirement and, to my knowledge no funds have been diverted to any purpose other than what it was intended for.

Senator GRASSLEY. Mr. Skud, in your testimony you addressed the current status of the ongoing implementation of the International Trade Data System. Do participating government agencies have the resources to implement it? How will the Treasury Department ensure that participating government agencies prioritize the complete implementation of the International Trade Data System?

Mr. SKUD. Senator, let me put this in the context of the funding model for ITDS. There are basically two parts to ITDS when you look at it from a funding perspective. There is the joint effort, the interagency effort, that is funded out of CBP appropriations, and then there are individual agency appropriations to take care of hardware, software, and training needs on the agency side. Frankly, Senator, I have to defer to the individual agencies about their own specific funding.

On the joint part of the effort, which is funded out of CBP funds, we think funds are sufficient. But we also think that, frankly, large IT projects have a long history of going off the track. So the ITDS board monitors expenditures and the program progress vigilantly, working cooperatively with CBP.

Senator GRASSLEY. Senator Stabenow? When you are done, Senator Stabenow, it will be Senator Bunning, then Senator Salazar, and then Senator Snowe, just in case the chairman and I are previously engaged.

So, Senator Stabenow?

Senator STABENOW. Thank you very much, Senator Grassley. Good morning.

Senator GRASSLEY. Would each of you abide by the 5 minutes? Because there will not be somebody here to referee.

Senator STABENOW. How closely will you be looking, Mr. Chairman? [Laughter.] No.

We appreciate all of your being here and appreciate your work. Collectively, you really represent a very important effort to focus on American safety, health, commerce, and also whether or not we have American jobs. From my perspective with a State that reflects a large loss of manufacturing jobs, particularly since this decade began, and certainly understanding the fact that we have lost over 3.5 million manufacturing jobs in the country, some of that—not all of that—is just global competition. Some of that relates to what is happening as to trade enforcement. I want to make sure we are exporting products and not our jobs, and I hope that is all of our goals.

One of the things I have heard this morning is that we have more trade agreements. Trade agreements have been increasing; resources for trade enforcement have, in fact, gone down. So more trade agreements to be enforcing, less resources for trade enforcement. Certainly that is something that we in Congress and the administration and President Bush all need to be held accountable for in terms of overall resources.

But I do believe that we are not focused—this is not a new comment from me—sufficiently on enforcing the trade agreements that we have. It is also concerning to me that when we talk about counterfeit products—and Ms. Myers, I appreciate what is being done with individual examples. The counterfeit medicine you talked about is a serious, serious issue, and I am pleased ICE is responding to that and that there is a project starting, and so on.

But it is my understanding that we know that 80 percent of the counterfeit products that are being stopped and confiscated at our border are coming from one country: China. So that goes to a larger policy then of how we enforce our trade agreements. China comes into the WTO, it is supposed to be following the rules, and is not

on counterfeiting, currency manipulation, and so on, which goes to a broader issue.

My question—and Commissioner Basham, I would ask you—is, according to the GAO report released in April, Customs and Border Protection has failed to collect more than \$613 million in anti-dumping and countervailing duties dollars since 2001. It is my understanding that your agency believes it is very difficult to collect that money, that your Office of Chief Counsel plans to write off most of that at this point in time because importers have either disappeared, lack assets, or have declared bankruptcy.

Unfortunately, when these things happen, it sends a very bad message internationally when we are not able to obviously enforce those issues. So do we need to overhaul our antidumping and countervailing duty collection systems or can you make substantial improvements within the current system to fix the problem? To me this is pretty basic. We are not collecting through those systems as we should be.

Commissioner BASHAM. Senator, as you know, the Department of Commerce establishes the fees or duties, penalties, on antidumping and countervailing duties. Our difficulty has been that, in many cases, the evaluation of the product as it comes into the country really does not get liquidated for maybe 2 years after that point when Commerce finally issues a liquidation order.

Many times when we try to collect those duties, the company simply has never had any intention of paying it, or the company goes out of business, or we just cannot locate the responsible party after that period of time. What we have proposed is a continuous bond, that those bonds be set upon entering, which gives us a better opportunity to actually collect those duties at that later date when the liquidation is determined. So we do believe that there needs to be—we are working very closely with Commerce on this.

Quite frankly, the cooperation between us and Commerce on these issues has improved considerably. So, yes, we would like to work with this committee to develop a better process for collecting the duties and fees on these kinds of products that are coming into the country.

Senator STABENOW. Thank you.

Anyone else want to respond? I think my time is up, but I would welcome any short response from anyone else.

[No response.]

Senator STABENOW. All right. Thank you very much.

Senator BUNNING. Thank you.

Ms. Myers, I noticed in your testimony that China is the origin of most of our troubling examples of adulterated products, besides the shoe case, and also the case involving Cisco, where we are talking about big dollars.

Given the fact of a 500-percent increase in imports from China during the last 10 years—a 500-percent increase—is your agency adequately equipped to protect American consumers from adulterated drugs, counterfeit products, and tainted food?

Ms. MYERS. Well, thank you very much for that question, Senator. I certainly agree that I need the resources to execute our mission properly, working with the other agencies that do have a role.

In our fiscal year 2009 budget we do request about \$12 million that would help us kind of further execute our goal.

One of the reasons that we did establish Operation Guardian is to look really more strategically, and we recognize that over the years we had a great relationship with CBP and we do some kind of interesting individual, kind of one-off seizures and were not necessarily—

Senator BUNNING. Please, just answer my question, so I can ask others.

Ms. MYERS. Absolutely. We are seeking at least \$12 million in the President's 2009 budget to enhance opportunities, and we are also looking to spend the money that Congress gives us more effectively and more strategically.

Senator BUNNING. All right.

Mr. Basham, I want to ask you about the Notice of Proposed Interpretation you published in January regarding the so-called First Sale rule. This is the rule that governs how goods are valued for tariff purposes.

I understand that, at the last minute, the Farm Bill conferees inserted a provision that would delay the implementation of any change to the rule for several years. Can you explain for this committee how the rule works in practice today, why you think the rule is being abused, and which other countries have abandoned it?

Commissioner BASHAM. Senator, first of all, we issued the rule because there was a great deal of conflict between parties as to the application of First Sale.

Senator BUNNING. Did, in fact, a delay of the rule occur in the Farm Bill that was just passed?

Commissioner BASHAM. Yes.

Senator BUNNING. For how long?

Commissioner BASHAM. Until 2011. January 1, 2011.

Senator BUNNING. Oh. Just to 2011? So you cannot change the rule until 2011?

Commissioner BASHAM. That is correct.

Senator BUNNING. How much harm does that do?

Commissioner BASHAM. Well, we do not feel that it does any particular harm. What we are interested in is, the Farm Bill also has required that importers report on the number of imports that the First Sale applies to, and that we do an analysis of that information and then make a determination as to whether or not we need to interpret the rule at some point in the future. We will not take any action on First Sale, the interpretation, nor will we change the First Sale rule as it stands today.

Senator BUNNING. All right.

This is a question for Assistant Secretary Myers and Deputy Assistant Secretary Skud, or anyone else on the panel who would like to respond.

Last August, one of your sister agencies uncovered a massive cigarette tax fraud scheme in which they stopped the sale of 600,000 cartons of counterfeit cigarettes, together with 125,000 counterfeit revenue stamps from Kentucky, Virginia, and New York.

If Congress raises the Federal tobacco tax in order to pay for free health care for middle-class families, do you think this might increase the incentive for counterfeiting in China or elsewhere to

bring contraband across the border? Has your agency ever tested these counterfeit cigarettes to see what they contain? Is your agency equipped to handle the rise in organized crime resulting from increased smuggling of bootleg, tax-free cigarettes?

Ms. MYERS. Senator, in cases that we are involved with that involve counterfeit cigarettes, we absolutely do do testing, first of all to determine whether or not they are counterfeit, and then whether or not they can contain any additional carcinogens. It is certainly true that we see in other countries—

Senator BUNNING. Well, what did you find when you tested them?

Ms. MYERS. In the particular case you referenced, it was not clear that that was an ICE case. In certain cases we find that there are no additional carcinogens, in other instances we do find that there are additional problems. That is why we absolutely have to make sure that we do testing. Testing is part of any investigative scheme.

Senator BUNNING. Mr. Skud?

Mr. SKUD. Yes, Senator. With respect to the impact that the increase on the cigarette tax might have on the incentive to smuggle or to counterfeit, I think the answer has to be yes, that it would increase the incentive.

With respect to testing the safety of cigarettes, the Treasury Department's Tax and Trade Bureau does have a program for testing, a sampling program for testing.

Senator BUNNING. And did they do that with these 600,000 cartons?

Mr. SKUD. I am not familiar with the case you reference, but I would be happy to look into it.

Senator BUNNING. My time has expired.

Senator GRASSLEY. The Chairman will be back in just a minute.

To Mr. Skud, please, I want you to describe the relationship between Treasury and DHS with respect to the promulgation of Customs regulations. Is the delegation of authority from Treasury to Homeland Security working properly? Have there been any lapses in coordination? Specifically, why has Treasury not been more involved with respect to Customs' recent efforts to change the First Sale rule and the operation of heading 9801 of the Harmonized Trade Tariff Schedule?

Mr. SKUD. Thank you for the question, Senator. I would say that, in general, the relationship between the Treasury Department and DHS, CBP in particular, is working amazingly well. Under our delegation order, all day-to-day operations are delegated to the Department of Homeland Security. As I mentioned earlier, we retain the sole authority to approve regulations, and we review certain rulings.

I talk to people at Customs, several people every day, in a wide variety of offices from the Office of International Trade, the CIO's office, the Finance office, and the Chief Counsel's office. We work quite closely and, I think, quite successfully together.

With respect to the First Sale notice, this has been a CBP concern for a number of years. It was first formally presented to the Treasury Department over 5 years ago in the form of a draft regulation, and the Treasury Department did not go forward with that

rule at the time. The reason is that, from a policy perspective, we see the issue as a trade-off between administrative efficacy, collecting the right amount of duties sufficiently, and the potential duty increase. But, frankly, we did not have the data available to evaluate the scope and impact of that duty increase or the administrative benefits, so we did not go forward with the proposal then.

Earlier this year when CBP told us about the proposal, frankly, I counseled them that it would be controversial, but I also realized that the process of going out with notice and comment could generate the information needed to make an informed decision.

With respect to the 9801 issue, this is a proposal that is under review at the Treasury Department, but I also understand that there is a proposal to include language in the Miscellaneous Tariff Bill that would make this issue moot.

Senator GRASSLEY. I hope you can move. You cannot count on the Miscellaneous Tariff Bill, though.

Mr. SKUD. I am not counting on it. We have not made a decision on 9801 on its merits at this time. If the Miscellaneous Tariff Bill does not move, of course we will have to.

Senator GRASSLEY. Mr. Commissioner, the trade community has voiced great concern about the implementation of the 10+2 rule. Some companies have indicated that they will not be able to comply, while others have indicated compliance will cost millions. How will 10+2 improve the security of the Nation? Would it be appropriate to begin with a pilot program before requiring widespread implementation? How is Customs working with the trade community to minimize costs?

Commissioner BASHAM. Senator, 10+2 was a result of the Safe Port Act that required CBP, Customs, to collect additional information, advanced information on products that were coming into the country prior to its loading onboard ships overseas.

We sat with, worked with over the past several years, our partners in COAC, the Commercial Operations Advisory Committee, and looked at hundreds—literally hundreds—of data elements to determine which of those would be the most useful in developing our targeting tools to determine what would be a threat that would be coming to this country in the way of maritime cargo. We agreed upon 10 of the elements out from the import community, and 2 from the shipping community. Currently, the rule is at the Department of Homeland Security. We hope to have it to OMB by the end of the week, and then hopefully by the end of the summer have that rule out.

Over the next year, or whatever time it takes, we will be working with the trade to make sure that they are fully capable of providing this information, as we have done in many other cases in the past, working with them to ensure that they are prepared to provide that information to us. That is our way forward.

Senator GRASSLEY. Senator Bunning?

Senator BUNNING. Thank you.

I just want to go back to those cigarettes, the 600,000. Contraband cigarettes have been tested, and there was lead in them. Now, if the Customs agents and those who discovered them cannot do something more drastic than confiscate and fine, or try to initiate some kind of action against the perpetrators of those frauds

of the counterfeit cigarettes that come in, and using our tax stamps out of Kentucky, Virginia, and New York, then shame on the agencies that are supposed to stop the activity.

For Mr. Maruyama, I have a question. As you know, there is a local content requirement for NAFTA treaty benefits. I have heard that certain importers are circumventing the local content requirement by reporting an artificially low Customs valuation on imports into NAFTA countries. This makes the NAFTA content easy to meet, and the goods travel across our borders tariff free. Part of the problem appears to be that our own Customs laws allow goods to be valued using the First Sale between a factory and the first middleman and a long supply chain. That often brings in China. Is USTR aware of this issue?

Mr. MARUYAMA. Senator, we have heard about the issue. We would like more information about the specific situation that has arisen. Our NAFTA agreement does contain very detailed and elaborate rules of origin that specify how products should be valued and situations in which they qualify for duty-free treatment under the agreement.

So, if someone is playing games with the valuations, we would be very interested in hearing about it, and also interested in working—

Senator BUNNING. Do we not have specific prohibitions of transshipment to Third World or to NAFTA countries as a stopover and then adding a widget, and then shipping them into the United States or the NAFTA countries?

Mr. MARUYAMA. Absolutely. The rules of origin in the agreement are designed to make sure that products are legitimately sourced out of U.S., Canada, or Mexico.

Senator BUNNING. In other words, you would like for us to bring to the USTR, in your office, specific violations that we know about?

Mr. MARUYAMA. We would be very interested in that, if there is a broad problem with the agreement, but also I think we would be very interested in working with Customs and DHS, if there is a relatively routine case of Customs fraud.

Senator BUNNING. All right. Thank you very much.

Go ahead, Pat.

Senator ROBERTS. Thank you, Mr. Chairman.

Commissioner Basham, I have some concerns. I am not sure whether this has been brought up before; if it has, I apologize to you.

This is a proposal to reclassify certain lower-cost shoes under a heading that would result in higher import duties. In fact, the change could actually triple the current duty rate and it would result in an increase of about \$400 million to businesses and U.S. consumers.

I am talking about fabric-soled shoes. In February, CBP was looking at reclassifying these kinds of shoes imported into the United States under a new heading that would result in significantly higher tariff duties.

This is not based on any kind of a domestic challenge, as I understand it. Additionally, there is essentially no domestic manufacturer of these types of shoes. So what I am worried about here is, what is the current status of this proposal, if you are aware of it?

Is there any consideration given to the consumer end of this proposal, given the fact that these kinds of shoes are generally the lower-cost shoes? Most commonly, they are children's shoes.

In this economic environment, is this the best type of proposal to consider, one that would have a negative impact, obviously, on Americans' pocketbooks, and more disproportionately, those with lower incomes? About 10 years ago, I can remember a fuss like this, and it basically boiled down to Michael Jordan athletic shoes, over \$100, versus Hakeem Olajuwon—I think I have that right—the Houston all-star forward, who endorsed a different shoe. The difference was remarkable, what 25, 30 bucks for Hakeem Olajuwon's, and of course, Michael Jordan's were over \$100. But these are children's shoes, so I would ask you to respond in regards to my questions.

Commissioner BASHAM. Well, first of all, it is a classification issue, as you point out, the difference between a shoe that has a rubber sole versus a shoe that has a fabric sole, and in many cases they attach a piece of fabric and list it and misclassify it. We recognize that there needs to be some work on this, and we would be very happy to work with the committee on this issue to deal with the problem. But again, we are enforcing the tariff laws as we interpret them. That is the purpose of our looking at this issue. But as I say, we would be very happy to work with the committee on this.

Senator ROBERTS. Well, it is sort of the bottom-line effect that I am worried about, 400 million bucks to businesses and U.S. consumers, which could really be the end of these shoes being available. As I say, again, the difference in cost, as the example I used in terms of sporting shoes, now it is children's shoes.

I have no problem whatsoever on the classification of what the shoe is made of, but I do have a problem in that we do not have any domestic shoe company that is providing this. It does provide low-income folks to have shoes for their children, so I would hope that that would be the case.

Commissioner BASHAM. Yes, sir.

Senator ROBERTS. All right. Thank you very much.

Thank you, Mr. Chairman.

Senator BUNNING. Since there is nobody else to ask questions, the committee will stand in recess.

[Whereupon, at 11:06 a.m., the committee recessed, reconvening at 11:15 a.m.]

The CHAIRMAN. The committee will come back to order.

I'd like to talk now about enforcement of intellectual property rights. The real question here is whether the various agencies charged with intellectual property have the resources and are sufficiently coordinated. CBP works with IP issues at the border. ICE does its investigations. Of course, the ITC has 337 investigations, and USTR is in charge of enforcement. With all these different agencies, it is a huge concern.

I would be interested in the panel's thoughts on how well that is working. Of course, everybody wants more resources. But what advice do you have among yourselves or for this committee to make sure that each of these different agencies gets the job done? Whoever wants to begin first, just raise your hand if you want to speak.

Commissioner BASHAM. Mr. Chairman?

The CHAIRMAN. Yes.

Commissioner BASHAM. First of all, I would like to say that we have increased our efforts on enforcing intellectual property rights violations. We have been working very, very closely with ICE. Part of ICE is an IPR center to identify and target. We are using the same kinds of tools that we use for our security to look at these types of violations, particularly out of China. We have increased, I think, something like 27 percent the number of actual interdictions that we have made.

Like someone said, 80 percent of those are coming out of China, and we are actually working with the Chinese Government, and have signed an agreement with the Chinese Government to share information on investigations that ICE is conducting with the Chinese Government so that they can look back into their own system and determine where these kinds of IPR violations are occurring. So we are sharing information with them to try to come up with better intelligence on targeting these kinds of violations.

Julie?

Ms. MYERS. Thank you. Senator, from a cooperation standpoint, I think cooperation between all the different law enforcement agencies involved is only getting stronger. At ICE we recognized, frankly, that our IPR center could be more effective if we made it more operational and more initiative-based in really looking at health and safety. So we have always had a national IPR center, but we are actually kind of forming a new center together and we have buy-in from the FBI—the Criminal Division, CSIS—the Canadian Security Intelligence Service, FDA, as well as CBP, who are all going to be part of this center to target, in particular, substandard and counterfeit goods that really affect public health and safety.

In terms of resources, we are requesting in the President's 2009 budget an additional \$4.6 million in particular for commercial fraud and intellectual property rights, as well as an additional \$5.7 million for cybercrime. We do think this funding is essential in order for us to make the difference.

Finally, I would just note, internationally, we are seeing some more cooperation on the law enforcement-to-law enforcement side from the Chinese, as well as from the government of India. I recently was in India and met with the commissioner of Customs there, and they are very interested, given the problems that they are seeing as well, in partnering with us, kind of law enforcement-to-law enforcement. There is more to be done, but I am seeing some encouraging progress.

The CHAIRMAN. Right. During the strategic economic dialogue talks just last week, China announced beefed up intellectual property enforcement. What are your concerns about that? Where are the blanks? Where are the loopholes? What needs to be done there? Again, it sounds good, and I commend China for taking that action. But I am just curious. As you look at it, what are some of your concerns?

Ms. MYERS. Well, I think from kind of a pure law enforcement standpoint, it is just making sure that actually the cops on the ground are working well together and actually sharing information, and that the agreement, in goodwill, is actually executed on par-

ticularized cases. I think we have seen some very promising things. We have actually worked several undercover cases with the Chinese where people have been prosecuted and served jail time, both in the U.S. and in China. I think that really represents a step forward. I think, also, the Chinese are more interested in health and safety issues than they have been before.

Given the dangers in counterfeit pharmaceuticals, that is troubling, but I think it is really an execution that I am most concerned about, kind of seeing how we are going to carry through from the great promises, both in the dialogue last week, as well as kind of the talks that we have individually with our counterparts.

The CHAIRMAN. Do you work with the provinces in China as well as with the central government? The provinces and the cities, for example?

Ms. MYERS. We do some. We would primarily work with the Ministry of Public Security, but we do in some kind of particularized cases. If there are kind of particularized issues there, then we would focus down at the provincial level. But generally we do work most closely with MPS.

The CHAIRMAN. It is my understanding that there is a little bit of a difference between Beijing and the provinces, a whole different dynamic. I would just urge you to be aware of that and be effective in dealing with the problems in some way.

Ms. MYERS. I agree, Senator.

The CHAIRMAN. All right. Thank you.

Anybody else on the coordination of IP among all your agencies? Mr. Maruyama?

Mr. MARUYAMA. Well, just a couple of things that USTR has going on the IPR front. We have a major case that is under way challenging China's inadequate IPR enforcement system. The second panel hearing was last week, so the case was moving into a phase where it is going to be ripe for a decision. We have some of our best lawyers working on that case, and we have had excellent support from a strong interagency team, with lawyers and IP experts from Commerce, the PTO, copyright, and the U.S. embassy in Beijing. We also have an anti-counterfeiting trade agreement initiative that is an effort to try to bring together like-minded countries to more effectively combat piracy around the world.

Finally, on the SEDs, the Shipper's Export Declarations, our dialogue with the Chinese took a hit when we filed the WTO case. Some very senior Chinese officials took it rather badly, but the Chinese appear to be revising their efforts to work on the IP front. The major issue there is political will. If the Chinese want to stop IP piracy, they have shown that they are capable of doing it. The best example of that is Olympics souvenirs, where everyone in China knows it is big trouble if you get caught peddling counterfeit stuff with the Olympic logos. So, they have the capability to do it when they really get down to business.

The CHAIRMAN. Well, I am hoping that China does change a bit when a WTO case is filed, as is the case with respect to Europe. The Europeans understand that is just the beginning, that this is a dialogue, a discussion. This is an indication, frankly, that economies are maturing. There is a lot more commerce, so it is more likely more cases will be filed. We want the Chinese to recognize

they should not take it personally, but actually look at, hey, they are becoming a more mature economy, and I am sure we will have differences and so forth, but we can work out ways to deal with it.

But basically on IPR, what more do we need to do? Here you all are, you are the agencies charged with enforcement. What kind of job are we doing, do you think? How can we do better?

Mr. PEARSON. Mr. Chairman, if I could differentiate just slightly between the IPR protection provided by the other agencies and provided by the ITC.

The CHAIRMAN. Right.

Mr. PEARSON. I would note that they are generally dealing with intentional efforts to defraud or to violate law.

The CHAIRMAN. Right.

Mr. PEARSON. The ITC, quite often in its 337 cases, finds two parties in front of us where one party believes that there is patent infringement and the other party believes there is not, and it is an issue to be decided by patent attorneys and others learned in those arts. Yet, what we are finding is that the intellectual property holders find our service to be very, very valuable because we are faster than the District Courts and we have the ability to issue an exclusion order to keep out infringing imports. Given the integrated nature of the global economy, the ability to keep out imports, which then is enforced by Customs, that is very valuable to the IPR holders.

The CHAIRMAN. I appreciate that.

Let me ask Mr. Skud a question on a different subject, and that is whether Treasury has filled the 20 oversight positions that were authorized in the Homeland Security Act of 2002. Basically, as you said in your opening statement, you provide oversight. You have oversight responsibility, and that necessarily means you have a certain number of people conducting that oversight responsibility. The 2002 Act authorized 20 oversight positions for Treasury to do that oversight. Do you have those positions? Can you give me a better sense of how robust your oversight functions are?

Mr. SKUD. We do not have 20 positions within the Treasury Department that are dedicated solely to our responsibility for Customs revenue functions, but we have a number of people who are involved. I am in the Office of Tax Policy, and I work on Customs revenue functions with colleagues there. There are also at least a half-dozen members of the Office of General Counsel who regularly work on Customs revenue functions. In fact, in the past year the General Counsel has reorganized its office to provide better legal support on these issues. Also, I work quite closely with a number of people in the Office of International Affairs on these issues, and we see very useful support from the Office of Economic Policy.

The CHAIRMAN. But why do you not have those 20? I may be wrong, but it is my understanding that the 2002 Act provided for 20 positions.

Mr. SKUD. Mr. Chairman, I think the Act provided for up to 20 FTEs.

The CHAIRMAN. Well, how many do you have on an FTE basis working on oversight responsibilities?

Mr. SKUD. I am sure there are at least 20 people who spend time on these issues.

The CHAIRMAN. I meant, spend their sole time. You have how many people in oversight, basically?

Mr. SKUD. I understand the question. I really do not know. I do not keep track of people's time on these issues.

The CHAIRMAN. Does somebody in Treasury do that?

Mr. SKUD. Not to my knowledge, sir.

The CHAIRMAN. But do you think it would be a good idea if somebody did? If you have oversight responsibility, it seems to me you would want an idea of how many people are keeping track of all that.

Mr. SKUD. Congress gave us a responsibility for this oversight function, and I think we are doing a pretty good job of it. The bill said up to 20 FTEs.

The CHAIRMAN. If it is you and you do not know how many people there are, it raises certain questions.

Mr. SKUD. I know how many people are involved. I do not know exactly how much of each person's time is spent on this function.

The CHAIRMAN. Well, I have to leave. There is a vote going on. But this committee takes our oversight functions very seriously with respect to Customs and trade, and clearly we have a very equal responsibility to address security, but we also have a co-equal responsibility with respect to trade and Customs. We will be having subsequent hearings, so I would just urge all of you to do what you know you should be doing. It is not easy, but do what you know you should be doing so that we know next time we meet that we are making significant progress.

Thank you very much. The hearing is adjourned.

[Whereupon, at 11:29 a.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

**Statement of Commissioner W. Ralph Basham
U.S. Customs and Border Protection
Senate Finance Committee
U.S. Senate
June 24, 2008**

Introduction and Overview of Agency

Chairman Baucus, Ranking Member Grassley, and Members of the Committee, it is a privilege and an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) trade functions and enforcement efforts.

I want to begin by expressing my gratitude to the Committee for the interest and support you continue to provide as CBP performs our important security and trade enforcement work without stifling the flow of legitimate trade and travel that is so important to our nation's economy. These are our "twin goals:" building more secure and more efficient borders that at the same time will facilitate legitimate trade and travel.

Your support has enabled CBP to make significant progress in securing our borders and protecting our country against the terrorist threat. CBP looks forward to working with you to build on these successes.

I am pleased to appear before you today alongside witnesses from several government agencies, especially Assistant Secretary Myers from our DHS sister agency ICE, with which CBP maintains a cooperative working relationship on trade issues.

As America's frontline border agency, CBP employs our highly trained and professional personnel, resources, expertise and law enforcement authorities to discharge our mission of preventing terrorists and terrorist weapons from entering the United States, apprehending individuals attempting to enter the United States illegally, stemming the flow of illegal drugs and other contraband, protecting our agricultural and economic interests from harmful pests and diseases, protecting American businesses from theft of their intellectual property, regulating and facilitating international trade, collecting import duties, and enforcing United States trade laws.

As the single, unified border agency of the United States, CBP's missions are extraordinarily important to the protection of America and the American people. In the aftermath of the terrorist attacks of September 11th, CBP developed initiatives to meet our twin goals of improving security and facilitating the flow of legitimate trade and travel.

Our strategy to secure and facilitate cargo moving to the United States is a layered defense approach built upon interrelated initiatives. Among them are: the 24-Hour and Trade Act rules; the Automated Targeting System, housed in CBP's National Targeting Center; the use of Non-Intrusive Inspection equipment and Radiation Portal Monitors; the Container Security Initiative; and the Customs-Trade Partnership Against Terrorism initiative. These complementary layers enhance port security, and protect the nation.

Changes Since Last Authorization Hearing in 2006

Since the last authorization hearing before this Committee in 2006, CBP has worked to enhance our layered enforcement approach to cargo security. Specifically, CBP is currently working to finalize the Importer Security Filing rule-making, commonly referred to as "10+2." Per the requirements of the SAFE Port Act, CBP consulted with the COAC (the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection) when developing this draft rule. We worked with the trade community to review information and identify the data sources they used as the cornerstone of the international logistics process. CBP has focused on identifying which data elements will increase the transparency of the global supply chain and improve its overall targeting processes prior to the lading of containers onto U.S. bound vessels. Obtaining data earlier in the logistics process will assist CBP in making more informed decisions when inspecting individual shipments and, as a result, will facilitate entry and expedite clearance for low-risk cargo.

A second—and perhaps the most noteworthy change since our last authorization hearing—is that CBP, with your Committee's assistance and oversight, finalized the creation of the Office of International Trade in October of 2006. The Office of International Trade consolidates the trade policy, regulatory and enforcement functions of CBP into one office to support a multilayered approach to trade facilitation and compliance. It 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. The Office directs national enforcement responses through effective targeting of goods crossing the border as well as strict, swift punitive actions against companies that fail to comply with our trade rules. The Office of International Trade provides the legal tools to promote facilitation and compliance with 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. This Office is also responsible for continually analyzing and updating our interpretation of U.S. trade laws.

For instance, in January of this year, CBP published a Notice of Proposed Interpretation in the Federal Register seeking public comment on a proposed new interpretation of the phrase "sold for exportation to the United States" for purposes of applying the transaction value method of valuation in a series of sales importation scenarios. Generally this is the price paid by the buyer in the United States to the foreign distributor, rather than the price paid by the foreign distributor to a foreign manufacturer. While we believe this change would be more consistent with the provisions of the U.S. value law, we have sought input from the trade on this matter through an official public comment period. As discussed in more detail below, Congress subsequently, in the Food, Conservation and Energy Act of 2008 (Pub. L. No. 110-246), required CBP to collect valuation information from importers and included a sense of Congress that CBP should not publish a final interpretative rule on this issue before January 1, 2011.

The Office of International Trade also coordinates with international partners and other U.S. government agencies to enforce intellectual property rights, identify risks to better detect and prevent the importation of contaminated food products and other unsafe imports, and enforce free trade agreements. By promoting trade facilitation through partnership programs such as Account Management and Importer Self-Assessment, the Office of International Trade is streamlining the flow of legitimate shipments and fostering 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.

Additionally, since the last authorization hearing, CBP, in partnership with the Department of Energy has piloted the Secure Freight Initiative (SFI) and has submitted the first SFI report to this Committee. SFI, as required by the SAFE Port Act, tests the feasibility of scanning, in a foreign port, 100 percent of U.S.-bound, maritime port containers before they are laden on a vessel. SFI integrates radiation detection and imaging equipment to provide additional data elements to CBP officers to help mitigate risk and adjudicate radiation alarms.

Meeting the legislative requirements of the SAFE Port Act, the first three SFI ports (Puerto Cortes, Honduras; Port Qasim, Pakistan; and Southampton, United Kingdom) became fully operational on October 12, 2007, and are attempting to scan 100 percent of U.S.-bound maritime containers (the total U.S.-bound container volume at these three ports from October 12, 2007 to May 25, 2008 was 170,564 containers). Furthermore, CBP and DOE are working to pilot scanning equipment in additional diverse environments that provide unique challenges, which include certain terminals in Hong Kong (now fully operational), Salalah (Oman), and Port Busan (South Korea).

As the report details, the implementation of SFI in Pakistan, Honduras, and the United Kingdom, and the limited testing in the additional SFI locations illustrates that the scanning of all U.S.-bound maritime containers in a foreign port is possible on a relatively contained scale. However, several diplomatic, technical, and logistical challenges remain and will affect future deployments. As DHS develops a specific policy, in conjunction with the DOE and the DOS, we will prioritize our resources and efforts by focusing on specific higher risk trade corridors where the most security benefit can be realized. Based on preliminary results from the three pilot locations, and in light of the considerable costs and challenges associated with SFI, this high risk trade corridor approach represents the most responsible investment of limited available resources for the scanning of cargo containers at foreign ports.

Trade Law Enforcement

The face of trade has changed over the last several years. The negotiation and enactment of new free trade agreements, the changes in the textile industry with the elimination of quotas on all WTO countries and then establishment of new quotas on China, the new laws enacted involving bioterrorism and wood packing material, as well as the concerns about a potential avian flu pandemic have caused us to take another look at the way we deploy our resources. It has caused us to reexamine the way we equip our Import Specialists and other trade personnel to address such complex and challenging issues. The deployment of our resources to ensure that we focus on those issues that have the greatest impact on the economy and the welfare of the American people has been at the forefront of our trade mission.

CBP has developed staffing models in accordance with the Homeland Security Act and the SAFE Port Act to determine the appropriate level of staff by analyzing criteria such as workload, threat and complexity. These models help identify requirements for CBP Officers, Agriculture Specialists, Auditors, Lawyers, International Trade Specialists and the various CBP revenue positions. The models provide an optimal level of staffing and are used as a national guide in the allocation of available resources. They are used as a decision support tool to make better resource decisions and to allocate available resources based upon the current financial plan. These models assist CBP in determining staffing needs, but do not eliminate the judgment of experienced personnel when making decisions on allocating staff. The models can adjust to changes in workload, processing times, complexity of tasks and threat levels.

CBP addresses national trade risks and priority issues through multi-disciplinary trade strategies that provide solutions to both enforcement and facilitation challenges. Specifically, we are developing the CBP Trade Strategy to direct actions and resources around trade issues posing significant risks. The strategy is organized around priority trade issues, which were developed using a

consistent risk-based analytical approach with a clear emphasis on integrating and balancing the goals of trade facilitation and trade enforcement.

With a strategic approach to addressing trade risks, CBP can successfully facilitate legitimate trade while effectively protecting the American public and economy. This includes protecting American business from theft of intellectual property and unfair trade practices, enforcing trade laws related to admissibility, collecting the appropriate revenue, and shielding the American public from harmful pests in agricultural products and other health and public safety threats.

The fundamental principles of the Trade Strategy are to:

- **Facilitate Legitimate Trade and Ensure Compliance**
Employ risk management principles and advance targeting of information to facilitate legitimate trade. Expand partnerships with the trade community, other U.S. government agencies, and international entities to ensure compliance. Expand the pre-entry and post-release verification programs to reduce cargo delays at the border.
- **Enforce U.S. Trade Laws and Collect Accurate Revenue**
Improve risk analysis and targeting through expanded information sharing with the trade community, other U.S. government agencies, and international entities. Apply swift, consistent enforcement actions to address and deter high-risk trade law violations. Employ trade expertise to set priorities, direct policy, enforce compliance, and collect proper duty.
- **Advance National and Economic Security**
Protect U.S. consumers and industry through the prevention of unsafe imports and the imposition of border measures in response to findings of unfair trade practices. Advance DHS and CBP security priorities to meet priority mission and assist other U.S. government agencies with their primary concerns. Strengthen national trade policy by influencing the development of trade laws and regulations that enable CBP to more effectively administer trade policy.
- **Intensify Modernization of CBP's Trade Processes**
Streamline trade processes and enhance delivery of services to stakeholders through automated, account-based, and paperless processes and technology. Strengthen trade expertise and ensure a skilled workforce capable of effectively executing CBP's mission. Ensure commitment to change to realize the benefits of modernization.

Priority Trade Issues:

The Priority Trade Issues (PTIs) integrate the key trade risks from political, economic and resource concerns while balancing the goals of trade facilitation and trade enforcement. The PTIs include:

- **Agriculture** – We must detect and prevent the intentional or unintentional contamination of agricultural products that could cause harm to the American public, American agriculture, or the nation’s economy.
- **Antidumping and Countervailing Duty** – We will enforce antidumping and countervailing duty determinations and ensure timely and accurate collection of duties.
- **Import Safety** – CBP recognizes the challenges we face in maintaining safe and secure imports. To ensure the enhanced safety of imports, CBP is actively participating in the President’s Interagency Working Group on Import Safety. Furthermore, CBP has established a Division for Import Safety within our Office of International Trade.
- **Intellectual Property Rights (IPR)** – We are improving the effectiveness of IPR enforcement by ensuring a single, uniform approach and focusing on known or alleged violators with high aggregate values of the infringing goods or whose infringing products threaten health and safety or economic security.
- **Penalties** – Our goal is to improve the effectiveness of the trade fraud penalty process by emphasizing national direction, uniformity, swift action, alternatives to traditional commercial fraud penalties, and focusing our resources on Priority Trade Issues.
- **Revenue** – We will maximize collection efforts by ensuring strong controls over the revenue process and focusing on material revenue risks.
- **Textiles and Apparel** – CBP will ensure the effective enforcement of the anti-circumvention laws, trade agreements, and trade legislation regarding the importation of textile and apparel.

Farm Bill Provisions

First Sale

- As discussed above, in January of this year, CBP published a Notice of Proposed Interpretation in the Federal Register seeking public comment on a proposed new interpretation of the phrase “sold for exportation to the

United States” for purposes of applying the transaction value method of valuation in a series of sales importation scenarios. The proposed interpretation would require the price paid by the buyer in the United States to the foreign distributor to form the basis for valuation. This interpretation is a departure from the current application of the valuation statute, which allows importers to use the price paid by an intermediary to a foreign manufacturer as the basis for determining the transaction value of merchandise being imported into the United States. This departure from the current valuation method has been controversial.

- The Farm Bill instructs CBP to require each importer of merchandise to declare whether the transaction value of the imported merchandise has been determined on the basis of a first or earlier sale.
- CBP is required to submit a report that includes the number of importers that declare transaction value on the basis of first sale, the tariff classification of such merchandise and the value of the merchandise, on a monthly basis to the United States International Trade Commission (USITC).
- We have had preliminary discussions with the trade and are examining the most efficient means of collecting the required information while minimizing the impact on the trade.
- The Farm Bill also includes a sense of Congress that CBP should not proceed with its proposed interpretative rule until January 1, 2011 and upon certain coordination and consultation with Congress, the Commercial Operations Advisory Committee, the International Trade Commission, the Secretary of Treasury, and the trade. CBP does not intend to proceed further on the proposal on first sale before January 1, 2011. Nor will we change the current interpretation with respect to first sale without consulting with the Congress and the private sector, or without the explicit approval of the Secretary of Treasury.

Wine Drawback

A miscellaneous trade provision codifies a current drawback practice that permits wine of the same color to be deemed commercially interchangeable. We did not object to this provision and have worked cooperatively and successfully with the wine industry on language that will be part of drawback simplification legislation that will be acceptable to both the industry and CBP.

Softwood Lumber Act

Title III of the Farm Bill became law and we have begun the process required for implementing the softwood lumber provision. When this process is complete, we will provide a full briefing for this Committee as well as the relevant committees of

the House. Although we will try to minimize the adverse impact on the trade, I know that this provision will require software reprogramming on their part and may affect softwood lumber imports from as many as 85 countries.

Conclusion

We look forward to working with you on a reauthorization bill which will support our trade functions.

Mr. Chairman, Members of the Committee, we have briefly addressed CBP's critical initiatives today that will help us protect America against terrorists and the instruments of terror, while at the same time enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. We realize there is more to do, and with the continued support of the Congress, CBP will succeed in meeting the challenges posed by the ongoing terrorist threat and the need to facilitate ever-increasing numbers of legitimate shipments and travelers. Thank you again for this opportunity to testify. I will be happy to answer any of your questions.

**Responses to Questions for the Record From W. Ralph Basham
Finance Committee Hearing of June 24, 2008
Oversight of Trade Functions: Customs and Other Agencies**

Questions From Senator Baucus:

Question: The “Softwood Lumber Act of 2008,” (“Act”) which was enacted in the “Food, Conservation, and Energy Act of 2008,” (“Farm Bill”) requires importers of certain softwood lumber and softwood lumber products to declare to U.S. Customs and Border Protection (“CBP”) that their imports are consistent with the terms of U.S. international trade agreements. The Act also requires CBP to reconcile the information provided by U.S. importers with information collected from foreign governments. And it requires CBP to verify the importer declarations. The provisions of the Act must take effect 60 days after enactment, which was June 18, 2008.

What steps has CBP taken to ensure the Act takes effect 60 days after enactment? Does CBP intend on issuing regulations implementing the Act? If so, when will CBP issue its proposed rules?

Answer: The Act requires all importers of softwood lumber and softwood lumber products to report an export price and an export charge, if any, to CBP at entry summary. The Act also requires importers to declare that they have made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting information published by the Department of Commerce. Importers must declare that they have determined that the export price matches the definition in the Act and is consistent with the export price provided on the export permit, if any, granted by the country of export. Finally, importers must declare that the exporter has paid, or committed to pay, all export charges due in accordance with the volume, export price, and export charge rate or rates, if any. CBP is also charged with reconciling and verifying the information reported, penalizing importers if necessary, and submitting reports to Congress every 6 months.

CBP is taking the appropriate steps to ensure implementation of the Act on August 18, 2008. Immediately after the enactment of the Softwood Lumber Act of 2008, CBP started drafting implementing regulations and also consulted with the Trade Support Network for input on the importer declaration requirement. The interim final rule has been drafted and is in the formal review process which entails review by CBP, DHS and the Treasury Department. CBP will endeavor to have the interim final rule published on or about August 18, 2008.

CBP plans to make changes to the Customs and Trade Automated Interface Requirements (“CATAIR”) and the CBP Form 7501 to collect the required data elements; publish information on its website, including implementing instructions; and issue interim regulations implementing the Act over the next few weeks. Prior to implementation, CBP will brief Senate Finance staff, brokers associations, and other interested parties on the requirements of the Act.

Question: U.S. Customs and Border Protection’s (“CBP”) proposal to change its “first sale” rule raises significant concerns. This is a radical change to customs policy and could lead to significant increases in the duties that American consumers pay.

CBP failed to consult either the Finance Committee or the trade community before releasing its proposal. As a result, I worked with Senator Grassley, Chairman Rangel, and Mr. McCrery on

language to the Farm Bill expressing the strong sense of Congress that CBP should continue allowing importers to use “first sale.”

What are the next steps CBP will take to implement the Farm Bill provision regarding “first sale” given that no action can be taken on this until at least 2011?

Answer:

- In a Notice of Proposed Interpretative Rule (“NPIR”) published in the Federal Register on January 24, 2008, CBP/DHS proposed a new interpretation regarding transaction value, the primary method for determining the customs value of imported goods under the U.S. value law, 19 U.S.C. 1401a. As you are aware, under current interpretation, transaction value is based on the price paid in the first sale, provided the merchandise can be shown to have been clearly destined for the United States and was the result of an arm’s length sale.
- In light of various considerations including the “Farm Bill,” the “Food, Conservation and Energy Act of 2008,” (Pub. Law No. 110-246, 122 Stat. 1651 (June 18, 2008)), which, as you indicate, includes a Sense of Congress that CBP should not implement a change in the First Sale Rule valuation until January 1, 2011 and when certain consultation and coordination has occurred, we are withdrawing the NPIR. Withdrawal of the NPIR will maintain the current transaction value method of valuation in a series of sales importation scenarios and allow CBP to fully comply with the requirements of the Farm Bill and respect the sense of Congress included in that law. This should reduce uncertainty for the importing community.
- The next steps to implement the Farm Bill include:
 - Issuance of a notice withdrawing the NPIR;
 - Commencing in mid-September, collecting the importer declaration as to whether the transaction value of the imported merchandise is determined on the basis of the price paid by the buyer in the first or earlier sale occurring prior to introduction of the merchandise into the United States; and
 - Preparing and submitting the monthly reports to the United States International Trade Commission (“USITC”) on the number of importers using first sale as the basis for transaction value, the transaction value claimed, and the classification of the merchandise. The USITC must in turn submit a report to Congress within 90 days after receiving the final CBP monthly report.

Question: U.S. Customs and Border Protection (“CBP”) plays an important role in administering and enforcing our trade laws. CBP’s policy decisions have a sweeping effect on the trade community. As such, Congress mandated that CBP fully consult with the trade community, other agencies, and Congress before making significant policy decisions.

But CBP has persisted in making major decisions, such as with “first sale,” without proper consultations. And this results in policy changes that are not supported by the facts. What safeguards are you putting in place to ensure that CBP consults fully with the trade community, other agencies, and Congress before making such decisions?

Answer: CBP has acknowledged that there would have been benefits to consulting with Congress prior to publishing its notice of proposed interpretive rule on first sale in January. Since that time, however, CBP has consulted closely with Congress and the trade with regard to implementing the

Farm Bill's provisions on first sale, softwood lumber and Haiti Hope II. In addition, CBP and Treasury have consulted with Congress with regard to a proposal to expand the NAFTA rules of origin for other purposes. CBP is committed to making certain that it consults with Congress on major issues. CBP has an ongoing dialogue with the trade in the regular meetings of the Commercial Operations Advisory Committee and the meetings of the committees and subcommittees of the Trade Support Network. CBP consults with other government agencies when such input is necessary.

Question: U.S. Customs and Border Protection ("CBP") consulted with the trade community in the development of the Advance Trade Data Elements proposal, known as "10 + 2." However, several companies and associations are concerned that the implementation process will be complex and costly to implement.

Given that a substantial percentage of the trade entering this country moves by ship, 10 + 2 will have a significant impact on this Nation's competitiveness. How do you plan on ensuring the trade community's voice is heard during the implementation process?

Answer: The SAFE Port Act of 2006 mandates that the Department of Homeland Security ("DHS"), working through CBP, require additional data elements for improved high-risk targeting, including appropriate security elements of entry data to be provided as advanced information prior to vessel lading at foreign ports. In addition, the Act requires that CBP consult with stakeholders, including Commercial Operations Advisory Committee ("COAC"), to identify to them the need for such information and the appropriate timing of its submission. For the past two years, CBP has worked closely with the trade on the "10 + 2" proposal.

Since its inception, CBP has actively worked in partnership with the trade community. CBP understands that fostering and maintaining positive working relationships with the trade is critically important as we seek to effectively secure our Nation's borders. The fruits of this partnership strategy are clearly evidenced by the successful implementation of numerous cargo security programs such as the 24 Hour Manifest Rule, the Customs Trade Partnership Against Terrorism ("C-TPAT") Program, as well as the Container Security Initiative ("CSI"). The trade's invaluable input during the consultative process as well as its participation in the Advance Trade Data Initiative ("ATDI") has been instrumental in the successful crafting of the "10 + 2" proposal.

Beginning in November 2006, CBP posted a "Strawman" white paper on the CBP.gov website, which clearly stated its intentions to move forward with a "Security Filing" program to complement the 24 Hour Rule manifest data that is currently required from the carrier community. As part of this process, CBP actively solicited feedback from the trade in the form of e-mail responses to the "Strawman" document. CBP's responses to the trade's Security Filing "Strawman" feedback were posted on the CBP website in the form of frequently asked questions ("FAQs").

Also in November 2006, CBP began the formal consultative process with the COAC. COAC is comprised of numerous industry representatives. In February 2007, COAC made nearly 40 official recommendations to CBP on how to best implement the security filing or "10 + 2" initiative. The majority of the COAC recommendations were accepted and adopted as part of the "Importer Security Filing and Additional Carrier Requirements" notice of proposed rule making ("NPRM") which was posted to the Federal Register on January 2, 2008. CBP received nearly 200 public comment submissions in response to the "10 + 2" NPRM during the 75 day comment period, which ended on March 18, 2008.

Beginning in March 2007, CBP began testing "10 + 2" data formats and transmission methods under the auspices of CBP's ATDI program. ATDI is a voluntary CBP-Trade partnership program consisting of over 60 companies from across multiple industry sectors, including importers, brokers, carriers, software developers and others. These companies volunteered to provide CBP with "10 + 2" test data on a continuous basis. To date, the ATDI security filing testing has resulted in the receipt of more than 50,000 proxy importer security filings, 75 million container status messages and 700 stow plans and serves as a proof of concept that the data is available and that data intake into CBP systems is working very well.

As part of CBP's ongoing outreach efforts, the draft Importer Security Filing transaction data sets that were developed under ATDI were released to the public on May 30, 2008. In addition, CBP set up a special electronic mailbox for the trade to provide feedback on the draft transaction sets. Based on the feedback, CBP was able to modify the existing draft data sets and posted updated copies to the CBP.gov website on July 17, 2008.

CBP has made every effort to consult with the trade stakeholders as directed by the SAFE Port Act. CBP has continued to engage in myriad outreach efforts with the trade and has participated in numerous meetings and conferences over the past two years. CBP maintains continuous contact with many trade organizations and committees such as the American Association of Exporters and Importers ("AAEI"), the National Customs Brokers and Forwarders Association of America ("NCBFAA"), the World Shipping Council ("WSC"), the Customs Electronic Systems Advisory Council ("CESAC") and the Trade Support Network ("TSN"). CBP is committed to continuing these outreach efforts throughout every phase of the "10 + 2" process including the critical implementation phase.

To address the trade's concerns about the implementation process being "too complex and costly," CBP plans to work closely with members of the trade to ensure that the required data is being filed correctly, timely and that the data is accurate. CBP will continue to update the trade on issues associated with the proposed regulations in the form of FAQs, postings on the CBP website, and consultation with the trade and foreign countries.

In addition, CBP received public comments recommending we utilize existing communication systems (i.e., Automated Manifest System and Automated Broker Interface) to receive the new Importer Security Filing data from the trade and to send status messages back to the data filers regarding their shipments. CBP believes these suggestions have potential merit, and is seriously considering such public comments in our current development of the Security Filing final rule.

Where appropriate, CBP will consult with the relevant United States Government Agencies as we work toward our goal of implementing the "10 + 2" final rule.

Question: In the past, you have stated that trade facilitation and security are complementary goals. You have also stated that U.S. Customs and Border Protection ("CBP") will provide greater trade facilitation to complement additional security efforts such as the Advance Trade Data Elements proposal, also known as "10 + 2." What new or different facilitation efforts will CBP make to complement the Importer Security Filing? How will these facilitation efforts affect CBP's current import clearance process?

Answer: In most cases, according to our research, the data proposed to be required for the “10 + 2” filing is available 24 hours prior to vessel lading. This data would allow CBP Officers to better assess and mitigate potential security threats posed by U.S.-bound containerized cargo much earlier in the supply chain process. In turn, this would facilitate the movement of lawful international trade by allowing CBP to focus its resources on those goods and containers that actually pose the greatest security risk to our Nation.

CBP processes CBP Form 3461s and CBP Form 7501s (entry and entry summary documentation) within the Automated Broker Interface (“ABI”) module and returns cargo selectivity response messages to the filers (normally a customs broker) after entry processing. In the sea mode of transportation, this may be done up to 5 days prior to a vessel’s estimated time of arrival at the first U.S. port of arrival. In most cases, the filer will receive a “paperless entry” release message in ABI. This type of selectivity release message means that the entry documentation has passed certain criteria edits and that the cargo has been deemed admissible into the United States for trade compliance purposes.

CBP is exploring the feasibility of expanding the current 5-day selectivity release window up to the confirmed vessel departure date (whichever is longer) as long as a 3461 and/or combined 3461/7501 has been submitted for processing as this data is not required by statute until after cargo arrival in the United States. The trade has requested this “benefit” as part of the “10 + 2” Notice of Proposed Rule Making consultative process because the trade believes that obtaining an earlier release (or hold) message will allow them to better manage the timeliness of their supply chains.

In addition, CBP believes that receiving actual cargo entry and entry summary data earlier will greatly enhance our shipment risk assessment process within the Automated Targeting System since entry data provides much more detailed information.

Question: In the Advanced Trade Data Notice of Proposed Rule Making (“NPRM”), U.S. Customs and Border Protection (“CBP”) states that it will continue to evaluate the effectiveness of the program, known as “10 + 2.” CBP is also considering additional steps including expanding the advance data requirements for other modes of transportation. Does CBP plan to expand the Importer Security filing to air and land? If so, when will this expansion occur? Will the Committee on Finance in the Senate and the Committee on Ways and Means in the House be consulted prior to this expansion moving forward? Will CBP consult with the trade community?

Answer: The Security Filing (10 + 2) is scheduled to be operational within the maritime cargo environment. CBP is not actively exploring the expansion of the Security Filing to other modes of transportation at this time.

Question: Last year, U.S. Customs and Border Protection (“CBP”) delivered to the Committee on Finance in the Senate a Resource Allocation Model (“RAM”) report as required by section 403 of the “Security and Accountability For Every Port Act of 2006” (“Act”). In the report, CBP found that it needs more than 2,000 additional officers to staff these operations. Recently the President of the National Treasury Employees Union, representing CBP, wrote a letter to Senator Grassley and me urging the Committee to authorize funds for additional staff. What actions is CBP taking to address this staff shortage identified in the RAM report?

Additionally, this shortage in trade staffing explains the long delays at high-volume ports of entry, especially along our Northern Border, and has a negative impact on U.S.-Canada trade. What is

CBP doing to reduce these delays? What resources do you need to accomplish your trade facilitation mission?

Answer: The RAM report identified a need of approximately 2,000 positions to address adequately the projected commercial workload in FY 2008. In controlling for certain factors, the RAM provides users with the optimum number of personnel needed to address workload. To the extent that it can, CBP will work towards addressing this need for additional personnel and funding through the budget process.

CBP has also developed a Human Capital Strategy that focuses on the key areas of human capital development for trade/revenue positions: hiring the right people; developing mission-critical skills sets; retaining a highly trained and motivated workforce; cultivating dynamic leaders; and leveraging technology to ensure that the goals and objectives of the revenue mission are not only met, but also, in optimum circumstances, exceeded. In essence, this plan is focused on a strategy that attracts and builds talent over the long term. To fill revenue positions, the Office of International Trade currently uses open continuous vacancy announcements, invitational job fairs, Federal Career Intern recruitment, and job announcement postings at local colleges, accounting websites, Monster.com and local newspapers.

CBP also has programs to expedite commercial cargo at the borders. These programs not only include facilities and infrastructure improvements, but also recruiting and retention of inspectional staff, wait time measurement methodologies, time and motion studies of inspectional processes, outreach to the public and other stakeholders, review of existing policies to find efficiencies, and the expansion of Trusted Traveler Programs such as the Free and Secure Trade ("FAST") programs. In addition, CBP has continued to offer enrollment in its Customs Trade Partnership Against Terrorism ("C-TPAT") program and employs a layered enforcement strategy that includes the use of the Automated Targeting System to gauge the risk of incoming cargo, while not impeding the flow of legitimate, non-intrusive inspection systems, including radiation portal monitors and hand held devices to search for the presence of weapons of mass destruction, narcotics and other contraband.

Even with these programs, however, additional challenges remain at the ports of entry regarding the implementation of the necessary infrastructural enhancements that would increase capacity and lessen wait times. The ports most in need of these enhancements are busy ports in economically developed regions and congested urban areas that do not have any vacant land to acquire and physically expand the ports' operations, creating a bottleneck.

Question: U.S. Customs and Border Protection ("CBP") is responsible for collecting all revenue due to the United States. But a Government Accountability Office ("GAO") report released this April identified over \$600 million of uncollected antidumping and countervailing duties ("AD/CVD") owed to the United States. The GAO report also stated that only four companies account for one-third of the total amount of uncollected AD/CVD duties, and that 20 companies account for 63 percent of uncollected duties.

What do you plan to do to improve your enforcement efforts? Has your agency worked to prosecute any of these offenders?

Answer: Most uncollected duties are AD/CV duties rather than regular Customs duties. An underlying reason CBP has difficulty collecting AD/CV duties, is that they are typically assessed

one to three years after the merchandise enters the United States. (This delay in assessment conforms to the statutory scheme enacted by the Congress). Under the U.S. antidumping system, the Department of Commerce (“Commerce”) conducts an investigation and calculates an estimated antidumping and/or countervailing duty rate, which importers must pay to enter their goods into the United States. Commerce then conducts a review of these entries; usually one to three years after the goods have entered, and calculates an actual/final assessment duty rate, which sometimes fluctuates from the estimated duty rate. When the final duty rate is greater than the estimated duty rate, CBP must liquidate the underlying entry and issue a bill to the importer for the difference. Unfortunately, all too often the importer is unable or unwilling to pay the bill issued by CBP and either declares bankruptcy or simply disappears.

Furthermore, importers and surety companies frequently obtain legal injunctions or file protests related to the application of AD/CV duties. The process of resolving protests and litigation can take many months or years longer.

Of the twenty companies, fourteen have had their immediate delivery privileges suspended, five have not because they have either protested all or part of the bills they received, and one company had its bills canceled. In addition, of those twenty companies, nineteen (including the fourteen who have had their immediate delivery privileges suspended) no longer actively import goods into the United States, making enforcement action and collection difficult because it is likely that the companies have ceased business operations.

In order to better protect the revenue, CBP revised its continuous bond directive to require higher bonds for high risk merchandise and applied this policy to a test case, the antidumping duty order on shrimp. Importers challenged the additional bond requirement before the U.S. Court of International Trade (“CIT”), which issued a preliminary injunction in 2006. A final decision on the merits is pending. In addition, the governments of India and Thailand filed a dispute with the World Trade Organization (“WTO”) against this revised continuous bond directive. On July 16, 2008, the WTO Appellate Body found that the additional bond directive, as applied to importers of shrimp from India and Thailand, was inconsistent with U.S. WTO obligations. CBP is continuing to evaluate the report and will be consulting internally and with other agencies on next steps. CBP remains committed to ensuring the collection of revenue lawfully owed the U.S. government.

Question: The trade community has worked closely with U.S. Customs and Border Protection (“CBP”) in implementing a number of trade security measures, including the Customs-Trade Partnership Against Terrorism (“C-TPAT”) program. Many have stated that the costs of these programs, while necessary, are impacting our Nation’s competitiveness.

What additional benefits do you think CBP can offer the trade, especially those companies C-TPAT-certified? And when can the trade community expect to see some of these benefits?

Answer: In 2005, CBP implemented a tiered benefits structure in accordance with Government Accountability Office recommendations. This structure ensures that minimal program benefits are afforded to “new” participants until after an on-site validation is performed to confirm that the C-TPAT member has in fact adopted the tighter security measures. The tiered benefits structure is also codified in the SAFE Port Act. In addition to reduced cargo exams, C-TPAT benefits include reduction in the number of compliance measurement exams, front-of-line privileges, access to Free and Secure Trade (“FAST”) lanes, and personal interaction with CBP Supply Chain Security Specialists.

The University of Virginia (“UVA”) recently conducted a study on behalf of C-TPAT which identified several collateral benefits that can be experienced by the C-TPAT participant, such as:

- C-TPAT benefits equaled or outweighed the affiliated costs;
- Greater ability for the importer to predict lead time to get product to market;
- Decrease in supply chain disruptions;
- Decreased wait times for carriers at border;
- Increase in number of customers and revenues since C-TPAT importers are required by the minimum security criteria to try to contract services with other CTPAT members in the supply chain where possible;
- Establishment of supply chain security procedures where none existed before;
- More frequent review of service providers security standards;
- Reduced cargo theft and pilferage; and
- Improved security for workforce.

Since its inception, C-TPAT has made significant strides in developing program benefits and will continue to explore new benefits that are relevant to a security focused program. It is important to keep in mind that benefits must be realistic and within the control of CBP. C-TPAT is developing a benefit guide, which will be made available to existing and non-members later this year and will assist companies in understanding the tangible and intangible benefits currently available to members.

Question: The Secure Freight Initiative (“SFI”) is a pilot program to test the feasibility of screening and scanning 100 percent of U.S. bound container cargo. Previous General Accountability Office (“GAO”) reports have identified U.S. Customs and Border Protection’s (“CBP”) challenges in developing performance measures for the Container Security Initiative (“CSI”) and the Customs-Trade Partnership Against Terrorism (“CTPAT”) programs. Given these challenges, will CBP be able to determine if 100 percent screening and scanning enhances security? If not, how will CBP determine if 100 percent screening and scanning enhances security?

Answer: The container scan data provided by SFI’s ICS program, in addition to the advanced data that would be provided by SFI’s Security Filing (10 + 2) Final Rule (when implemented), will allow CBP Officers to better assess and mitigate potential security threats posed by U.S.-bound containerized cargo much earlier in the supply chain process. In turn, this will facilitate the movement of lawful international trade by allowing CBP to focus its resources on those goods and containers that actually pose the greatest security risk to our Nation.

CBP has adopted a risk-based, layered enforcement strategy towards securing maritime containerized cargo. This enforcement strategy includes advanced information and automated analysis through use of CBP’s Automated Targeting System (“ATS”), Customs-Trade Partnership Against Terrorism (“CTPAT”), the Container Security Initiative (“CSI”), and the use of non-intrusive inspection (“NIL”) technology to scan high-risk shipments.

SFI’s International Container Security (“ICS”) program enhances this enforcement strategy by deploying an integrated scanning system, consisting of radiation portal monitors (“RPM”) provided

by Department of Energy and non-intrusive inspection (“NII”) imaging systems provided by CBP, to scan containers as they move through foreign ports. Through optical character recognition (“OCR”) technology, data from these systems are integrated and provided to CBP officers, who determine if the container should be referred to the host nation for secondary examination prior to lading. SFI’s integrated scanning system transmits the container scanned images and associated data back to the United States in real time, which is then integrated into CBP’s Automated Targeting System (“ATS”) to be reviewed alongside the targeting system’s risk assessment rule sets. For the CBP officers, SFUICS provides additional data points that are used in conjunction with advanced manifest data, such as 24-hour rule information, Customs-Trade Partnership Against Terrorism information, and the Automated Targeting System to assess the risk of each container coming to the United States.

Question: CBP has Container Security Initiative (“CSI”) staff working both overseas at foreign ports and at home at the National Targeting Center. As part of the Secure Freight Initiative (“SFI”) pilot, has U.S. Customs and Border Protection (“CBP”) determined the staffing needs (both location and number) under a 100 percent screening and scanning scenario for all ports shipping cargo to the United States? Does CBP intend to divert existing personnel to fulfill the additional SFI staffing needs, or seek new resources for these additional staffing needs? Is this staffing level feasible and can the level be maintained?

Answer: CBP has developed a strategic direction for the SFI program, in conjunction with the DOE and the DOS, which focuses on identifying high-risk trade corridors where the implementation of SFI would mitigate the risk associated with the potential introduction of Weapons of Mass Effect into the United States by way of maritime containerized cargo. CBP will prioritize its resources and efforts by focusing future deployments of SFI to foreign seaports in specific higher risk trade corridors where the most security benefits can be realized. SFI’s high-risk trade corridor strategy supports CBP’s current risk-based, layered enforcement strategy in securing maritime containerized cargo. It will also provide CBP with the ability to develop efficient expansion options that minimize costs and disruptions to port operations abroad and to the global supply chain in general, while confining deployments to trade lanes that present the greatest risk. This prioritization of departmental resources will ensure that CBP can best enhance security and realize the benefits of the scan data in an efficient manner that does not adversely impact global trade.

Once the specific locations within the high-risk trade corridors are approved for SFI deployment, CBP will be better able to assess the additional staffing needs to support future SFI deployments.

Question: How many containers inspected at Container Security Initiative (“CSI”) ports are re-inspected upon arrival at domestic seaports by U.S. Customs and Border Protection (“CBP”) ? What are the reasons for re-inspection? Does this re-inspection slow CBP’s import clearance time? How would this differ under a 100 percent screening and scanning scenario?

Answer: CBP does not track re-inspections at headquarters. Each domestic port would need to provide data to respond to the specific question about how many containers are re-inspected at domestic ports. However, containers can be re-inspected at a domestic port for a number of reasons:

- Domestic ports target for narcotics and trade violations, so a container that was inspected overseas for weapons of mass destruction can be re-inspected at a domestic port for narcotics and trade violations;
- If additional data is collected on a container while it is in transit to the United States, there could be a need to re-inspect a container at a domestic port;
- Containers are sometimes re-inspected at domestic ports as part of CBP's Compliance Measurement Program. These inspections are mandatory and serve as a check on the effectiveness of CBP's targeting tools and methodologies, such as the Automated Targeting System; and
- The Food and Drug Administration or the U.S. Department of Agriculture will re-inspect a cargo container to enforce laws that they enforce.

Question: Has U.S. Customs and Border Protection ("CBP") done any analysis on the impact that 100 percent screening and scanning has had on the flow of trade? If so, how was CBP's evaluation done and what were the results?

Answer: CBP has not studied the impact that 100 percent screening has had on the flow of trade. However, CBP hired the services of Industrial Economics, Inc. ("IEc") to provide research and an assessment of the potential impact of 100 percent container scanning on port economics, which was included as Appendix C Report to Congress on the Integrated Scanning System Pilot ("Security and Accountability for Every Port Act of 2006," Section 231).

The results of IEC's assessment were somewhat inconclusive due to the limited amount of data available due to the short time the SFI pilot ports have been operational. IEC's assessment concluded that shippers and carriers evaluate ports and terminals based on efficiency, because the more efficient ports tend to have the lowest transport costs and best services. The assessment stated that the deployment of 100 percent container scanning will likely affect and, in all likelihood, reduce port and terminal performance and efficiency. These efficiency reductions will vary from port to port and terminal to terminal, depending on the port size, mode of transportation for the delivery of containers (i.e., truck, rail, and ship), level of automation, and unique operating and management characteristics. Additionally, the IEC assessment concluded that although the SFI pilot program at the initial three locations gives some indication of what the operational impact of 100 percent scanning may be that the pilot program is not sufficiently broad enough to understand the issues of implementing a 100 percent scanning program in more complex, high volume and/or transshipment ports. IEC suggested that the further deployment of the SFI pilot program would provide CBP an opportunity to understand the issues of implementing a 100 percent scanning program at high volume and transshipment ports.

Question: Does U.S. Customs and Border Protection ("CBP") systematically review or examine the inspections practices or training of host government customs services that conduct inspections of high risk U.S. bound containers? Specifically, what are the controls over an inspection of U.S. bound cargo done at a foreign port? Are foreign customs and CBP looking at the same container multiple times for different purposes including; security, contraband and compliance? Has CBP examined the impact of this approach on the potential for slowing down cargo processing?

Answer: With respect to your first question, CBP has established procedures at its CSI ports where CSI personnel witness or verify all high-risk containers that have been referred for examinations. As part of the CSI protocols, CSI can employ "Do Not Load" orders on high-risk containers that

the host government will not examine. In addition to this, CBP is providing training and technical assistance to the customs administrations of a number of countries that currently participate in CSI, including Brazil, Honduras, the Dominican Republic and South Africa. This training and technical assistance forms a long-term capacity building program to support implementation of the World Customs Organization Framework of Standards to Secure and Facilitate Global Trade. The standards in the Framework incorporate many of the key elements which support CSI including: the advance electronic presentation of cargo information; the screening of cargo containers using non-intrusive inspection equipment; the use of automated risk management systems; the standardization of targeting criteria to identify high-risk cargo and containers; an emphasis on employee integrity programs; and the inspection of cargo in the country of origin, transit, and destination.

CBP provides a number of assistance and training programs to foreign customs and border security agencies to facilitate implementation of port security antiterrorism measures. Through its Capacity Building program in support of the World Customs Organization Framework of Standards to Secure and Facilitate Global Trade, CBP provides a long-term training and technical assistance program to partner customs administrations that includes an in-depth assessment of its seaport security practices. Through the Container Security Initiative, U.S. officers work with host customs administrations to establish security criteria for identifying high-risk containers. With the establishment of security criteria, CBP has benefited not only in identifying high-risk containers for terrorism, but has also benefited by the information received when the host government conducts examinations. Those benefits are in the form of using non-intrusive ("NII") technology to inspect the high-risk containers before they are shipped to U.S. ports, which was not done prior to CSI.

CSI is built on the premise that an examination by the host government customs will be requested for high-risk shipments destined to the United States. In essence, both CBP and the host government will be looking at that container for the same purpose. However, the host government can examine that same container for other reasons as well or refer containers that were not targeted by CBP to be examined. Generally, CBP can witness any examinations that the host country conducts.

CBP, along with the host government, constantly reviews the impact that examinations have on the movement of legitimate trade. As part of CBP's annual Global Targeting Conference, "lessons learned" are discussed to include what impact these examinations are having on the flow of trade. CBP believes that the current approach of a "layered strategy" in identifying high-risk maritime cargo containers prior to being loaded aboard a vessel reduces the likelihood of slowing down legitimate cargo.

Question: The Customs-Trade Partnership Against Terrorism ("C-TPAT") program consists of Tier 1, Tier 2, and Tier 3 participants, including importers and members in other trade sectors, according to the "Security and Accountability For Every Port Act of 2006" ("Act"). U.S. Customs and Border Protection ("CBP") has established all 3 tier levels for importers, but has not done so for participants in nine other trade sectors. In CBP's view, is the Act's requirement that tiers be established for all C-TPAT participants achievable? If no, why not? If yes, what is the status of CBP's efforts to develop tiers for each of the non-importer trade sectors?

Answer: C-TPAT has established a three (3) tiered system to provide benefits to its importer partners and identify all of the participating sectors' progress in the C-TPAT program. There are two (2) separate set of tiers for all C-TPAT participants but only C-TPAT importers are eligible for a Tier 3. Only C-TPAT importers receive reduced exams. As the C-TPAT program continues to

evolve, CBP continues to explore potential benefits to the trade within their specific sectors. For example, C-TPAT is exploring the possibility of granting Tier 3 designation to those C-TPAT members in other sectors that clearly exceed the minimum security criteria. This will allow members to differentiate themselves and will serve as a potential benefit in terms of marketability.

Question: During 2007, U.S. Customs and Border Protection (“CBP”) undertook a pilot project to use third party contractors to validate the supply chain security of U.S. importers obtaining goods from Chinese suppliers. As of today, we understand that only 28 of 306 eligible Customs-Trade Partnership Against Terrorism (“C-TPAT”) members had indicated an interest in using a third party to validate their security and only one had actually been validated. What is CBP’s plan for conducting validations with one of our largest trading partners? What are CBP’s next steps in this pilot project?

Answer: The 3rd Party Validator Pilot required by the SAFE Port Act has concluded and CBP is finalizing the Congressional report. Only 28 of the 306 C-TPAT companies invited to participate actually followed through and engaged the services of a 3rd party to gather the necessary foreign validation information so that C-TPAT could prepare a validation report. Only 4 companies were found to meet the minimum security criteria. The remaining 24 companies had a combined total of 278 actions required. These deficiencies are being addressed with the companies’ Supply Chain Specialists.

Independent of the Third Party Pilot program, CBP performed the first series of joint validations in China, with China Customs in March of this year. C-TPAT has strongly encouraged a second round this summer and while China Customs initially communicated that this was workable they have now indicated that they will not be prepared to participate until later this year, citing in part resource issues surrounding the Olympics. CBP is hopeful that China Customs will see this as an important bi-lateral effort, which will strengthen international cargo security and provide facilitation benefits to C-TPAT importers, ultimately benefiting Chinese manufacturers as well.

Question: H.R. 6124, the “Food, Conservation, and Energy Act of 2008,” includes provisions known as “HOPE II” that allow Haiti to export greater quantities of textile and apparel products to the United States under more liberal textile and apparel import rules than apply to other countries. Specifically, HOPE II establishes five different rules of origin that permit Haitian textiles and apparel to enter the United States duty-free. Each of these rules of origin operates independently, with the importer given the choice of which rule should apply to each entry.

HOPE II also expresses the sense of Congress that U.S. Government agencies, including U.S. Customs and Border Protection (“CBP”), should interpret, implement, and enforce provisions granting preferential treatment to Haitian textiles and apparel in a manner that maximizes U.S. imports of such products.

HOPE II requires CBP and other agencies to implement the five rules of origin by October 1, 2008. To comply with this requirement, CBP must issue its regulations in a timely manner. Will CBP commit to issuing the necessary HOPE II regulations in the Federal Register by August 1, 2008 to ensure the smooth implementation of these provisions?

And will CBP comply with the measures expressing the sense of Congress that provisions granting preferential treatment to Haitian textiles and apparel should be administered to maximize U.S. imports of such products?

Answer: CBP has developed draft regulations which implement Haiti HOPE II and the regulatory package is being circulated internally for comment by CBP offices before review by DHS and the Department of the Treasury.

Questions From Senator Grassley:

Question: Commissioner Basham, during your testimony you referred to the national trade strategy. Please elaborate. How has the national trade strategy evolved over time? What is the status of each of the priority trade issues in the national strategy? When does your agency next intend to consult with the Finance Committee regarding the national trade strategy? Would you agree that this is another area in which CBP could be more proactive in providing regular consultations and updates to the Finance Committee?

Answer: The FY 2009 CBP Trade Strategy, which is currently in final review, reflects the critical responsibility of enforcing U.S. trade laws while ensuring that compliant trade flows into the U.S. marketplace. By fostering a safe and fair international trade process, interdicting harmful and inadmissible goods, and protecting the economic security of our industry, the Strategy strengthens our ability to address national and economic security priorities and advances our ability to meet CBP's mission.

Within the trade environment, we have seen the volume and value of U.S. imports continue to grow due to the increasing global economic integration. On a typical day, CBP processes over 85,000 shipments of goods worth \$5.2 billion. In FY 2007 alone, \$2 trillion worth of goods arrived in 10 million vessel containers through a vast network of 810,000 importers, representing a more than 65 percent growth in value since FY 2001. Experts project that this amount will triple by 2015.

With this growth comes a greater challenge in protecting against harm to the American people and economy as well as heightened stakeholder expectations. The American public is concerned with potentially contaminated agriculture and unsafe consumer products. U.S. industry expects protection from unfair and illegal trade practices while demanding the rapid release of compliant imported goods with minimal delays, barriers, and cost.

Given the growth and the risk associated with international trade, the challenge for the Strategy is clear—the agency must facilitate legitimate trade, which forms our economic livelihood, while protecting our Nation's economy and people from unfair trade practices, illicit commercial enterprises, and unsafe imports. To direct an effective facilitation and enforcement approach, CBP will focus its actions and resources around priority trade issues that pose a significant risk to the U.S. economy, consumers, and stakeholders. The agency will assist in setting trade policy and execute operations to address the following priority trade issues: Antidumping and Countervailing Duty, Agriculture, Import Safety, Intellectual Property Rights, Penalties, Revenue, and Textiles and Wearing Apparel. These priority trade issues represent the areas of highest concern to the U.S. and are not specific goals but are the areas of greatest focus for CBP's commercial resources.

We have offered briefings to Congressional and committee staff on the broad principles of the Strategy while it is under departmental review and had planned for comprehensive briefings when the Strategy is finalized.

Question: Commissioner Basham, I remain concerned that Customs' trade facilitation mandate is not receiving the full attention it deserves. Please describe each of your agency's initiatives to support the trade facilitation mission of your agency, and its relationship to overall operations within CBP. Please also describe your agency's efforts to coordinate with other domestic and foreign government agencies on trade enforcement.

Answer: CBP is committed to our critical responsibility of enforcing U.S. trade laws while ensuring compliant trade flows into the United States. In October 2006, in accordance with the SAFE Port Act, CBP created the Office of International Trade ("OT"), consolidating the trade policy, program development, and compliance measurement functions of CBP into one office. The creation of the OT provides greater consistency within CBP with respect to its international trade programs and operations, and furthers CBP's ability to facilitate the flow of legitimate trade while securing U. S. borders and protecting the American economy from unfair trade practices and illicit commercial enterprises.

CBP's trade facilitation mission remains a top priority. CBP has partnered with industry and other government agencies to facilitate legitimate trade flows. CBP is enhancing account-based partnerships with the trade community, including the National Account Management and Importer Self Assessment programs, to foster corporate self governance and compliance improvement programs. In addition, CBP meets regularly with the Commercial Operations Advisory Committee and the Trade Support Network to gather trade community input on all matters involving the commercial operations of CBP.

CBP is committed to working with other government agencies on both trade facilitation and trade enforcement issues. Import safety is one area in which this cooperation is especially strong, as CBP supports the initiatives in the President's Import Safety Action Plan. One of the greatest achievements to date in this area is working with the Consumer Products Safety Commission ("CPSC") to include an import safety component as part of our Importer Self-Assessment program. This will allow for trade facilitation not only in traditional customs areas, but also in the area of products regulated by CPSC.

Another area of strong cooperation with domestic and foreign government agencies is intellectual property rights. CBP recently conducted an, enforcement operation in conjunction with the European Union customs authorities, termed Operation Infrastructure, which targeted shipments of counterfeit computer network equipment and integrated circuits and resulted in the seizure of more than 360,000 counterfeit integrated circuits and computer network components bearing more than 40 different trademarks. Also, CBP, in conjunction with the Royal Canadian Mounted Police, ICE, the Department of Justice, and the FBI, targeted the illegal distribution of counterfeit Cisco Systems network hardware manufactured in China. The initiative resulted in more than 400 seizures of counterfeit Cisco network hardware and labels with an estimated retail value of more than \$76 million.

Question: Commissioner Basham, please describe any significant backlogs in the Office of International Trade. For example, are there currently any substantial delays in finalizing and promulgating regulations to implement trade agreements, or in the issuance of customs rulings? What is the average length of time for CBP to respond to a request for a customs ruling? What efforts are being undertaken to reduce that response time? What resources are being directed to these priorities? Has there been any diversion of personnel away from these priorities?

Answer: CBP has published final rules for the Jordan Free Trade Agreement, the Chile Free Trade Agreement and the Bahrain Free Trade Agreement. Interim Rules are in place with respect to the Singapore, Morocco and CAFTA DR Free Trade Agreements. Draft final rules for Singapore, and Morocco and an interim rule for Australia are under review.

With respect to each of these agreements, CBP has published instructions for the trade community to facilitate their obtaining the benefits of these agreements as intended by Congress.

The issuance of prospective rulings is a top priority among Customs administrative decisions as the trade community looks to these in advance of importation in order to plan their transactions. There are no backlogs of prospective ruling requests in CBP. The average response time for prospective rulings in our New York office is 18 days. In addition, we have seen an increase in the use of our Electronic Rulings Program which, by eliminating all mail processing time, has provided decisions to inquiries with even greater efficiency and timeliness. Prospective Headquarter rulings which involve more complex matters are issued within our 90 day deadline. Administrative decisions that involve completed transactions such as protests are accorded a lesser priority than prospective ruling requests, and other higher priority matters such as requests for comments on pending legislation and pending litigation.

There has been no diversion of personnel from the Rulings Program or from the trade regulations function. In fact, we have maintained the personnel devoted to rulings and regulations in accordance with the direction provided by Congress in Section 412 of the Homeland Security Act of 2002 and section 403 of the Safe Port Act of 2006.

Question: Commissioner Basham, please provide the Committee with actual data on how much your agency spent on commercial customs functions for each of the last 5 years, both in absolute terms and as a percentage of total budgetary expenditures by your agency.

In addition, please provide the Committee with actual data on how many full-time equivalents have worked on the commercial customs functions for each of the last 5 years, both in the aggregate and broken down by each of the revenue functions identified in section 412(b) of the Homeland Security Act of 2002.

Answer: Customs and Border Protection (“CBP”), Office of Finance isolated commercial customs functions from the complete list of activities generated by our statement of net cost. The list was then further narrowed by positions identified in the Homeland Security Act 412(b). This resulting data follows below:

Commercial customs operations expenditures in absolute terms and as a percentage:

**Commercial Operations Expenditures
FY 2005 - 2008 YTD**

	FY05	FY06	FY07	FY08*
Total Commercial Operations Expenditures	\$3,108,856,332	\$3,192,850,969	\$3,313,190,536	\$2,251,341,203
Total Budgetary Expenditures	\$6,457,688,000	\$7,976,776,000	\$9,338,885,000	\$10,168,216,000
As a Percentage	48%	40%	35%	22%

* FY08 contains October 2007 - May 2008 cost data.

Full-time equivalents working commercial customs functions as identified in the Homeland Security Act of 2002:

Position Title	FISCAL YEAR				
	2003	2004	2005	2006	2007
Import Specialist	984	947	908	914	989
Entry Specialist	409	451	404	430	436
Drawback Specialist	37	37	31	27	38
Fines, Penalties & Forfeitures Specialist	203	214	212	221	230
Attorney	90	89	89	86	89
Customs Auditor	364	340	340	365	363
International Trade Specialist	74	58	58	73	80
Financial Systems Specialist	6	12	12	14	12
Total Positions Specified in HSA § 412(b)	2167	2148	2054	2130	2237

It is important to note that as Program Project Activities were broadened and refined over the fiscal years, the activities comprising commercial customs functions changed slightly as activities were added and removed by CBP.

Question: Commissioner Basham, will CBP withdraw the so-called "first sale" notice of proposed interpretation? If so, when will the notice be withdrawn? If not, why not?

Answer: Yes, CBP/DHS is withdrawing the NPIR on the valuation of imported merchandise in a series of sales transaction. The withdrawal notice is being finalized and will be issued in the near future.

Question: Do actual staffing levels for customs revenue positions in FY08 meet the optimal staffing levels identified in the Resource Allocation Model ("RAM") dated July 6, 2007? If not, when will optimal staffing levels be achieved? What is the agency's strategy for hiring and training additional personnel? What additional costs are anticipated with such hiring and training?

Answer: FY08 actual staffing levels for the customs revenue positions do not meet the optimal levels identified in the RAM.

The SAFE Port Act of 2006 required CBP to complete a resource allocation model by June 30, 2007, and every two years thereafter, to determine optimal staffing for commercial and revenue functions. While the RAM reflects the ideal levels of staffing in these positions and the staffing levels identified were well above FY07 levels and does not reflect any discussions about authorization or appropriations. CBP has offered to brief the committee on the RAM and plans for filling positions should the Congress make funds available for staffing to the RAM.

With regard to a strategy for hiring and training additional personnel, CBP has developed a Human Capital Strategy ("HCS"). The HCS for revenue positions provides a road map for building and maintaining a strong workforce that can meet and address the challenges of a globalized economy in the 21st Century. By putting people at the center of the agency's plans and actions, and demonstrating how valuable our workforce is in carrying out our revenue mission, CBP will ensure a dynamic approach to human capital development. The HCS is meant to focus on the key areas of human capital development: hiring the right people; developing mission-critical skills sets; retaining a highly-trained and motivated workforce; cultivating dynamic leaders; and leveraging technology to ensure that the goals and objectives of the revenue mission are not only met, but, in optimum circumstances, exceeded. In essence this plan is focused on a strategy that attracts and builds talent over the long term.

In preparing this HCS, CBP has benchmarked other Federal Government agencies and private industry examples to incorporate best-practices when considering the elements of how best to recruit, train, retain, develop, and recognize the contributions of a cutting-edge workforce. Making CBP a place where well-trained and highly-motivated people want to establish a career path is a key objective of this plan.

The agency must also recognize the challenges of a changing workforce dynamic and develop and embrace new and innovative ways to attract and retain an effective civilian workforce. To fill revenue positions, the Office of International Trade has used open continuous vacancy announcements, invitational job fairs, Federal Career Intern recruitment, and job announcement postings at local colleges, accounting websites, Monster.com and local newspapers.

Question: Commissioner Basham, does CBP have the regulatory flexibility to make substantive changes to the so-called "10 + 2" rule after it has been finalized and released to the public? If so, what is the process for making such changes?

Answer: CBP received many public comments recommending an extended compliance period in response to the Security Filing proposed rule, and is seriously considering those comments in our current development and review of the draft Final Rule. If CBP determines that the regulations should be changed after the regulations have been finalized, CBP can amend the regulations. In order to amend the regulations, CBP would need to adhere to the Administrative Procedures Act ("APA") rulemaking requirements. Depending on the substance of any future amendments, this could require CBP to undertake notice and comment rulemaking.

Question: Commissioner Basham, last year your agency performed a test on the feasibility of collecting the "10 + 2" data elements; however, it did not test the feasibility of doing so 24 hours before cargo is laden aboard a vessel destined for the United States. Why was the timing

requirement not tested? What concerns about the 24 hour mandate has the business community raised with your agency? Do you plan to address the concerns raised by the business community in the "10 + 2" final rule?

Answer: The SAFE Port Act of 2006 mandates that the Department of Homeland Security ("DHS"), working through CBP, require additional data elements for improved high-risk targeting, including appropriate security elements of entry data to be provided as advanced information prior to vessel lading at foreign ports. In addition, the Act requires that CBP consult with stakeholders (including COAC) to identify to them the need for such information and the appropriate timing of its submission. For the past two years, CBP has worked closely with the trade on the "10 + 2" proposal. The trade's input during the consultative process as well as its participation in the Advance Trade Data Initiative ("ATDI") has been instrumental in crafting the "10 + 2" proposal. ATDI is a voluntary CBP-Trade partnership program consisting of over 60 companies from across multiple industry sectors, including importers, brokers, carriers, software developers and others.

CBP acknowledges that the ATDI Security Filing testing did not focus primarily on the timing aspects of the Importer Security Filing ("ISF") filing portion of "10 + 2." However, the SAFE Port Act of 2006 did not provide for or even suggest that DHS or CBP conduct a pilot or test of the Security Filing. In fact, CBP took the initiative to conduct a test of "10 + 2" because it recognized that the successful implementation of "10 + 2" would hinge on the trade's participation and full cooperation in the Security Filing development process. Therefore, CBP set aside a portion of its information technology budget to conduct this test, while the trade community also set aside small portions of their own budgets to conduct this test.

In the beginning of the ATDI "10 + 2" test, CBP simply wanted to be sure that the ATDI participants would be able to put together a proxy Importer Security Filing ("ISF") and transmit the filing electronically to CBP. Over the course of a few months, CBP worked closely with these volunteers and helped them to identify how and where to locate the "new" data elements. For example, the trade publicly expressed concern that two of the "Importer's 10" data elements, the "*container stuffing location*" and the "*consolidator (stuffer) name and address*" were "new" to the importing community. The ATDI testing showed that for the most part, the trade simply needed to ask their overseas suppliers to start providing this information on a regular basis. In some cases, this meant that the purchase orders, advance shipping notices and/or commercial invoices were slightly modified to capture this "new" data. Today, ATDI analysis shows that these two pieces of data were present over 99 percent of the time in the 50,000 plus proxy filings.

As part of CBP's ongoing outreach efforts, the decision was made to share the draft "10 + 2" transaction sets (that were developed under ATDI) with the all members of the public. Draft copies were released on May 30, 2008 and a dedicated electronic mailbox was created in order for the trade to provide feedback on these draft transaction sets. Based on the feedback, CBP was able to modify the existing draft data sets and posted updated copies to the CBP.gov website on July 17, 2008.

Today, CBP is continuing to work with our partners in the trade community to identify and reconcile issues associated with the collection of the security filing data, including the timing mandate. As we have progressed through the ATDI test-bed project we have determined that some importers are able to provide the required data in the specified time frames—we intend to work with them to share these best practices with those operators who are currently experiencing difficulty in identifying the nature of the cargo being laden on board U.S. bound vessels on their

behalf. CBP agrees that it is critical to resolve this issue so that we can properly determine the risk associated with a shipment prior to its lading for transit to a U.S. port of discharge. Certainly the worst case scenario is to have limited information on the individuals or parties involved in the movement of containerized cargo destined to the U.S. by the time the cargo is in route or within the limits of a domestic port.

Most importantly, CBP has repeatedly stated its sincere commitment to work closely with the trade during the "10 + 2" implementation process. CBP believes that the lessons learned from the ATDI "10 + 2" test clearly indicate that all aspects of this new regulation can be successfully implemented.

Question: Commissioner Basham, what are the anticipated budgetary needs of your agency for commercial operations in fiscal years 2010, 2011, and 2012?

Answer:

FY10	FY11	FY12
\$3,755,491,698	\$3,901,955,875	\$4,054,132,154

*Projected 3.9 percent growth rate

Question: Commissioner Basham, how does CBP justify its proposed revocation of an established practice under HTS subheading 9801.00.20? Why was this change proposed without any discussions with the trade community?

Answer: In a notice published in the Customs Bulletin dated January 9, 2008, CBP proposed to change its interpretation of the phrase "exported for lease or similar use agreement" in subheading 9801.20. CBP expressed the view that the provision requires that the exported good be used in the country of export not merely warehoused and/or packaged. The comment period closed on February 29, and five comments were received. The matter is still under consideration by CBP and the Treasury Department.

This proposal was made pursuant to 19 U.S.C. 1625, the specific procedure specified by Congress to be followed by CBP to inform the international trade community when it proposes to issue a ruling that would change its interpretation of the Customs laws. In this manner, CBP was able to receive and take into consideration the views of the trade community with respect to this issue.

Questions From Senator Stabenow:

Question: The problem of illicit and counterfeit trade has reached epidemic levels. The FDA has linked contaminated Chinese heparin, the blood-thinning drug, to nearly 150 deaths in the United States. That's the latest in a long line of illegal and unsafe Chinese exports that includes poisonous toothpaste, lead-painted toys, toxic pet food, and tainted fish. These deadly products somehow got through CBP's examination process at the borders.

Counterfeit products not only endanger Americans' safety, but also our economic security. Counterfeiting has led to a loss of more than 200,000 good-paying jobs in the automotive industry

alone. American auto parts manufacturers lose about \$3 billion a year because of counterfeit imports. Your agency, working with other Federal agencies, is supposed to catch these imports long before they reach our stores and homes.

CBP appears to have assessed penalties on a significant number of violators of our intellectual property laws but according to a recent GAO report, you collected less than one percent of intellectual property rights penalties assessed from 2001 through 2006.

How can you collect less than one cent on every dollar owed, yet expect CBP's actions to actually deter criminals from exporting counterfeit goods to this country?

Answer: CBP's assesses and collects penalties against entities engaged in the import of counterfeit goods into the United States, generally the U.S. importer of record or consignee, who are under U.S. legal jurisdiction. While CBP may assess penalties on foreign exporters, the lack of jurisdiction over these entities makes assessment and collection of penalties against them extremely difficult.

Pursuant to 19 U.S.C. 1526(f), when CBP issues penalties for importations of counterfeit goods, the amount of the penalty must be based on the Manufacturer's Suggested Retail Price ("MSRP") of the genuine good, an amount that often greatly exceeds the value of the counterfeit goods seized. Per CBP policy, as stated in Treasury Decision 99-76, Guidelines for the Assessment and Mitigation of Civil Fines Under 19 U.S.C. 1526(f), the Agency bases the penalty on the MSRP of the seized goods as if they were genuine at the time of seizure.

Further, the deceptive nature of the counterfeiting environment, wherein criminals frequently change identities and locations, makes tracking violators in order to issue and collect penalties difficult.

While penalties are part of CBP's enforcement and deterrence actions, the Agency also seizes millions of dollars in fake goods every year, refers cases to U.S. Immigration and Customs Enforcement ("ICE") for criminal investigation, and has begun to use audits as an enforcement tool for companies at high risk for importing counterfeit merchandise.

Question: I have real doubts about CBP's proposed "10 + 2" rule. I want Customs to have the tools it needs to know critical details about shipments destined for this country as soon as it can, for all sorts of important reasons, including national security, consumer safety, and protection of our intellectual property laws. I want you to have the resources you need to achieve these very important goals. But I'm concerned that you won't achieve this goal, and you won't increase Americans' safety, unless you change direction and use your resources in a smarter way.

If 10 + 2 goes into effect, CBP officers will have to give equal attention to all the data they receive from every importer about every shipment, rather than managing according to risk. Has CBP considered and analyzed the potential impact that implementing and enforcing "10 + 2" would have on CBP's other efforts, including anti-counterfeiting and trade enforcement? How much manpower and financial resources will you need to carry out 10 + 2?

Answer: CBP relies heavily upon the timely provision of data to identify and respond to potential threats before these threats can reach the United States. Due to the vast number of incoming cargo shipments arriving by sea, CBP uses the Automated Targeting System ("ATS") as a decision

support tool to target inbound high-risk cargo for examination. ATS helps to identify and select import cargo shipments that appear to have a higher likelihood of being associated with terrorism or possibly containing implements of terrorism, narcotics or other contraband. ATS uses numerous rules to analyze shipment information from manifest and entry data, to prioritize shipments and generate recommended targets. ATS also includes mandatory threshold targeting that automatically places shipments on hold that are above a specified risk threshold.

However, the information that CBP currently analyzes to generate its risk assessment prior to vessel loading is, for the most part, the ocean carrier's or non-vessel operator's ("NVOCC") cargo declaration (i.e., manifest data). While this data is very timely, CBP's ability to make informed targeting decisions would increase with the ability to collect additional detailed entry information. Too often, CBP expends precious resources examining "lower-risk" cargo because the underlying data supporting the targeting decision is not detailed enough to clearly identify said cargo as "lower-risk" prior to United States arrival. Section 203 of the SAFE Port Act of 2006 recognizes these facts and mandates the development of a regulation to require additional data elements for improved high-risk targeting, including appropriate security elements of entry data to be provided as advanced information prior to vessel lading.

The data that would be required by CBP's proposed 'Importer Security Filing and Additional Carrier Requirements', or simply "10 + 2," if finalized will significantly increase the scope and accuracy of information gathered on the goods, conveyances and entities involved in the shipment of cargo to the United States. This new data would provide CBP with a much higher level of transparency into the global supply chain by:

- Increasing the transparency of key supply chain participants;
- Improving the identification of cargo;
- Identifying cargo and conveyance origins, routing and event timelines; and
- Complementing and validating manifest data that is collected 24 hours prior to lading.

In most cases, according to our research, the data proposed to be required for the "10 + 2" filing is available 24 hours prior to vessel lading. This data would allow CBP officers to better assess and mitigate potential security threats posed by U.S.-bound containerized cargo much earlier in the supply chain process. In turn, this will facilitate the movement of lawful international trade by allowing CBP to focus its resources on those goods and containers, which actually pose the greatest security risk to our Nation.

As to the impact "10 + 2" would have on staffing and financial resources, CBP anticipates that any impact on staff would be minimal as we implement the "10 + 2" program, since the "10 + 2" data is designed to complement the current 24 Hour Manifest Rule data. Basically, the same CBP offices and staff that are responsible for enforcing the 24 Hour Manifest Rule provisions would most likely be responsible for enforcing "10 + 2." CBP believes that the net effect of the "10 + 2" program would actually be to free up officers in the field. This is because the Automated Targeting System ("ATS") would be able to analyze, identify and facilitate lower-risk shipments much earlier in the supply chain process. CBP has already completed most of the ATS programming to incorporate the new "10 + 2" data. Past and immediate future programming costs (information technology) are projected to be less than 5 million dollars.

Question: The Big Three auto companies (General Motors, Ford and Chrysler), have visited my office repeatedly about this issue. They say that if “10 + 2” is implemented for land and sea shipments, it will cause major delays in their well-timed assembly lines that depend on products traveling quickly across our northern border. Given that we have not seen hard data on the economic consequences of applying 10 + 2 across all borders, would you be willing to consider a pilot program in which CBP would track the cost, efficiency and effectiveness of 10 + 2, and that Congress could analyze before a full-scale implementation of the rule?

Answer: The Security Filing is scheduled to be operational within the maritime cargo environment. CBP is not actively exploring the expansion of the Security Filing to other modes of transportation at this time. Therefore, there should be no adverse affect on the “just-in-time” land-border shipping lanes between Canada and the United States.

Question: The amount of money that Customs and Border Protection is failing to collect on in-bond goods is appalling. A four-year study of in-bond shipments of wearing apparel diverted from Los Angeles to customers throughout the country revealed that CBP failed to collect more than \$100 million. That’s just on one product from one port. Given that in-bond shipments represent 30 to 60 percent of the goods that come to our Nation’s ports, or more than 6.5 million transactions a year, we can conclude that this country is missing out on billions of dollars it is owed.

Why is this money slipping through your fingers? The Government Accountability Office reported that you do a poor job of monitoring and tracking in-bond goods; especially when it comes to reconciling the in-bond documents issued at the arrival port with documents at the destination port. In some major ports, an estimated 50 to 80 percent of in-bond transactions remain open.

What have you done, or plan to do, to improve the tracking of in-bond transactions and to ensure that appropriate duties and quotas are applied? What are the results of the changes you have already made, and what results do you foresee from the changes you will make?

Answer: CBP acknowledges there have been cases where wearing apparel was diverted into the economy without the payment of applicable duties, taxes and fees. Many of the issues that resulted in audit findings were directly related to automated system deficiencies in the current in-bond module, which CBP has corrected. CBP has taken specific, tangible steps to mitigate the vulnerabilities associated with in-bond cargo in the form of automation changes, written instructions to field officers, and proposed regulatory changes to improve accountability in the in-bond environment. Additionally, CBP is collaborating with Mexico to improve information sharing to deter the NAFTA fraud represented by the textile diversion cases referenced in the QFR. Because of increased bi-national cooperation and more precise enforcement techniques, CBP has made many significant recent seizures of cargo involved in attempted diversions. The lessons learned from in-bond diversion cases have been translated into new instructions to field officers and new joint CBP and ICE initiatives to attack the issue in the environments that are most vulnerable.

As reported to Congress in October of 2007, CBP continues to search for technology solutions to assist in the better tracking of in-bond shipments, and is currently in the second phase of a pilot project to employ Radio Frequency Identification (“RFID”) tags to track in-bond containers from the port of arrival to the port of destination. Significant progress has been made since the most recent GAO report was issued in May of 2007, and CBP is committed to continuing its efforts to deter trade fraud and mitigate security risks in the in-bond environment.

Question: I'm concerned that since the creation of the Department of Homeland Security, trade enforcement has become a secondary concern. Protecting our Nation from a terrorist attack is certainly critical. But the United States cannot afford for CBP to neglect its trade obligations. Nearly every day, the media feature stories about dangerous imported medicine or toys sitting on our store shelves, or counterfeit auto parts being sold for our cars, all products that your agency is supposed to block from entering the country.

Furthermore, CBP is the second-largest collection agency of the Federal government after the IRS, bringing in about \$30 billion a year. Our government depends on that money to provide necessary services.

To maintain a high level of trade enforcement, the Finance Committee wrote a requirement into the Homeland Security Act of 2002 mandating that your agency maintain a specific number of personnel in nine designated trade functions. CBP has failed to meet this congressional mandate. Last year, the Government Accountability Office reported that you actually reduced the number of staff in three of the nine mandated positions: Office of Regulations and Rulings attorneys, international trade specialists and customs auditors.

What percentage of your FY 2009 budget request for personnel will you spend to hire and train personnel for these nine mandated positions? How many will you hire, and how soon?

Answer: CBP has requested \$1 million in our FY 2009 President's Budget in support of Office of Trade's Regulatory Program. The requested funds will allow CBP to obtain an additional 7 attorneys, 2 economists, 2 paralegals and 1 mission support personnel. These personnel will ensure the efficient and legally-thorough drafting of new regulations; assist in the removal of obsolete and inconsistent regulations that may pre-date the Department's creation; help issue guidance to the private sector on homeland security-related matters; and aid in the Department's compliance with new Presidential mandates concerning legal review.

Additionally, as of July 15, 2008, CBP has met or exceeded hiring goals for three of these positions (Entry Specialists, FP&F Specialists, and International Trade Specialists) and are within single digits of meeting goals in three others (Drawback Specialists, Attorney, and Customs Auditor). There are currently 15 personnel scheduled for entry on duty in various positions and another 69 selected pending the background investigation process. CBP will continue recruiting for these positions to ensure that the required numbers of hires are met.

Question: It's bad enough that a patent holder has to wait a year and a half for the International Trade Commission to issue an exclusion orders to block entry of counterfeit products. But to add insult to injury, a GAO report shows that CBP lacks data to prove that it is enforcing the exclusion orders. Rights holders spend considerable time and energy to get the exclusion orders issued in the first place. They rightfully expect results. Why don't you maintain data on the number of exclusion notices your agency issues to counterfeiting importers, and why don't you alert the U.S. patent holder of the exclusion? What plans does CBP have to develop measures and programs to enforce exclusion orders issued by the International Trade Commission?

Answer: CBP maintain records of denial of entry letters (exclusion notices) related to exclusion orders. The Agency is in the process of developing new procedures that will allow more efficient tracking and reporting of the number of denials of entry related to exclusion orders.

Currently, CBP alerts rights holders of seizures of products infringing trademarks or copyrights as provided for by law. CBP is exploring whether additional legal authority is needed to enable it to make similar disclosures to right holders when goods are denied entry under an exclusion order.

CBP is actively working to improve its enforcement capabilities on exclusion orders. Specifically, CBP is:

- investigating the possibility of using audits to assess an importer's compliance with exclusion orders; and
- posting information to our intranet and internet sites to alert CBP officers to, and remind them of, unexpired exclusion orders; and working with exclusion order complainants to obtain assistance in monitoring orders.

Questions From Senator Sununu:

Question: Mr. Commissioner, more than three years ago, Goss International, a U.S. manufacturer of large newspaper printing presses with facilities in New Hampshire, provided Customs with evidence that a Japanese competitor had committed fraud in the importation of large newspaper printing presses. I have written to Customs several times to inquire about the status of this investigation. Last August, I received a letter from your bureau informing me that ICE had completed its investigative phase in this matter and that "CBP is now moving forward with the penalty and revenue recovery phase." [letter attached] Yet ten months later, despite findings of fraud, it is my understanding that no further action has been taken.

Answer: CBP's "penalty and revenue recovery phase" includes a thorough review within CBP of all information and evidence concerning this matter. The allegation of fraud has been made by Goss International; however, a finding of any violation, including culpability, is determined by CBP only after CBP completes its review of all evidence and information to support a case for fraud. This ensures that CBP brings penalty actions that are legally sound and supported by the facts in order to meet the necessary requirements mandated by statute to prove the violation. CBP is in the process of that review at this time.

Question: More than two years ago, the Department of Commerce completed its own review of the Japanese producer's actions in antidumping proceedings and found that its behavior constituted a "uniquely egregious display of misconduct." The fraud included falsification of sales invoices, destruction of documents requested by Commerce, and secret rebates to hide dumping. Commerce took several actions to address this fraud, including revising the final duty rate calculated in the tainted proceeding from zero to 59.67 percent. At that time, more than two years ago, Commerce forwarded its final determination to Customs "in order for you to take any action you deem appropriate in accordance with your statutory authority." [letter attached]

Indeed, just last week, the Court of Appeals for the Federal Circuit strongly affirmed the Secretary of Commerce's authority to reopen the administrative review on the Japanese producer and recalculate the antidumping duty.

It has been more than three years since the customs fraud investigation was requested, more than two years since Customs received notice from Commerce of the correct duty to collect, and more

than 10 months since you confirmed that fraud occurred in this case. Moreover, the Secretary of Commerce's legal authority to reopen the review and recalculate the Japanese producer's antidumping duty is now well-settled. And yet, Customs has not collected even one penny in duties or penalties from the Japanese company that violated our laws.

The dumping and fraud committed by this Japanese producer have harmed industry and workers in the state of New Hampshire. My constituents expect that their government will enforce the trade laws and decisively address any wrongdoing. Mr. Commissioner, what will you do to ensure that the Bureau of Customs and Border Protection collects the appropriate duties and penalties in this case?

Answer: CBP has not at this time "confirmed that fraud occurred in this case." The allegation of fraud has been made by Goss International; however, a finding of any violation, including culpability, is determined by CBP only after CBP completes its review of all evidence and information to support a case for fraud. This ensures that CBP brings penalty actions that are legally sound and supported by the facts in order to meet the necessary requirements mandated by statute to prove the violation. CBP is in the process of that review at this time. CBP takes all allegations of fraud and misconduct very seriously. However, as indicated above, the penalty process set forth in 19 U.S.C. 1592, which Congress established to ensure due process and fair play to all, is still ongoing. CBP will make every effort to finalize that process as soon as possible.

AUG 17 2007

Assistant Secretary for Legislative Affairs
 U.S. Department of Homeland Security
 Washington, DC 20528



**Homeland
 Security**

The Honorable John E. Sununu
 United States Senate
 Washington, DC 20510

Dear Senator Sununu:

On behalf of Secretary Chertoff, thank you for your letter of July 19, 2007, on behalf of Goss International Corporation regarding U.S. Immigration and Customs Enforcement's (ICE) investigation of Tokyo Kikai Seisakusho, Ltd. (TKS) urging U.S. Customs and Border Protection (CBP) to collect millions of dollars in "antidumping duties" imposed on TKS by the Department of Commerce for alleged acts of fraud.

DHS is pleased to report that ICE has completed its investigative phase of this matter, and CBP is now moving forward with the penalty and revenue recovery phase. CBP will take all necessary steps to recover any duties owed. ICE will provide additional assistance to CBP during this process as requested. DHS understands Goss International Corporation's frustration in the amount of time that has passed, however, developing a commercial fraud case and subsequent penalty action requires a substantial amount of time to ensure that the agency takes all appropriate remedial action while complying with the applicable statutory and due process requirements. In addition, the due process that follows the issuance of a penalty can also take a significant amount of time, particularly if the case is challenged by the petitioner and goes to court.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

Donald H. Kent, Jr.
 Assistant Secretary
 Office of Legislative Affairs



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

FOR PUBLIC FILE

A-588-837
Public Document
AD/CVD 2: RT

MAR 30 2006

MEMORANDUM TO: William R. Scopa
Cathy Saucedo
U.S. Customs and Border Protection
Commercial Enforcement Branch

THROUGH: Tom Futner
Acting Director, Office 4
AD/CVD Operations

FROM: Irene Darzenta Tzafolias *IDT*
Acting Director, Office 2
AD/CVD Operations

RE: Changed Circumstances Review of Large Newspaper
Printing Presses and Components Thereof, Whether
Assembled or Unassembled, from Japan

On March 8, 2006, the Department of Commerce (the Department) published in the Federal Register the final results of the changed circumstances review of large newspaper printing presses and components thereof, whether assembled or unassembled (LNPPs), from Japan. A copy of the Federal Register notice and accompanying decision memorandum is attached for your information.

As part of the Department's final results decision, we determined that the antidumping duty rate applicable to entries of LNPPs from Tokyo Seisakusho, Ltd. (TKS) during the period September 1, 1997, through August 31, 1998 should have been 59.67 percent as opposed to zero. We are informing you of this decision in order for you to take any action you deem appropriate in accordance with your statutory authority.

Enclosure



Senator Maria Cantwell
Statement for the Record
June 24, 2008

I want to thank the Chairman and Ranking Member for holding this hearing. The efficient movement of freight through our nation's ports and trade corridors is critical to ensuring our long-term economic growth and the competitiveness of U.S. companies in the global marketplace.

Since 2001, Congress and the administration have focused significant attention and resources on developing a security regime for the purpose of guarding against threats posed to the U.S. through our robust trade system and, specifically, one of its primary mediums, the maritime cargo container. In the Safe Port Act and through other regulatory measures, Congress and the administration have imposed a rigorous security regime on maritime cargo containers shipped from a foreign port that enter the U.S. directly via one of our maritime ports.

Foreign originated containers trans-shipped through our North American neighbors that enter via our land borders are not subjected to the same strict standards as those entering the U.S. through a domestic seaport. I am concerned that U.S. Customs and Border Protection may not be adequately prepared to handle ever-increasing volumes of trans-shipped international cargo entering the United States through Canada and Mexico and it may have an adverse effect on our security and economic interests.

I am also very troubled by the potential for increased counterfeit, pirated, and unsafe goods entering the United States. Intellectual property rights violations and counterfeit goods originating in Asia are well documented. More recently, there have been a number of cases reported of unsafe imports—from dangerous toys, tires, drugs, to tainted food. The customs inspection regime to identify and remove counterfeit, pirated, and unsafe goods from cargo containers arriving in Canada and Mexico and trans-shipped across our land borders by rail, appears to be less rigorous as that in place for cargo containers entering the U.S. through a domestic seaport.

On April 11, 2008, Senator Murray and I wrote to U.S. Customs and Border Protection (CBP) Commissioner Basham to get a better understanding of the measures CBP is currently implementing to address this anticipated influx of foreign cargo containers across our land borders and what additional resources may be necessary to stand up and sustain this effort. CBP responded that “[a]ny unexplained surge in volume of rail or truck cargo will be dealt strategically using appropriate measures.”

This answer is not adequate and I again urge CBP to carefully consider how it will handle a major increase in trans-shipped international cargo entering the United States from Canada and Mexico. I believe that foreign origin goods trans-shipped to the United States via a land border port of entry should be subjected to a security regime equivalent to that imposed on containers entering the U.S. directly through domestic seaports. I intend to work with the Senate Finance Committee to address this issue, which is critical to our homeland security, health and safety, and our competitiveness.

United States Senate
Committee on Finance



Sen. Chuck Grassley · Iowa
Ranking Member

<http://finance.senate.gov>
Press_Office@finance-rep.senate.gov

Opening Statement of Senator Chuck Grassley
Senate Finance Committee Hearing
Oversight of Trade Functions: Customs and Other Trade Agencies
Tuesday, June 24, 2008

Today's hearing continues this committee's ongoing oversight of the administration of our customs and international trade laws. I am very pleased that we have with us today the Commissioner of Customs, Mr. Basham; the Assistant Secretary for Immigration and Customs Enforcement, Ms. Myers; the Deputy Assistant Secretary for Tax, Trade and Tariffs at the Treasury Department, Mr. Skud; the Vice-Chairman of the International Trade Commission, Mr. Pearson; and the General Counsel in the Office of the United States Trade Representative, Mr. Maruyama. The testimony of these distinguished witnesses and their responses to our questions will be of tremendous help to the Committee as we proceed with our bipartisan effort to reauthorize the customs and trade functions in the executive branch of our federal government.

These functions are more important than ever to protecting our economic security. The proper administration of our customs and international trade laws is essential to maintaining the competitiveness of U.S. businesses in the global economy of the 21st century. We have many important issues to cover. For example, with respect to U.S. Customs and Border Protection, what is the status of the implementation of title IV of the Security and Accountability For Every Port Act of 2006? What are the priorities of the agency and, in particular, the Office of International Trade? How effective is the working relationship between Customs and the other agencies within the Department of Homeland Security? One of the most important implementation issues is the status of the Automated Commercial Environment, or ACE, and its interface, the International Trade Data System. This system will serve as a central data collection point and improve communication and cooperation among trade-related agencies. It is essential that we get ITDS fully implemented as soon as possible.

There are also a number of technical customs issues that we need to consider. The proposed elimination of the "first sale" rule has generated some controversy, for example. This proposal appears to counter an established practice of some two decades on the part of Customs. Yet, the agency did not consult this Committee before proposing a change of such magnitude. And that, quite frankly, is not acceptable. In fact, it led Congress to legislate on this matter in the recently enacted Farm Bill. As a result, I understand that Customs will take no action to implement this proposal until 2011 at the earliest, and not until there has been adequate consultation with the committees of jurisdiction and the public.

Another technical issue we need to review is implementation of the 10+2 initiative, particularly with respect to 24-hour advance submission of data. But more broadly, I'm interested in hearing from Commissioner Basham on how the agency is managing and prioritizing its commercial mandate. Congress established by law an Office of International Trade within the agency in 2006. How is the Commissioner utilizing this office? Congress also established an International Trade Committee to facilitate the administration of customs trade functions within the agency. How effective has that Committee proven to be? Are there additional steps that Congress can take to ensure that our vital economic interests are fully met by the Customs and Border Protection agency? Are adequate resources in place to meet these responsibilities, or are resources being diluted?

Similarly, we have Mr. Skud here to address Treasury's role in the operation and promulgation of customs regulations. I'm interested in hearing his views on the relationship between Treasury and the Department of Homeland Security in this regard. The Immigration and Customs Enforcement agency, or ICE, also plays a vital role in enforcing our customs laws. After all, you can't spell "ICE" without Customs. How effective is the working relationship between ICE and CBP in investigating and prosecuting customs violations? Are resources within Immigration and Customs Enforcement adequate to do the job? Are they being diluted? What steps can this Committee take to ensure that appropriate resources are in place to meet the growing challenges of trade enforcement? I look forward to hearing the views of the Assistant Secretary in this regard.

We also have the Vice-Chairman of the International Trade Commission here to comment on the growth and change in composition of that agency's workload. I'm interested in hearing about efforts undertaken by the agency to improve the composition and management of personnel within the agency to better meet the needs of Congress, the Executive branch, and the public.

Finally, we have Mr. Maruyama here to comment on the operating constraints facing the Office of the United States Trade Representative. I've been concerned for some time that USTR has had insufficient resources to meet its mounting responsibilities. We have dual interests that need to be addressed by USTR. First, we need to establish fair rules for international trade. Second, we need to ensure that those rules are being adhered to by our trading partners. USTR is on the front line for executing both responsibilities.

**STATEMENT BY WARREN MARUYAMA
GENERAL COUNSEL
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
SENATE FINANCE COMMITTEE
JUNE 24, 2008**

Chairman Baucus, Senator Grassley, members of the Committee, I appreciate this opportunity to discuss the Office of the U.S. Trade Representative's role in the formulation and enforcement of U.S. Trade Policy.

At USTR, our mission is leveling the playing field for American workers, farmers, and entrepreneurs. We accomplish this goal by negotiating agreements to open new markets for American goods and services; and by ensuring that our trading partners live up to their trade commitments. At USTR, there is no line of demarcation between negotiation and enforcement. We know that a trade agreement that isn't being enforced is just a piece of paper.

USTR is a lean, efficient, and effective organization. We currently have about 226 full-time equivalents to cover the full range of U.S. trade policy, negotiations and enforcement. Our staff has increased by only 13 percent since FY 2001.

Our role is expanding. Last year, trade accounted for 40 percent of U.S. economic growth. When President Bush took office, the U.S. had free trade agreements in force with three countries; today, the U.S. has agreements in force with 14 countries. After last year's May 10 agreement with the House and Senate leadership, we have further strengthened the labor and environmental chapters of our FTAs.

In the last decade, the amount of WTO enforcement litigation has exploded, and the disputes have gotten more complex. Every single person at USTR knows that his or her job is to hold other governments to their word, and make sure they live up to their commitments.

The USTR Budget

The USTR budget is labor and travel-intensive. Of the \$45.2 million we spent in Fiscal Year 2007, \$33 million (or 73 percent) went to payroll. Travel accounted for \$5.6 million or 12 percent. That left 15 percent to cover everything else, including our office in Geneva, Switzerland, a trade officer in Brussels, and a new office in Beijing, China.

In FY 2008, our payroll will increase to \$35 million, primarily due to a COLA. As you know, the cost of everything is going up, especially the cost of fuel, which will affect airline fares and travel.

USTR Agenda

Let me briefly describe our agenda and what we have accomplished.

Enforcement

As General Counsel, a major part of my job is ensuring that trade agreements are enforced. In the last 15 months, we have launched four WTO cases against China. We have challenged China's prohibited export subsidies and import substitution subsidies; its failure to adequately protect intellectual property rights; and its market access barriers to copyrighted American entertainment products – movies, home videos, DVDs and sound recordings. This March, we requested WTO consultations on the use of regulatory authority by Xinhua – the press agency of the Chinese government -- to restrict foreign financial information providers from dealing directly with clients in China.

Last November, we successfully settled the prohibited subsidy case, with China agreeing to eliminate all of its WTO-illegal subsidies effective January 1, 2008. We are optimistic about our China auto parts case, where a WTO panel is scheduled to announce a final decision in July.

Our WTO challenge to Launch Aid and other trade-distorting subsidies that European Union member States and the European Commission provide to Airbus is in its final stages. We also are going after the EU's restrictions on U.S. biotech products and beef. Last year, USTR initiated two arbitrations under the U.S.-Canada Softwood Lumber Agreement.

Negotiations

Free Trade Agreements with Colombia, Panama and South Korea await Congressional approval and remain Administration priorities. With respect to Colombia, the vast majority of Colombian products already enter the United States duty-free under the Andean Trade Preferences Act. The Colombia FTA would level the playing field by converting one-way free trade into two-way free trade, while strengthening our relationship with a key U.S. ally.

These and other FTAs are important as U.S. exports to the 14 countries have grown nearly 42 percent faster than U.S. exports to the rest of the world.

USTR continues to work toward a successful WTO Doha Round by the end of 2008. The Round offers the potential to boost economic growth around the world and lift millions out of poverty.

More broadly, the United States must be a strong, active leader on global trade in order to safeguard U.S. interests. If we walk away, our workers, farmers, and entrepreneurs will lose out on new opportunities created by an expanding global economy.

Conclusion

Mr. Chairman, American taxpayers get an exceptional return on their investment in USTR. We are a lean and efficient organization with a capable staff and a strong sense of mission. We are committed to making sure our trading partners live up to their commitments. Thank you. I would be happy to answer any questions you may have.

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**QUESTIONS FOR THE RECORD FOR
MR. WARREN MARUYAMA**

**United States Senate
Committee on Finance**

**Hearing on:
Oversight of Trade Functions: Customs and Other Agencies
June 24, 2008**

Senator Grassley Question

Question 1

Mr. Maruyama, your testimony highlighted the dual role of the Office of the United States Trade Representative to both negotiate fair rules for international trade and to see to it that those rules are enforced. Does your office have sufficient resources to meet its mounting responsibilities? What more can we do to ensure that appropriate resources are dedicated to these critically important missions?

Answer

The full-year continuing resolution (CR) in 2007 and the Omnibus Bill in 2008 have essentially flat-lined our appropriations over the last two fiscal years. Our FY 2006 appropriation was \$44.2M, our 2007 appropriation was \$44.5M, and our 2008 appropriation is \$44.1M, \$0.3M less than the President's request. This cut to our requested funding level has required us to absorb mandatory pay increases as well as higher costs for travel and other services without compensatory funding adjustments.

The President has requested \$46.3M for USTR in FY2009. This funding level is sufficient for USTR to maintain its high level of performance while offsetting mandatory payroll increases, increased costs for services, including security and language services, State Department assessments for ICASS and its capital security cost program, rapidly rising travel costs, and foreign exchange changes. Pay increases alone will cost USTR an additional \$2.5M in FY 2009 as compared to FY 2007. In addition, we expect increases in travel costs during FY2009 as most international airfares are forecast to increase between 25% and 75% depending on destination. We also expect that our *per diem* costs – which have risen substantially over the past two years due to higher foreign exchange costs and price inflation – will increase further as well.

If Congress funds USTR in FY 2009 below the President's request, it would require us to take more dramatic steps to reduce payroll and other costs, undermining our existing enforcement efforts. This would erode USTR's ongoing efforts to open foreign markets for U.S. workers, farmers, and producers and to enforce and defend U.S. rights under existing trade agreements.

Senator Lincoln Questions

Question 1

Brazil is indicating it will proceed with damage claims of \$4 billion stemming from the case against the U.S. in the WTO. How much of the \$4 billion damage claim by Brazil is attributable to the GSM program and how much is related to the U.S. upland cotton program?

Answer

The arbitration proceedings in the *Cotton* case remain suspended, and we do not know what Brazil would present if proceedings resume.

With respect to your question about the \$4 billion damage claim previously submitted by Brazil, in 2005 after the conclusion of the appeal from the original cotton panel, Brazil made two separate requests for authorization to suspend concessions. The first was made with respect to the original panel findings on prohibited subsidies (GSM-102, GSM-103, SCGP and Step 2) and sought an amount each year equal to the Step 2 payments made in the most recently concluded marketing year plus the applications received under the GSM-102, GSM-103, and SCGP, which Brazil claimed totaled \$3 billion in the first year (2005). The second was made with respect to the original panel findings on actionable subsidies (marketing loan, countercyclical, marketing loss assistance, and Step 2 payments) and sought \$1.037 billion annually. The request did not include details on how Brazil determined this number. Together, these two requests totaled \$4.037 billion for the first year.

The arbitration proceedings were suspended in 2005, and have remained suspended during the compliance panel and subsequent appeal. There have been important changes made to the programs since the requests were filed. If arbitration resumes, we would expect that Brazil would submit information on its proposal for retaliation, including the annual amount and the methodology for calculating the amount. We would, of course, carefully review and, if appropriate, vigorously challenge any proposed Brazilian methodology during the arbitration.

Question 2

Will Brazil consider the possibility of settling the WTO case in a bilateral agreement with the U.S.? If so, has USTR developed any potential offers?

Answer

We cannot speculate on Brazil's views on a possible settlement of the *Cotton* case.

We continue to believe that that the appropriate forum for addressing agriculture subsidies issues is the negotiating table, not litigation. For example, we would welcome working with Brazil to achieve a balanced result in the Doha negotiations.

Question 3

WTO Ag. Chairman Crawford Falconer has stated that the cotton specific provisions in an agricultural text remain one of the most difficult issues. Will USTR meet with representatives of the U.S. cotton industry prior to a WTO ministerial? Has the U.S. cotton industry provided meaningful input on the cotton specific provisions?

Answer

USTR has worked closely with the National Cotton Council on a number of matters, including the Doha negotiations and the ongoing WTO dispute with Brazil. We made clear at the recent mini-ministerial in Geneva that any U.S. offer to reduce domestic support for cotton would depend on the degree of new market access for cotton, particularly in key U.S. export markets, that other WTO Members were offering to make available. As we continue to evaluate how to move forward with the Doha process, we will continue to consult closely with cotton producers and other affected agricultural interests.

Question 4

If the Doha talks cannot move forward many countries will seek to point fingers at the U.S. and the latest U.S. farm bill is likely to be a target. Can U.S. agricultural interests assist USTR in countering accusations that the U.S. prevented meaningful reductions in domestic support?

Answer

The Administration has repeatedly stated that the 2008 Farm Bill is not our Doha offer. The United States has offered in the Doha negotiations to make significant reductions in domestic support, provided that other Members offer significant new market access opportunities. Until there is a Doha agreement, however, the United States will continue to comply with its existing WTO commitments, and USTR is committed to working with USDA and other relevant agencies to ensure that the 2008 Farm Bill is implemented consistently with those commitments. USTR will

continue to work closely with U.S. agricultural interests along both of these pathways.

Question 5

The Brazil case is complex and not will be understood by many Congressional staff and other interested parties. Will USTR provide a briefing on the aspects of the case and the alternatives that are now present in resolving this problem?

Answer

We would be pleased to provide a briefing on the aspects of the case and current alternatives, and we look forward to arranging a meeting at a convenient time.

Senator Stabenow Question

Question 1

In March, in response to my questions, Ambassador Susan Schwab said that USTR devotes about a quarter of its time and resources to monitoring and enforcement activities, or about \$11.6 million of USTR's annual budget. In your recent written response to my questions for the record following the trade enforcement hearing, you dispute this estimate. You say that it's based on a "highly artificial allocation." This internal dispute is extremely frustrating to lawmakers who want a solid, numbers-based explanation for why USTR seems focused on new trade negotiations and seems less concerned about whether the 250+ current trade agreements are being enforced. I believe USTR should spend at least as much energy, if not more, on enforcing our current trade laws as on negotiating new agreements. Therefore, I'll ask you the same question I asked the Ambassador: Please tell me what proportion of your resources spent on enforcement versus negotiation of new trade agreements. Please describe the funds, staff and other resources devoted to enforcement. Furthermore, do you plan to increase your enforcement staff in next year's budget?

Answer

The \$11.6 million figure, which has been the origin of claims that USTR only dedicates one-fourth of its resources to trade enforcement, was based on a highly artificial allocation for internal accounting and budgeting purposes. It does not include important USTR activities that, even though they may not have been classified as "enforcement" by some offices for purposes of budget allocations, also play a vital role in USTR's monitoring and enforcement efforts. The reality is that WTO dispute settlement is only one form of trade enforcement. We also seek to enforce trade agreements through a wide range of other tools, including: bilateral consultations, technical discussions, bilateral and multilateral negotiations and oversight, monitoring mechanisms (including both those within agreements and

those under U.S. trade law, such as Special 301 and the National Trade Estimates (NTE)). Such tools can avoid the delay, uncertainty, and inherent litigation risk of bringing a formal WTO or FTA dispute, and thus are generally preferred by U.S. industry and agriculture. We will proceed to formal WTO or FTA dispute settlement if such tools prove ineffective, just as a prosecutor or lawyer typically seeks to persuade a defendant to enter into a plea bargain or settlement instead of going to trial.

While it is difficult to assign a precise figure to USTR's enforcement activities, it is safe to say that USTR devotes a substantial share of its resources – well above one-quarter of our budget – to enforcement activities and that enforcement is one of Ambassador Schwab's highest priorities. We have an entire office which is focused on Monitoring and Enforcement. This office litigates WTO and FTA disputes as well as assisting other USTR offices in their enforcement efforts and initiatives. We also assigned key personnel to enforcement activities, including our Chief Counsel for China Enforcement and Deputy Assistant U.S. Trade Representative for China Monitoring and Enforcement. In the past two and one-half years, USTR has initiated five major WTO disputes against China, challenging unfair trade practices involving auto parts, prohibited subsidies, intellectual property rights, market access barriers for copyright-intensive products (e.g. movies, DVDs, videos, CDs and other entertainment products), and barriers to foreign information services (Xinhua).

Statement

Of

**Julie L. Myers
Assistant Secretary**

**U.S. Immigration and Customs Enforcement
Department of Homeland Security**

**Regarding a Hearing On
Oversight of Trade Functions: Customs and Other Trade Agencies
Before The
Senate Finance Committee
June 24, 2008
Washington, D.C.**

INTRODUCTION

Good morning Chairman Baucus and distinguished members of the Committee. It is my privilege to testify before you today and discuss ICE's investigative efforts and strategies to combat illegal trade practices and commercial fraud activities. The international transportation and entry of goods into the United States is an integral part of the economic health of our nation. The U.S. government seeks to create economic prosperity through international trade and the opening of new consumer markets to U.S. goods. However, the growth of international trade and commerce can increase the possibility of border security compromises, potential threats to national security and a greater volume of economic crimes. Threats to America related to international commerce are multi-dimensional and potentially devastating. Those threats include the

exploitation of trade vulnerabilities by terrorists and unscrupulous businesspeople; the direct physical harm to our citizens, families and children from dangerous, substandard, imported products; and an adverse effect on the U.S. economy, specific markets and American businesses.

In 2007 ICE became aware of one individual who was exploiting our trade system with potentially lethal results. At that time, the pharmaceutical industry alerted ICE that Kevin Xu, a citizen of the People's Republic of China (PRC) and the owner of Orient Pacific International, was allegedly involved in importing and distributing counterfeit pharmaceuticals. ICE initiated an international investigation which further disclosed that Xu illegally imported purported prescription drugs into the U.S. and the European Union through express courier services. This illicit scheme put U.S. and European citizens who needed real medicine for legitimate health care needs at serious health risk. During the investigation, ICE and the Food and Drug Administration's (FDA) Office of Investigations (OCI) undercover agents met with XU and made numerous undercover purchases of counterfeit cardiac, cancer and psychiatric prescription drugs. Subsequently, on July 24, 2007, ICE agents arrested Xu after he arrived in Houston allegedly to personally replace the packaging, lot numbers and expiration dates on an order of counterfeit and misbranded drugs ordered by ICE undercover agents.

This joint ICE and FDA-OCI investigation led to a nine-count indictment charging Xu and others with conspiracy, trafficking in counterfeit goods and trafficking in misbranded drugs. An extraordinary facet uncovered during this investigation was that

Xu inserted thousands of dosages of counterfeit drugs into the supply chain in the United Kingdom that were dispensed to patients in need of real medicine. Xu's actions were serious and potentially life threatening and British patients were deprived of the critical treatments they desperately required. Xu's successful insertion of counterfeit pharmaceuticals into the supply chain resulted in three Class I recalls of counterfeit Plavix (a heart drug), Casodex (a cancer drug) and Zyprexa (a psychiatric medication) in that country. Class I recalls are categorized for dangerous or defective products that could cause serious health problems or death to individuals who consume them and are instituted in the most egregious cases. The pharmaceutical industry attempted to preserve the integrity of the drug supply by removing those particular medications from the market because the supply chain was diluted with the fake drugs. The efforts of ICE and its law enforcement partners in this investigation effectively eliminated the threat of one individual whose actions had serious consequences to the well-being of vast numbers of innocent citizens from two continents.

The Xu case is just one example of illegal and predatory trade practices driven by profit and greed motives. ICE Headquarters Commercial Fraud and Intellectual Property Rights Unit, in conjunction with ICE Office of Investigations field offices, have implemented a strategy to counter the impact these crimes have on the safety of our citizens and the financial well-being of the U.S. economy. Our strategic, tactical and operational activities are directed to aggressively investigate and prosecute criminally and civilly those noncompliant importers, exporters, manufacturers, brokers and others who commit trade related crimes. ICE seeks to seize and forfeit contraband and criminal

proceeds of these crimes whenever possible. ICE administers and enforces U.S. trade laws and international agreements utilizing a multi-faceted approach that combines our efforts with law enforcement partners. We have developed threat based initiatives and engaged the trade community with an active outreach program.

Today, I would like to discuss some of the innovative ICE initiatives and operations instituted as part of this ongoing strategic effort. In particular, I will focus my remarks on our efforts to keep dangerous and substandard products out of the U.S. marketplace, how we are protecting Intellectual Property rights, and the myriad ways in which we target the goods and schemes designed to circumvent lawful trade mechanisms.

PROTECTING HEALTH AND SAFETY

Operation Guardian is a threat specific initiative that began in October 2007 in response to the Administration's Interagency Working Group on Import Safety and several incidents of hazardous imports into the United States that caused public safety concerns. Those imports included

- counterfeit toothpaste that contained anti-freeze;
- counterfeit drugs containing too little of the active ingredient, too much of the active ingredient or none of the active ingredient at all;
- structural steel imported using false documents that stated the steel met a certain grade of the American Society for Testing and Materials, found to be substandard;

- tainted animal food containing melamine, a product contained in plastics, cleaning products, countertops, glues, inks and fertilizers, that led to the death or injury of pets in U.S. households;
- Counterfeit circuit breakers that explode or cause fires.

- **OPERATION GUARDIAN**

In developing Operation Guardian, ICE joined with numerous law enforcement and regulatory agencies including U.S. Customs and Border Protection, the FDA's OCI, U.S. Postal Inspection Service, the Computer Crime and Intellectual Property Section of the Department of Justice, and Consumer Products Safety Commission to join a Headquarters Working Group (WG) that would function under the Operation Guardian umbrella. The Operation Guardian WG initially concentrated on illicit imports from the PRC but has since expanded its mission to combating the importation and distribution of harmful, foreign manufactured products imported from all foreign sources.

The Operation Guardian WG has established specific objectives including but not limited to:

- targeting, interdicting, and investigating imported substandard, tainted and counterfeit products, including drugs, that pose a health and safety risk to consumers;
- conducting assessments, identifying high risk commodities and specific ports of entry for enforcement activities;

- creating inspection and investigative standard operating procedures to be employed during Operation Guardian enforcement actions;
- developing specific surge activities targeting known shipments, commodities and/or identified smuggling organizations;
- conducting outreach and coordinating with private sector and industry representatives to strengthen and enhance effectiveness in responding to the threat of hazardous importations; and
- individual agencies have placed ongoing investigations and regulatory activities under the auspices of Operation Guardian to enhance coordination, de-confliction and intelligence sharing.

Since the inception of the Operation in FY 08, ICE initiated and/or designated 69 investigations as Guardian cases. Additionally, there are 43 ongoing joint ICE and FDA-OCI investigations that will be placed under Operation Guardian to better utilize the combined agency authorities, expertise and resources. There are early successes of Operation Guardian in ongoing investigations that have resulted in criminal arrests and indictments, administrative immigration arrests, seizures of cash, counterfeit items, illicit pharmaceuticals, narcotics and other regulated items.

Three Guardian surge operations are simultaneously underway at several ports of entry throughout the U.S. ICE, together with CBP and other Guardian partners conducted trade analysis and identified specific commodities and importers to be targeted for inbound inspections and product testing at U.S. ports of entry. The

products targeted and port locations will evolve pending the development of new intelligence, identification of anomalies and updated targeting by law enforcement. Presently, the surge operations are focused on interdicting tainted food products, counterfeit circuit breakers and unregulated cigarette lighters. Operation activities to date have resulted in the seizure of commercial shipments of tainted shrimp, honey and counterfeit circuit breakers.

- **OPERATION APOTHECARY**

Operation Guardian member agencies have also conducted numerous investigations under the ongoing initiative called Operation “Apothecary” (Apothecary). Apothecary addresses, measures, and attacks potential vulnerabilities in the entry process that might allow for the smuggling of commercial quantities of counterfeit, unapproved, and/or adulterated drugs through the Internet, international mail facilities (IMFs), international courier hubs (ICHs), and land borders.

Since October 2007, Apothecary surges have been conducted at IMFs and ICHs in Chicago, Honolulu, and Dallas which have resulted in the examination of approximately 7,150 parcels, numerous seizures of unapproved drugs, including controlled substances, and the initiation of several ICE Office of Investigations (OI) investigations. There are seven additional Apothecary surge operations scheduled for the remainder of this calendar year. Prior to FY 2008, Operation “Apothecary” resulted in the discovery of 50 Internet-based targets and initiation

of 154 investigations. Those investigations have led to 75 indictments, the execution of 24 federal search warrants, 48 criminal arrests, 52 convictions and 326 seizures.

PROTECTING INTELLECTUAL PROPERTY RIGHTS

The ICE-led National Intellectual Property Rights Coordination Center (IPR Center) stands as the key post in the fight against the importation and trafficking of counterfeit goods. The IPR Center offers one stop shopping for both law enforcement and the private sector to address the growing economic, transnational threat of counterfeit merchandise. With increased trade based threats, the IPR Center has recently begun to take on a more active and expanded role in this arena. The IPR Center organizational structure will consist of three sections including Operations, Programs and Outreach/Training formulated to create a command and coordination posture that will maximize the multi-agency use and deployment of investigative resources with partnered law enforcement agencies. The Operations section will be responsible for managing and directing all identified leads to field offices for investigation. Investigative activities and targeting will be coordinated on national and international levels, with member agencies playing critical roles in deconfliction and coordination. The IPR Center will perform in-depth analysis of IP industry leads, intelligence, review importer records and conduct link and financial analysis that will be used to support affidavits for search, seizure and arrest warrants.

The IPR Center will continue its critical enforcement role in support of the Administration's Strategy targeting Organized Piracy! (STOP!), the Security and Prosperity Partnership (SPP) and Operation Guardian. The enhancements made to support the IPR Center will augment successes of prior years that resulted in cumulative seizures of counterfeit merchandise by both ICE and CBP that were valued at almost \$155.3 million in FY 06 and \$196.7 million in FY 07.

Additionally, the IPR Center initiated an outreach program in 2000 and began to provide IP industries, wholesalers and retailers with information to help protect their trademarks and copyrights by offering enforcement assistance through referrals to the IPR Center. The number of outreach programs and individuals contacted through the IPR Center outreach program has spiraled upward in recent years. During FY2006, the IPR Center conducted 60 outreach programs through seminars, conventions, conferences, training sessions and meetings, contacting approximately 10,000 people. In FY2007, the IPR Center coordinated and conducted 95 outreach events to an audience of almost 16,000. As of April 2008, the IPR Center has completed 50 outreach and training sessions for an additional 8,200 people. This outreach conducted by ICE is paying dividends. The following examples were the direct result of IP industry partnership with the IPR Center that led to successful anti-counterfeiting investigations by ICE field offices.

- **CISCO SYSTEMS JOINT INVESTIGATION**

In February 2008, the Royal Canadian Mounted Police (RCMP) in Toronto charged two individuals and a company with distributing, via the Internet, large quantities of counterfeit Cisco Systems network components to companies in the U.S. The RCMP seized approximately 1,600 pieces of counterfeit network hardware with an estimated value of \$2 million.

Thanks to technical assistance from CISCO which resulted from our partnership, ICE and the RCMP have been able to validate the illegitimacy of the counterfeit network hardware. These arrests and seizures are the latest in a joint international enforcement initiative between the U.S. and Canada that targets the illegal distribution of counterfeit Cisco network hardware manufactured in China. All told, the initiative has resulted in more than 400 seizures of counterfeit hardware and labels with an estimated retail value of more than \$76 million. The initiative is led by ICE, CBP and the FBI, working in conjunction with DOJ's CCIPS, U.S. Attorney's Offices across the country and the RCMP. Cisco Systems, Inc. provided exceptional assistance throughout these investigations.

This landmark initiative has achieved significant successes in protecting the public from the risk of network infrastructure failures associated with these counterfeits. ICE opened a total of 28 investigations in 17 separate field offices. Eight of these were jointly worked with the FBI, and several with the RCMP. ICE investigations accounted for 115 seizures of counterfeit Cisco products with an estimated retail value of \$20.4 million. CBP seizures accounted for more than

\$52 million in counterfeit Cisco Systems products, with the FBI accounting for more than \$3.5 million in seized counterfeit network hardware. Thus far, our work has led to six indictments and four felony convictions.

- **FIRST FOREIGN NATIONAL EXTRADITED FOR IPR VIOLATIONS**

Just last month, in March, 2008, Randy Gonzalez, a Philippine citizen who allegedly conspired to import and distribute counterfeit drugs into the U.S. from Thailand, was the first foreign national to be extradited to the U.S. for IPR counterfeit pharmaceutical violations. The extradition of Mr. Gonzalez was the result of a joint ICE-FDA/OCI investigation that uncovered the smuggling of counterfeit Viagra and Cialis pills in packages of general merchandise. The loose tablets were packaged and labeled after entering the U.S.

Both trademark holders were essential to our ability to determine these products were counterfeit, and, as a result the two importers in the U.S. were convicted and sentenced in 2007 after entering guilty pleas for conspiracy to traffic in counterfeit goods and trafficking in counterfeit pharmaceuticals. Mr. Gonzalez is now being prosecuted and his case includes seizures of counterfeit drugs valued at more than \$776,000.

- **XYDEAS UNAPPROVED HALOPERIDOL COUNTERFEIT DRUG INVESTIGATION**

In another case of note, in February 2007, FDA issued a consumer warning that U.S. consumers who ordered drugs over the Internet were receiving the powerful anti-psychotic drug Haloperidol rather than the specific products they had ordered. Some consumers became ill enough to seek emergency medical treatment. Joint investigations by ICE and FDA-OCI led to Georgios Xydeas, a Greek national who was allegedly the supplier for counterfeit and unapproved prescription drugs, including some controlled substances, for several different Web-based dealers. Over the course of the investigation, ICE and FDA's OCI agents received critical assistance from several major pharmaceutical companies, the U.S. State Department, Panamanian officials and the British Medicines and Health Care Regulatory Agency. On April 1, 2008, Mr. Xydeas was arrested in New York City and charged with 43 criminal counts, including trafficking in counterfeit goods, importing controlled substances, misbranding drugs and smuggling goods into the U.S.

These cases underscore the importance of the ICE industry outreach program in combating illicit trade. This partnership with the trade community provides ICE with information, tips and insight from businesses that encounter suspicious activity in the course of normal business. Moreover, industry representatives often provide technical guidance to law enforcement and prosecutors in support of investigative efforts while ICE provides training to educate industry on lawful business practices.

TARGETING THE SCHEMES DESIGNED TO CIRCUMVENT LAWFUL**TRADE MECHANISMS**

Beyond protecting intellectual property rights and trademarks here at home through education and partnerships with legitimate businesses, ICE is also working to attack the illicit schemes designed to circumvent lawful trade mechanisms. We find particular success in these cases thanks to strong collaboration with CBP and numerous other law enforcement partners.

IN-BOND DIVERSION

We consistently find that illicit cargo and goods are smuggled into the U.S. using similar methods utilized by drug traffickers and alien smugglers. These criminals illegally import items via sea, air and land while penetrating U.S. borders with misdescribed and/or transshipped merchandise via third countries or diverting merchandise from the In-Bond system. The In-Bond system allows foreign merchandise to physically enter at a port other than the official port of importation. When conducted properly, In-Bond transactions facilitate trade by allowing the use of U.S. infrastructure for the transportation of goods to foreign markets. The goods never formally enter into U.S. commerce but instead transit the U.S. under bond via air, truck or rail before exiting the country in route to a foreign destination. In-Bond movements are incredibly valuable to trade, but also have an inherent vulnerability in that they can be diverted to smuggle

restricted or high duty items, and merchandise limited by quota and visa, into the United States.

Exploitation of this vulnerability is evidenced in a recent successful ICE investigation conducted by the Special Agent in Charge (SAC) New York called KDL. Consolidated containers were imported from China utilizing false documents listing the merchandise as being inexpensive, low duty rate items, such as plastic shower curtains, for multiple companies. The importers, through their fraud scheme, falsified entry documentation and substituted the counterfeit merchandise with pre-staged items prior to inspection and facilitated the illegal entry of more than 950 containers of counterfeit merchandise during a two-year period with an estimated MSRP of more than \$700 million. In June 2007, the ICE New York Office of Investigations arrested 29 individuals, including Customs brokers, container freight station operators, cartmen, bonded warehouse operators and persons trafficking in counterfeit merchandise for various smuggling and IPR violations. ICE agents also coordinated efforts with CBP to seize 103 containers of counterfeit merchandise with an approximate MSRP of \$230 million.

To help attack potential vulnerabilities in the entry process that might allow smuggling of commercial merchandise via bonded warehouses, ICE established Fraud Investigative Strike Teams (FIST). FIST activities, which began in 2004, are directed towards protecting the integrity of the in-bond process. FIST personnel consisting of ICE agents and CBP officers conduct joint operations that focus on identifying the unauthorized manipulations of commercial merchandise within bonded areas and

unauthorized access by employees who lack proper immigration documentation and/or the background investigations required to have access to bonded the warehouses.

To date, FIST operations have resulted in the following:

- 352 individuals identified as being illegally residing and working in the United States
- 147 liquidated damages (\$6,370,674)
- 7 penalties (\$102,993)

ANTI-DUMPING AND COUNTERVAILING DUTIES

The ICE Antidumping and Countervailing Duty (AD/CVD) Program is another illustration of how ICE and CBP protect U.S. businesses from predatory and unfair trade practices and protect the revenue of the U.S. AD/CVD orders are issued by the Department of Commerce (DOC). CBP administers the collection and distribution of the assessed AD/CVD duties, at the direction of the DOC. Antidumping duties are assessed when imported merchandise is being sold at less than fair market value, causing or threatening to cause material injury to the domestic industry producing a comparable product. Countervailing duties are imposed to offset foreign country subsidy payments on the exports of the foreign businesses. The AD/CVD duties are intended to balance the value of the foreign merchandise with the domestic manufactured merchandise.

ICE has the responsibility to investigate importers who evade the payment of AD/CVD on imported merchandise. When working AD/CVD investigations, ICE Special Agents work closely with CBP Officers, Import Specialists and Regulatory Auditors.

AD/CVD evasion schemes often include:

- Trans-shipment of goods, where goods made in an AD/CVD-affected country are shipped to a third, non-affected country and then declared as a product of the third country when entered into the U.S.;
- Undervaluing the merchandise to offset the cost of the AD/CVD payment; and
- Falsely describing the merchandise to avoid detection and payment of the AD/CVD.

AD/CVD cases are often long-term investigations that involve global investigative leads. Since 2005, ICE has conducted numerous joint investigations with CBP, the National Oceanic and Atmospheric Administration, Office of Law Enforcement (NOAA-OLE), FDA, and the DOJ, regarding the alleged illegal importation of Vietnamese catfish described as “grouper,” “sole,” and “pike” to circumvent the antidumping order. Here are just a few examples:

- An ICE Pensacola investigation has resulted in the execution of federal search warrants, the arrest, indictment and conviction of the main target, Danny Nguyen, on charges of conspiracy to import and sell mislabeled fish in 2006 and was ordered by a federal court to pay CBP \$1,139,275 in dumping duties.

- On April 1, 2005, the ICE SAC Washington, DC initiated an investigation into Virginia Star Seafood Corporation, located in Fairfax, Virginia alleging evasion of anti-dumping duties by falsely labeling/classifying goods and entering those goods by means of false statements and smuggling fish commonly known as Basa, Tra or Swai (subject to Anti-Dumping Duties) as sole, pike, flounder, grouper, carp fillets imported from Vietnam not subject to an anti-dumping duty order.

- On January 14, 2008, David S. WONG, the Vice President of True World Foods, LLC plead guilty to violating the Lacey Act¹. Wong purchased, on behalf of his employer, \$197,930 worth of frozen fish fillets from Virginia Star Seafood Corporation. In March 2008, True World Foods Chicago, LLC, was ordered to pay \$60,000 for its role in purchasing and re-selling falsely labeled frozen fish fillets in violation of the Lacey Act. Under the December 2007 plea agreement, the corporation agreed to publish a full page advertisement regarding this incident in a seafood industry publication with wide circulation, and also forfeited \$197,930, the purchase value of the fish.

¹ The Lacey Act provides that it is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law whether in interstate or foreign commerce.

In summary, ICE is currently involved with approximately 70 AD/CVD investigations relating to open DOC AD/CVD orders that include honey, lined paper products, pasta, polyethylene bags, shrimp, steel and wooden bedroom furniture.

TRADE-BASED MONEY LAUNDERING

Another scheme designed to circumvent lawful trade mechanisms is trade-based money laundering. ICE's Trade Transparency Unit (TTU), which aggressively targets trade-based money laundering and commercial fraud, also recently began creating TTUs with foreign trading partners. The core component of the TTU initiative is the exchange of trade data with foreign counterparts, which is facilitated by existing Customs Mutual Assistance Agreements. By combining international efforts, TTUs can identify and eliminate trade-based money laundering systems. Through this initiative, ICE is the only federal law enforcement agency exchanging trade data with foreign governments to investigate trade-based money laundering investigations. The ICE TTU currently has partnerships with Argentina, Brazil, Colombia, and Paraguay and continues to gain momentum by expanding overseas units as well as increasing domestic support.

The lead initiative for FY 2008 is the establishment of a new TTU in Mexico City, Mexico, which was completed just last month. This is TTU's largest project to date, as Mexico is the United States' third largest trading partner. The U.S. and its foreign TTU partners exchange trade data that, for the first time, allows both countries to see the full picture of import and export data relating to commodities entering and leaving

their countries. This provides for trade transparency and assists in the identification and subsequent investigation of international commercial fraud and money laundering organizations.

The exchanged trade data is placed in the Data Analysis & Research for Trade Transparency System (DARTTS), an analytical computer system that helps ICE special agents and analysts detect and track money laundering, contraband smuggling and trade fraud by analyzing data in ways not previously feasible. The ICE TTU installs, updates and maintains the DARTTS computer systems in foreign TTUs and trains law enforcement officials in the use of DARTTS and commercial fraud and money laundering indicators. TTU efforts with foreign governments have produced recent operational successes in investigations identifying fraudulent trade schemes, Black Market Peso Exchange (BMPE) money laundering and irregular import/export company trans-shipments.

The ICE TTUs bring worldwide recognition to the threat of trade-based money laundering and ICE's efforts to combat and prevent this threat. Recognized as the best mechanism to combat trade based money laundering, TTUs have been highlighted in numerous U.S. Government publications including *The National Money Laundering Threat Assessment*, *the National Money Laundering Strategy* and *the Department of State's International Narcotics Control Strategy Reports*.

Additionally, TTU's are generating valuable case leads. As a result of just one TTU-generated lead, the ICE's Miami Office of Investigations, Bulk Currency Smuggling Task Force (BCSTF) targeted several companies involved in the laundering of Eurodollars from Colombia through the U.S. Due to strict currency regulations, the Eurodollar cannot be deposited directly into European financial institutions and therefore are smuggled into Colombia. Then, from several Colombian money exchange businesses, the Euros were shipped to a third party country (U.S./Miami) via commercial jet. The Euros were ultimately delivered to a legitimate financial institution, which undertook the exchange of them into Colombian pesos and then wired the pesos back to the Colombian money exchange businesses. The TTU-lead resulted in the seizure of Euros valued at \$US 12 million at the Miami International Airport in June 2007. Working with the Department of Justice for civil prosecution, the majority of the Colombian money exchange businesses have since agreed to a settlement.

CONTRABAND SMUGGLING

ICE Headquarters and investigative field offices continue efforts to identify how organized criminal trafficking organizations exploit legitimate trade at U.S. borders and ports of entry. One constant is the threat of internal conspiracies at seaports and airports. These schemes involve the smuggling of illegal contraband by persons who are employed in the transportation industry, and who use their access to international cargo and conveyances to remove illicit contraband from containers and/or baggage prior to examination. Internal conspirators introduce contraband into otherwise legitimate export

cargo or conveyances, and they can remove contraband, including narcotics from an arriving conveyance or a baggage carousel. ICE works closely with the CBP Office of Field Operations to disrupt contraband smuggling groups attempting to take advantage of the busy flood of trade goods entering the U.S. One continuing threat to the United States is the smuggling of methamphetamine and its precursors, both of which are scheduled under the Controlled Substances Act (CSA).

One way many of the criminal organizations still manufacturing methamphetamine in the United States illicitly purchase the necessary precursors to produce methamphetamine is through the internet. Precursors for methamphetamine are imported and exported to and from the United States illicitly via the Internet utilizing trade channels and courier services. ICE has ongoing initiatives and investigations to successfully target organizations engaged in this activity. For example, one such smuggling organization was targeted in a multi-agency investigation led by the ICE Special Agent in Charge Phoenix. This internationally coordinated effort named Operation Red Dragon, dismantled a criminal organization that distributed methamphetamine precursors worldwide via its website in the United Kingdom. The case involved six undercover purchases of Red Phosphorus and 600 grams of Iodine Crystals and resulted in the following significant enforcement results: 138 methamphetamine laboratories dismantled in the United States; 15 methamphetamine labs dismantled in Australia, Germany and the United Kingdom; six search warrants executed in Scotland and the seizure of 47 different chemicals; and over 90 arrests

including the apprehension of main suspects Kerry Ann Shanks and Brian Howes pursuant to international arrest and extradition warrants.

CONCLUSION

Counterfeiting, piracy and unlawful importation of goods pose a significant threat to the national security, public safety and the economic well being of the United States. ICE investigations have shown us that these illegal traders and criminal organizations are profit driven and exploit loopholes and vulnerabilities in the transportation, importation In-Bond system and financial sectors to advance their criminal enterprises. ICE has strong and unique expertise, infrastructure and established key law enforcement partnerships that effectively support investigative and operational activities focused on dismantling criminal organizations, reducing public safety hazards and limiting negative economic impact to this country. ICE will continue to work through institutionalized mechanisms such as the Trade Transparency Units, and the ICE Intellectual Property Rights Center to coordinate and unite domestic and international law enforcement efforts in combating international trade crimes. ICE will build on agency outreach programs with the trade community designed to enhance cooperation with all private sector partners.

I want to thank the Chairman and the entire committee for the opportunity to speak with you today, and for your continued support of ICE's efforts. I will be happy to answer any questions.

**Responses to Questions for the Record From Julie Myers
Finance Committee Hearing of June 24, 2008
Oversight of Trade Functions: Customs and Other Agencies**

Question From Senator Baucus:

Question: The Government Accountability Office (“GAO”) reported in March 2008 that Immigration and Customs Enforcement (“ICE”) had decreased the number of staff assigned to the National Intellectual Property Rights Coordination Center (“Center”). In 2004, ICE dedicated 15 staff to the Center. In 2007, only 8 remained.

Among the agencies that conduct criminal investigations, only ICE has staff dedicated exclusively to intellectual property rights enforcement. When the number of intellectual property rights violations are increasing, how can ICE justify decreasing the number of staff at the Center? Can you explain the reasoning behind this staffing decision?

Response: The ICE Office of Investigations pursued a reorganization of the National Intellectual Property Rights Coordination Center (IPR Center) to both meet staffing needs and create a true uniform U.S. government response to the growing threat of counterfeiting. The IPR Center hosts a staff of seasoned ICE Special Agents and Criminal Research Specialists as well as representatives from other U.S. government agencies charged with IPR enforcement. ICE Commercial Fraud Unit personnel have been permanently re-located and integrated into the IPR Center. Additional increases in staffing at the IPR Center are scheduled, as well as the development of a cadre of ICE IPR enforcement points of contact in each of the 26 ICE Offices of Special Agents in Charge. These IPR subject matter experts will extend the reach of the IPR Center to field offices, while providing additional outreach and training, and expanding investigative resources available to U.S. trademark and copyright holders.

Currently, ICE has 25 employees assigned to the IPR Center, 21 permanent and 4 TDY:

- 1 Director
- 1 Unit Chief
- 2 Section Chiefs
- 15 Program Managers (10 permanent and 4 TDY - Office of Investigations, 1 - Office of International Affairs)
- 4 Criminal Research Specialists
- 1 Management Program Analyst
- 1 Mission Support Assistant

Total of 25 employees is an increase of 66% of the FY 2004 levels and an increase of 212% of the FY 2007 levels.

Questions From Senator Grassley:

Question: Assistant Secretary Myers, please elaborate on your agency's working relationship with the Customs and Border Protection agency and with other agencies on trade enforcement. Is there anything the Finance Committee can do to help strengthen those working relationships? For example, I understand that the Intellectual Property Rights Center is about to move to a new location in Virginia. Is your agency receiving full cooperation from the other participating agencies in this important endeavor?

Response: ICE appreciates the Committee's offer to strengthen the working relationships with other agencies. On July 10, 2008 the IPR Center was dedicated at its new state of the art facility in Arlington, VA. The reorganization of the IPR Center by the ICE Office of Investigations has significantly expanded the original model of this multi-agency law enforcement and regulatory endeavor created to target intellectual property crimes. The new IPR Center structure consists of Operations, Programs and Outreach/Training Units and includes embedded interagency representation from CBP, the Federal Bureau of Investigation, Food and Drug Administration-Office of Criminal Investigation, Department of Justice Computer Crimes and Intellectual Property Section, U.S. Postal Inspection Service, Dept. of Commerce and the U.S. Patent & Trademark Office. Member agency personnel are embedded in designated units on both full-time and part-time contingencies, which will further strengthen the existing inter-agency cooperation. The new IPR Center organizational structure contains a Center Director (ICE) and Deputy Directorship position for both CBP and ICE to strengthen the coordination on trade enforcement.

These enhancements of the IPR Center will more effectively utilize and coordinate member agency authorities and resources to combat the current threats to public safety and national security posed by the importation of counterfeit, substandard and tainted products into the United States. The new operational capability to conduct active investigations from the IPR Center will enhance its multi-agency outreach and training capability and provide a "one-stop-shop" approach to IP enforcement. The IPR Center will facilitate a more effective command and coordination posture to maximize the use and deployment of investigative resources. Additionally, the reorganization will enhance the ability of all members to conduct outreach with the domestic and international law enforcement communities and private industry.

Question: Assistant Secretary Myers, please provide the Committee with actual data on how much your agency spent on customs enforcement for each of the last 5 years, both in absolute terms and as a percentage of total budgetary expenditures by your agency. In addition, please provide the Committee with actual data on how many full-time equivalents have worked on customs enforcement for each of the last 5 years.

Response: ICE does not assign agents to specific investigative program areas, nor does it allocate budget dollars this way. Instead, each Special Agent in Charge (SAC) allocates resources based on the threat within their area of responsibility. ICE agents target criminal violators in all ICE programmatic areas and charge violations of criminal law whenever possible in order to send a strong message of deterrence. In retrospect, we can estimate the allocation of personnel and budget resources by dividing the investigative hours reported for the investigative program area in question by the actual total OI

investigative hours expended. The following are the estimated budgetary expenditures and full-time employee contingents for FY04-FY08 (through the third quarter):

	FY04	FY05	FY06	FY07	FY08*
Customs Enforcement Expenditures	\$660,873,957	\$730,507,733	\$686,723,083	\$732,823,220	\$641,861,140
Percentage of overall ICE Expenditures	18.28%	19.00%	17.70%	15.48%	11.51%
Customs Enforcement FTE	4643	4356	4067	3800	2891

* All FY08 data reflects reported effort through the third quarter

Question: Assistant Secretary Myers, what are the anticipated budgetary needs of your agency for customs enforcement operations in fiscal years 2010, 2011, and 2012?

Response:

ICE continually reviews its budgetary needs across the spectrum of investigative program areas as part of the budget planning process. ICE continues to evaluate its requirements for FY2010, FY2011 and FY2012 as they relate to ICE's customs related authorities. ICE looks forward to working with the Committee regarding future budgetary needs.

**STATEMENT OF HON. DANIEL R. PEARSON, VICE CHAIRMAN,
UNITED STATES INTERNATIONAL TRADE COMMISSION,
BEFORE THE SENATE FINANCE COMMITTEE
June 24, 2008**

Introduction

Mr. Chairman and members of the Committee, I am pleased to have this opportunity to discuss issues pertaining to the budget and workload of the U.S. International Trade Commission. Chairman Shara Aranoff has asked me to convey her regret that she was not able to attend due to a long-scheduled travel commitment. I would like to acknowledge the presence of Director of Administration and CIO Stephen McLaughlin.

Let me begin by thanking this Committee for its past support of the Commission's mission. That support has been ongoing and bipartisan and is greatly appreciated. The ITC recognizes that it plays a key role in enforcing U.S. trade remedy laws that have been crafted in large part by this Committee. We take those responsibilities seriously. In my view, the six commissioners have done an admirable job of collaborating together in a thoughtful and bipartisan way to address the challenges facing our agency.

Mission and Function

The U.S. International Trade Commission is an independent, quasi-judicial federal agency with broad responsibilities on matters of trade. In Import Injury Investigations, we enforce antidumping (AD), countervailing duty (CVD) and safeguard laws by investigating whether domestic industries have been injured by imports. In Intellectual Property-Based Import Investigations, we enforce U.S. intellectual property (IP) rights by adjudicating cases under section 337 involving imported goods that are alleged to infringe patents or trademarks. Through such proceedings, the Commission facilitates a rules-based international trading system. The Commission also serves as a federal resource where trade data and other trade policy-related information are gathered and analyzed. The information and analysis are provided to the President, the Office of the United States Trade Representative (USTR), and Congress pursuant to requests under section 332 or requests for technical assistance. The Commission makes most of its information and analysis available to the public to promote understanding of international trade issues.

The mission of the Commission is to: (1) enforce U.S. trade remedy laws within its mandate in a fair and objective manner; (2) provide the President, USTR, and Congress with independent, quality analysis, information, and support on matters of tariffs and international trade and competitiveness; and (3) maintain the Harmonized Tariff Schedule of the United States (HTS). In so doing, the Commission strives to serve the public by implementing U.S. law and contributing to the development of sound and informed U.S. trade policy.

The USITC's Financial Situation

The Commission initially sought an appropriation of \$73,600,000 for FY 2009. This represented a 7.6 percent increase over the FY 2008 appropriation request. The Commission has recently advised the CJS Subcommittees of the Senate and House Appropriations Committees that, due to developments since that initial request was submitted in September, the Commission now requests an additional \$1,500,000, for a total of \$75,100,000. (An updated budget summary reflecting the amended request is attached to this testimony.) This may seem like a substantial increase. However, it is warranted in light of the Commission's unique circumstances.

The Commission is governed by statutes allowing it to carry forward any budget surplus from one fiscal year to the next. In May 2005, the Commission correctly anticipated a substantial surplus for FY 2005, as a result of several unforeseen and non-recurring cost reductions. The Commission therefore made the somewhat unusual decision to write the House and Senate Appropriations Committees requesting that its appropriation for FY 2006 be lowered by \$2.750 million. Congress agreed and responded by providing an FY 2006 appropriation, net of rescissions, of \$61.951 million. That amount, combined with the Commission's FY 2005 carryover, was sufficient to fund operations in FY 2006.

The Commission's actions in 2005 were reasonable and responsible. However, the reduced FY 2006 appropriation left the Commission with an artificially low baseline to which the FY 2007 spending freeze was applied. Funds available to the Commission in FY 2007 were \$1.327 million lower than in FY 2006. (Note: The Commission received a special \$1.3 million increase in its FY 2008 appropriation that would have offset the FY 2007 shortfall. However, the unanticipated rent increase (see below) absorbed all those funds.)

Managing Cash Flow in FY 2007

Salaries and benefits together typically account for more than 70 percent of the Commission's expenditures. Rent accounts for over 10 percent. The Commission had few options in coping with the financial restraints imposed by the year-long continuing resolution (CR) in FY 2007. The primary means of managing cash flow was simply not to hire people. The Commission filled very few personnel vacancies as they arose. By the end of FY 2007, the Commission's vacancy rate was at 14 percent and in FY 2008 rose as high as 16 percent as the pace of retirements and departures continued to outpace new hirings. Such a high vacancy rate is unsustainable in light of the Commission's rising workload and its need for staff with highly specialized skills. People with decades of experience were retiring, yet we were unable to harvest their experience by teaming them for six months or a year with newly hired employees. These departures reduced the depth of the Commission's technical and analytical expertise and imposed considerable strain on the remaining people. The Commission has begun efforts to address these personnel gaps and has set a vacancy goal of 9 percent by the end of FY 2008 and 7 percent by the end of FY 2009. However, meeting the goal for FY 2008 now appears unlikely due to continuing retirements and difficulty in recruiting qualified personnel. The Commission's current vacancy rate is 14 percent.

Despite a high vacancy rate in FY 2007, personnel costs nonetheless increased due to government-wide salary increases (4.5 percent in Washington, DC) and the need to hire some highly compensated individuals to work on our growing caseload of intellectual property investigations. Increases in some other expenses were also unavoidable. Actual reductions in expenditures on items other than personnel, benefits, and rent were necessary given the reduction in available funds. In FY 2007, the Commission's non-personnel/non-rent expenditures were \$10.4 million, down from \$13.5 million in FY 2006, a decline of nearly 23 percent. The largest portion of this decline was accomplished by postponing a number of previously planned information technology (IT) and security-related expenditures. The Commission's FY 2009 request allocates \$12.6 million for such expenditures, a significant increase over FY 2007 and FY 2008, but still well below FY 2006 levels. Full funding in FY 2009 is essential so that the Commission may undertake maintenance and replacement activities postponed in FY 2007 and FY 2008, thus mitigating the risk of service disruptions that occur when equipment fails. Full funding also would allow the ITC to make progress toward meeting government-wide security mandates.

Increases in the Intellectual Property Workload

The Commission's intellectual property workload consists primarily of investigations under section 337 of the Tariff Act that involve allegations of imported products that infringe U.S. intellectual property rights. Cases are first heard by a Commission administrative law judge (ALJ), and the Commission then adopts, modifies, or remands the ALJ's determination.

The Commission's intellectual property workload has expanded dramatically in recent years. The number of section 337 investigations instituted on the basis of new complaint filings tripled from 11 in FY 2000 to 34 in FY 2006. The rate of new institutions basically held steady in FY 2007 at 31, but now has soared at a truly unprecedented rate. As of mid-June – less than nine months into the 2008 fiscal year – 36 new investigations have been instituted and two additional complaints are now awaiting votes on institution. Thus, with three months left in the fiscal year, the number of new cases instituted this year has already reached a twenty-year high.

What has caused this rapid increase in section 337 filings? It may be due in part to the greater integration of the global economy, with many products being manufactured overseas and then imported into the United States. The increase in workload also may be attributable to a higher level of understanding on the part of U.S. intellectual property owners that the section 337 process can provide quite effective and expeditious relief from infringing imports, with investigations generally being completed less than 18 months after filing. In addition, perhaps the workload increase is a reflection of respect for the level of expertise of the Commission, its ALJs, and its intellectual property staff. The Commission's ALJs are unique within the federal government for their exclusive focus on IP issues. The Commission is also justly appreciated for the high caliber of its Office of Unfair Import Investigations, which represents the public interest in section 337 investigations.

The rapid increase in the section 337 workload has put a serious strain on the Commission. A decision was made in FY 2007 to add a fifth ALJ position. However, two

ALJs retired, and by the end of FY 2007 the Commission still had only four ALJs on staff, despite successfully recruiting two new ALJs. A candidate has recently accepted the fifth ALJ position and is expected to begin serving in July. The current workload levels mean that this newly recruited ALJ will be handed at least half a dozen investigations immediately upon arrival at the Commission.

The Commission met in May to review the section 337 workload. In response to the unprecedented growth in the intellectual property caseload, the Commission made two major decisions to address the pressures on the section 337 process. The first was to approve the hiring of a sixth administrative law judge (ALJ). The Office of Personnel Management (OPM) has approved the Commission's request to add this position. If the hiring effort proceeds as hoped, we anticipate having a sixth ALJ on board late in FY 2008 or early in FY 2009. The cost of an ALJ and associated staff is roughly \$500,000. Those funds were not included in the original FY 2009 appropriation request.

The second Commission decision relates directly to the first. Our building currently has only two courtrooms available for use by its four sitting ALJs. As the caseload has swelled, the ALJs have expressed concern that the two existing section 337 courtrooms are insufficient for scheduling hearings in a timely manner. Even with just four ALJs, the courtrooms are solidly booked through April 2009.

We have addressed the need for more courtroom space on a temporary basis by encouraging the ALJs to schedule some of their hearings in the ITC's main hearing room. Currently section 337 hearings are scheduled for the main hearing room for two weeks in September, October, and December 2008 and for the entire month of February 2009. However, availability of the main hearing room for section 337 purposes is limited by the need to conduct hearings in antidumping/countervailing duty or section 332 investigations.

Prior to 1995, the ITC had two additional courtrooms located on the second floor of our building. As a cost-saving measure at a time of low section 337 activity, the Commission decided not to continue leasing that space. (When valued at current rental rates, the ITC has reduced its expenditures over those years by more than \$15 million.) Although the second floor now is occupied by other tenants, we have been advised by the General Services Administration (GSA) and Boston Properties, owner of the building, that terms of the lease would allow the ITC to reclaim the second floor as soon as the latter months of FY 2009. We believe the annual cost of leasing that space would be in the neighborhood of \$1.3 million, of which roughly \$500,000 would be incurred in FY 2009. In addition, we would incur an immediate cost in the range of \$500,000 for the construction of a new courtroom. There may also be future costs for retrofitting a portion of the floor with new office space.

The bottom line is that the Commission, after concluding that the increase in the section 337 workload is not likely to be temporary, has determined to seek a \$1.5 million increase in our appropriation request for FY 2009. That number consists of: \$500,000 for a sixth ALJ and associated staff; \$500,000 for the part-year cost of leasing the second floor; and \$500,000 for construction of a new courtroom. When added to our existing request, the total requested appropriation would be \$75.1 million.

I would like to bring one more point to your attention with respect to the Commission's continuing effort to adjust to the growing section 337 caseload. As should be apparent from my testimony, the rapid increase in the section 337 workload has been

exacerbated by the continuing difficulty in hiring and retaining ALJs. Applicant pools have declined significantly in recent years, and the Commission continues to encounter difficulties in locating highly qualified candidates under the current recruitment and hiring constraints imposed by the Office of Personnel Management (OPM). The Commission is currently seeking from this Committee new statutory authority in order to increase hiring flexibilities and enable it to recruit judges with specialized backgrounds, especially as rising workloads and possible retirements may require multiple additional recruitments over the next few years.

Increases in the Import Injury Caseload

Filings of new import injury, or title VII, investigations slowed somewhat between FY 2004 and the beginning of FY 2007. In the second half of FY 2007, however, filings increased significantly. That trend has continued through the first half of FY 2008. The recent spate of new filings seems to be related, to some extent, to the U.S. Department of Commerce's recent decision to apply the countervailing duty (CVD) law to China. Six new CVD investigations were filed against products from China in the second half of FY 2007 and four thus far in FY 2008. Furthermore, the title VII caseload tends to be counter-cyclical, with filings increasing during economic downturns. Thus, we are projecting that title VII filings will remain at relatively high levels in FY 2008 and FY 2009.

The Commission has been successful in shifting some resources from the Office of Economics and the Office of Industries to assist the Office of Investigations to meet periodic increases in the import injury caseload, as economists and international trade analysts work in both areas. However, these shifts are only feasible when one operation is slowing. Our recent experience has been an increase in workload for both the Import Injury and Industry and Economic Analysis areas, at a time when our vacancy rates have been extremely high. We must fill at least some of the positions that were allowed to remain vacant throughout FY 2007 to maintain a high quality work product, of which we are understandably proud.

Industry and Economic Analysis Investigations

FY 2007 saw a significant increase in the number of section 332 investigations instituted relative to the recent past, and we project that activity in this area in FY 2009 will be similar to that seen in FY 2007 and FY 2008. Along with an increase in the number of studies requested, complexity is rising as well. Recently requested studies are more likely to require economy-wide assessments or other highly specialized analysis. Many result in the production of national security information (NSI) classified materials, which are more costly to process.

The Offices of Economics and Industries are most involved in the production of these studies. No increase in the number of authorized positions is planned to meet the increased caseload, which the Commission hopes to meet by efficient utilization of its overall staff. However, both offices are currently experiencing higher-than-average vacancy rates, and the limitations of our FY 2007 spending level postponed any attempt to fill those vacancies. Staffing levels in both of these offices will need to be improved so

that the Commission can continue to supply Congress and the executive branch with timely and accurate assistance and analysis over a wide variety of topics.

Tariff Affairs and Trade Agreements

The Commission is charged with producing and maintaining the Harmonized Tariff Schedule (HTS) of the United States. The HTS must be modified any time a free trade agreement is signed into law, an omnibus trade bill is enacted by the Congress, or the President proclaims amendments arising from the World Customs Organization. Commission staff are widely recognized for their expertise in this area.

The Commission also supplies Congress with legislative reports on proposed tariff waivers. For the 109th Congress, 1,027 bill reports were prepared by Commission staff, up from a total of only 711 for the two prior (107th and 108th) Congresses. For the 110th Congress, 807 bills have been introduced in the House alone. The Senate is expected to begin introducing bills soon.

Recent history suggests that demand for Commission assistance in this area will grow. However, the Commission has no plans at this time to seek additional staff for this function.

Litigation

Litigation activity in the AD/CVD area continues to be significant. At the end of the second quarter of FY 2008, 67 appeals involving Commission AD/CVD determinations were pending at the Court of International Trade or the Court of Appeals for the Federal Circuit. Additionally, three disputes involving these determinations were pending before NAFTA panels and four were pending before the WTO. Litigation in the AD/CVD area is likely to remain quite active, as parties continue to challenge the Commission recent injury and sunset determinations, as well as its determinations regarding eligibility for funds under the Continued Dumping and Subsidy Offset Act (the "Byrd Amendment").

Litigation activity in the section 337 area continues to increase significantly. Between FY 1996 and FY 2002, the Commission dealt with six to eight appeals per year in the section 337 area. In FY 2006, the Commission dealt with 15 appeals in this area. At the end of the second quarter of FY 2008, there were 32 appeals of the Commission's 337 determinations pending at the Federal Circuit. There were also two actions involving the Commission's section 337 matters pending in U.S. district courts. Given the rising level of overall investigative activity in this area, the Commission is likely to see further increases in litigation as well. The need for increased litigation support in the section 337 area should be met by the same staff increases referred to earlier.

Significant Increases in GSA Rent Charges

The Commission has occupied space at 500 E St. SW since the building was opened in 1987. The Commission's second 10-year occupancy agreement (OA) expired in August 2007. During the early stages of our budget formulation process for FY 2008, in spring 2006, the Commission began to seek information from GSA regarding the likely increase in our rent. We first received an estimate from GSA in May 2006, indicating that

FY 2008 rent would be approximately \$7.0 million, a 15 percent increase over FY 2007. The Commission received a higher estimate later in 2006, but was then told to use the \$7.0 million figure. We planned our FY 2008 budget accordingly, relying on the \$7.0 million estimate.

The Commission received no further information from GSA until August 2007. A week before our existing OA expired, we were informed by GSA that our actual rent increase would be 38 percent rather than 15 percent. We had no choice but to accept the increase and sign a letter of agreement to that effect. The unanticipated portion of the increase represents a \$1.3 million cost that the Commission is absorbing in FY 2008 by delaying IT-related projects for another year. The unexpected boost in rent also accounts for \$1.3 million of the increase in our appropriation request for FY 2009. In October 2007 we formally sought some relief from the unforeseen increase from GSA. In May 2008, GSA informed the Commission that they had granted our request for a rent adjustment and waived their annual management fee for FY 2008 due to the miscommunication on the rent charges for the new lease. That will result in a \$497,000 adjustment in our rent for FY 2008, but no adjustment in FY 2009. The increased rent in FY 2009 and beyond is a heavy burden for a small agency that has expenses concentrated in personnel costs and rent, neither of which can easily be reduced. This is especially true given that non-personnel/non-rent expenditures, which represent less than 20 percent of our FY 2008 and FY 2009 budgets, already were severely curtailed in FY 2007.

Cost Increases Outside the Control of the Commission

The Commission's budget is largely fixed for FY 2009. It comprises salaries (56.3 percent), benefits (14.9 percent), rent (11.7 percent), and required support services (11.1 percent), such as security guards and network services. Increased costs in FY 2009 and beyond for these categories are driven by external factors over which the Commission has no control.

Salaries increase based on the federal pay raise and step increases. Benefits increase with salaries, but also because of increased health insurance costs and the shift in the workforce from CSRS to FERS. FERS employees cost the ITC 24.5 percent of salary; CSRS costs the ITC 8.65 percent of salary. Rent increases are driven by GSA's cost of leasing our building, along with unpredictable increases in real estate taxes.

In FY 2009, we anticipate that personnel expenses will increase by \$3.6 million, or 7.3 percent. This assumes that the Commission will continue to reduce its vacancy rate by filling open full-time slots, but we still are projecting a vacancy rate of 7 percent at the end of the fiscal year. Personnel expenses also presume a federal cost of living increase of about 3.5 percent, a conservative estimate in light of FY 2008's 4.5 percent increase. We presume an additional increase in the cost of benefits because of rising health care costs and the shift of employees into FERS. We estimate that rent will increase by about 3 percent in FY 2009, following the 38-percent increase in FY 2008.

In the coming years the Commission may continue to struggle to maintain its human capital. Currently 20 percent of the agency's workforce is retirement eligible, and another 19 percent will be eligible within the next five years. We have no way of knowing when those retirements will occur. We hope that funding levels will give us sufficient

flexibility to backfill important positions before the knowledge and capabilities of long-term employees are lost to retirement.

Conclusion

In conclusion, let me speak on behalf of Chairman Aranoff and all Commissioners in saying that we find our responsibilities to be both rewarding and quite challenging. One of the greatest challenges is dealing with fluctuations in workload over which we have no control. Of necessity, the appropriations process requires federal managers to project their financial requirements some two years in advance of when the final funds allocated for a given fiscal year will be expended. The Commission's workload has the potential to spike or decline much more quickly.

Once again, Mr. Chairman, I would like to thank you and the other members of the Finance Committee for your ongoing support of our work at the U.S International Trade Commission.

I would be pleased to answer any questions.

**UNITED STATES INTERNATIONAL
TRADE COMMISSION**

**ADDENDUM TO THE TESTIMONY OF
VICE CHAIRMAN DANIEL R. PEARSON**

June 24, 2008

Revised Analysis of Change: Obligations, Fiscal Year 2007; Expenditure Plans, Fiscal Years 2008, and 2009 (Dollar Amounts in Thousands)

Object Classification	FY 2007		FY 2008		FY 2009		REVISED		FY 2008-2009		Percentage Change
	Actual Obligations	Expenditure Plan	Budget Request	Request	Budget Request	Request	FY 2009 Budget Request	FY 2008-2009 Change	FY 2008-2009 Change		
PERSONNEL COST CHANGES:											
Personnel Compensation											
Permanent	\$35,399	\$37,200	\$39,600	\$40,000	\$2,800						7.5%
Temporary	350	500	500	500	-						0.0%
Term Appointments	435	750	600	600	(150)						-20.0%
Overtime	64	70	80	80	10						14.3%
Awards	1,038	250	700	700	450						180.0%
Net Personnel Compensation	\$37,287	\$38,270	\$41,480	\$41,880	\$3,100						8.0%
Personnel Benefits	9,157	10,130	11,050	11,150	1,020						10.1%
NET PERSONNEL COSTS	\$46,444	\$48,400	\$52,530	\$53,030	\$4,130						8.9%
NON-PERSONNEL COST CHANGES:											
Rent	\$6,120	\$8,481	\$8,640	\$9,140	\$659						7.8%
Net Rent Costs	\$6,120	\$8,481	\$8,640	\$9,140	\$659						7.8%
Services											
Chief Information Officer	\$5,405	\$5,000	\$5,500	\$5,500	\$500						10.0%
Facilities Management	1,436	1,400	1,500	1,500	100						7.1%
Administration	645	800	900	900	100						12.5%
Equal Employment Officer	13	25	25	25	-						0.0%
Inspector General	226	250	250	250	-						0.0%
Net Service Costs	\$7,725	\$7,475	\$8,175	\$8,175	\$700						9.4%
Net Supplies Costs	\$806	\$790	\$1,015	\$1,015	\$225						28.5%
Net Equipment Costs	\$368	\$815	\$1,085	\$1,085	\$270						33.1%
Other											
Travel	\$441	\$500	\$500	\$500	\$100						20.0%
Training	235	400	500	500	100						25.0%
Communications	247	243	260	260	17						7.0%
Transportation	0	15	20	20	5						33.3%
Postage	116	116	130	130	14						12.1%
Equipment/ Other Rental	66	200	220	220	20						10.0%
Land and Structures	150	200	200	200	500						250.0%
Printing and Reproduction	262	265	225	225	(40)						-15.1%
Net Other Costs	\$1,618	\$1,939	\$2,155	\$2,155	\$716						36.9%
NET NON-PERSONNEL COSTS	\$16,537	\$19,600	\$21,070	\$21,070	\$2,570						13.2%
TOTAL OBLIGATIONS	\$62,981	\$68,000	\$73,600	\$74,100	\$6,700						9.8%

United States International Trade Commission
Human Capital Issues

Staffing Levels – Career Staff Only

Change over time – On Board career staff (permanent and term) as reported in Annual Reports (does not include Commissioners)

	End of FY 1990	Pre-RIF FY 1995	Post-RIF FY 1996	Sunset begins FY 1999	End of FY 2007
Total	442	384	332	359	314
Operations	270	240	215	233	198
EC	41	41	39	43	37
INV	47	45	38	45	32
ID	135	114	103	106	82
OUII	17	13	12	13	20
GC	46	41	37	46	39
ALJ	11	8	7	9	11
AD/CIO	99	82	61	59	55

The data in the table compare on-board staffing at fiscal year end. It demonstrates a substantial decline in the last 18 years of about 33%. Even an increase in hiring to reduce the vacancy rate by 5% would only result in 20 more staff on-board or 334. In addition, adding more positions (and filling them) in ALJ, OUII, GC and other offices dealing with IP cases would result in on-board staff of 344.

Reductions in the early 1990s were the result of Commission decision to lower overall staffing in the Office of Industries and in administrative and technical support (AD/CIO). The result was greater breadth of coverage by Industry analysts and less administrative and technical support agencywide. The use of personal computers, among other things, made the drop in administrative support sustainable.

The reductions in the mid-1990s were the result of the RIF in FY 1996. 35 people were terminated but a larger amount left with a severance package. Again the Office of Industries and administrative and technical support (AD/CIO) were hard hit.

Since the advent of sunset investigations beginning in FY 1999, the Commission has emphasized flexible staffing, particularly among International Trade Analysts in the Office of Industries and the Office of Investigations. Dramatic increases in caseload due to transition sunset investigations and increased requirements for economic and industry analysis as the result of FTAs have been met with temporary increases in staffing to meet peak caseload, but declines in staffing in the in all offices responsible for that work over the long term.

To meet the shifting workload, staff have been transferred between Industries and Investigations to meet peak demand. Those transfers have typically been formal details for extended periods of time. Similarly, economists in the Office of Economics have been reassigned to different divisions to meet changes in caseload. In addition to the formal details, spot staffing needs have been met by just assigning staff in all of these offices to specific investigations where they fill roles other than those normally assigned to staff in their office. These kinds of “one case” assignment do not rise to the level of a formal detail.

The increased Intellectual Property caseload has proven a more difficult challenge, as reassigning resources is limited due to the need for specialized patent and technical expertise. Some shifts have occurred within GC, but the Office of the ALJ and OUII need increased staffing levels. Most importantly, the Office of the ALJ with 6 ALJs would have an overall staffing level of at least 20. In addition, all offices affected by the increased caseload need support staff that are not currently on board.

While administrative and technical support has been reduced most dramatically since the early 1990s, the need to maintain websites, databases, information security, and the management of an exploding docket (and its electronic counterpart -- EDIS) require some increased staffing. None of these requirements existed in the early 1990s.

Examples of shifts in resources (workhours) among operating offices to meet shifts in workload:

In FY 2006 during the peak of transition sunset part 2, Industries staff had over 14,000 hours charged to sunset investigations, including several staff detailed to serve as investigators. In a non-transition sunset year, the normal amount of time charged by Industries staff to sunset would be about 2,000 hours, none of it as the investigator.

In FY 2007, as the title VII caseload dropped, the Applied Economics Division, which historically has done only title VII work, spent over 4,000 hours assisting on Economic and Industry Analysis investigations. This represents 15% of their total time.

The workhours GC has charged to Section 337 investigations almost doubled between FY 2003 and FY 2007 (from 7,938 to 13,400), but the total number of workhours charged by GC has not changed.

CHAIRMAN



*FY'07 Budget
5/24/05 ~~to~~ raising our
FY'06 request*

 UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

May 24, 2005

The Honorable Richard C. Shelby
Chairman
Subcommittee on Commerce, Justice, and Science
Committee on Appropriations
S-146A, the Capitol
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. International Trade Commission requests that you reduce our FY 2006 Appropriation Request from \$65,278,000 to \$62,528,000. This reduction is manageable due to a projected \$2.0 million personnel surplus on the current FY 2005 Expenditure Plan and a lower estimate, by \$750,000, of our personnel requirements for FY 2006.

We are generating a \$2.0 million surplus in this year's budget due to the decline in new filings of antidumping and countervailing duty (AD/CVD) investigations; and a substantially higher than normal vacancy rate in authorized positions. We plan to carry this surplus forward to FY 2006 to lower the need for additional appropriated funds.

In our FY 2006 Budget Justification, we noted the decline in new AD/CVD filings and observed that it "will probably lead to a higher than normal surplus." Budget Justification at 6. The Commission anticipated a normal level of new AD/CVD investigations, in addition to a scheduled peak load of transition sunset reviews. We planned to add a limited number of term employees to meet the peak sunset workload. While the sunset workload has increased as predicted, the decline in new filings has persisted. This has allowed the Commission to shift permanent staff resources to meet the sunset increase and has limited the need for term employees.

We also noted in our FY 2006 Budget Justification that we have had a substantially higher than normal vacancy rate, but anticipated hiring additional employees during FY 2005 to meet critical personnel gaps and to prepare for the sunset increase. While we have been filling positions and our vacancy rate has declined substantially during FY 2005, the vacancy rate remains comparatively high due to increased retirements and some difficulties in filling key positions. Thus, we are generating a current surplus in the permanent staff account as well.

The Honorable Richard C. Shelby
Page 2

For FY 2006, we expect we will be close to our normal vacancy rate, but we do not believe we will need the requested level of term employees. Rather than the \$1,000,000 in term employees that we originally requested, we believe that \$250,000 will be sufficient. Thus, our FY 2006 requirements will be \$750,000 less than we requested.

The net effect of these two factors is a reduction in our FY 2006 appropriation request of \$2,750,000. As we stated in our FY 2006 Budget Justification: "the Commission will keep the appropriations committees fully apprised of any projected FY 2005 surplus and any revisions to the expected FY 2006 caseload estimates so that appropriate adjustments to the budget request can be made in a timely fashion."

Please contact Nancy Carman, Congressional Relations Officer, on 205-3151 or Stephen McLaughlin, Director of Administration, on 205-3131, if you have any questions regarding this matter.

Sincerely,


Stephen Koplan
Chairman

cc: House Ways and Means Committee
Senate Finance Committee

CHAIRMAN



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 3, 2008

The Honorable Barbara Mikulski
Chairman, Subcommittee on Commerce,
Justice, Science, and Related Agencies
Senate Committee on Appropriations
The Capitol, S-131
Washington, DC 20510

Dear Chairman Mikulski:

In September 2007, the U.S. International Trade Commission submitted an appropriation request for FY 2009 in the amount of \$73.6 million. When we met with your subcommittee staff on February 4, 2008, we discussed with them the rapidly increasing Commission workload, especially the burgeoning Section 337 intellectual property protection investigations. We told the staff that the Commission had not made provision for additional Section 337 resources in the FY 2009 budget, but was closely monitoring the caseload and was considering the possibility of requesting funds for a sixth Administrative Law Judge as well as an additional courtroom as early as FY 2010. However, given the continued brisk rate of new section 337 filings in the intervening months, the Commission now has concluded that the caseload has outstripped available resources, and that the corresponding resource requirements cannot be put off for another year. Thus, we are requesting a higher appropriation for FY 2009.

The Commission met in May to review the section 337 workload. The number of section 337 investigations instituted on the basis of new complaint filings tripled from 11 in FY 2000 to 34 in FY 2006. The rate of new institutions basically held steady in FY 2007 at 31, leading the Commission to request FY 2009 funding sufficient to address a caseload similar to that seen in FY 2006 and FY 2007. Since that time, the ITC's section 337 caseload has soared at a truly unprecedented rate. As of June 3 – eight months into the 2008 fiscal year – 36 new investigations have been instituted and another one has been filed with institution pending. Those 37 cases exceed the previous record high, and there still are four months left in the fiscal year.

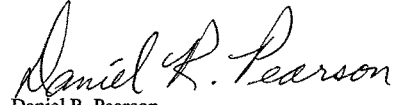
The Commission made two decisions to address the pressures on the section 337 process. The first was to approve the hiring of a sixth administrative law judge (ALJ). Although the Commission had resolved to hire a fifth ALJ early in FY 2007, two retirements offset the hiring of two new ALJs, so the ITC currently has only four ALJs to handle approximately 70 active proceedings. A candidate has accepted the fifth ALJ position and is expected to begin serving in July. Given the heavy and increasing caseload, along with the reality that three of the four sitting ALJs are eligible for retirement, the Commission decided that it was essential to begin recruiting a sixth ALJ. The Office of Personnel Management (OPM) has approved the Commission's request to add another ALJ. If the hiring effort proceeds as hoped, we anticipate having a sixth ALJ on board late in FY 2008 or early in FY 2009. The cost of an ALJ and associated staff is roughly \$500,000. Those funds were not included in the original FY 2009 appropriation request.

The second Commission decision relates directly to the first. For some months the ALJs have been expressing concern that the two existing section 337 courtrooms are insufficient for scheduling hearings in a timely manner. We have addressed that issue on a temporary basis by encouraging the ALJs to schedule some of their hearings in the ITC's main hearing room. Currently three such hearings are planned. However, availability of the main hearing room for section 337 purposes is limited by the need to conduct hearings in antidumping/countervailing duty or section 332 investigations. Prior to 1995, the ITC had two additional courtrooms located on the second floor of our building. As a cost-saving measure at a time of low section 337 activity, the Commission decided not to continue leasing that space. (When valued at current rental rates, the ITC has reduced its expenditures over those years by more than \$15 million.) The second floor now is occupied by other tenants. We have been advised by the General Services Administration (GSA) and Boston Properties, owner of the building, that terms of the lease would allow the ITC to reclaim the second floor as soon as the latter months of FY 2009. We believe the annual cost of leasing that space would be in the neighborhood of \$1.3 million, of which roughly \$500,000 would be incurred in FY 2009. In addition, we would incur an immediate cost in the range of \$500,000 for the construction of a new courtroom. There may be future costs for retrofitting a portion of the floor with new office space.

The bottom line is that the Commission is seeking a \$1.5 million increase in our appropriation request for FY 2009. That number consists of: \$500,000 for a sixth ALJ and associated staff; \$500,000 for the part-year cost of leasing the second floor; and \$500,000 for construction of a new courtroom. When added to our existing request, the total requested appropriation would be \$75.1 million.

The Commission very much appreciates the strong support shown by the CJS Subcommittee for our efforts in support of U.S. trade policy. Receipt of these additional monies in FY 2009 would provide significant help as we strive to meet the statutory guidance to complete section 337 investigations within a 12-15 month timeframe.

Sincerely,

A handwritten signature in cursive script that reads "Daniel R. Pearson". The signature is written in black ink and is positioned above the printed name and title.

Daniel R. Pearson
Chairman

CC: Sen. Thad Cochran

**QUESTIONS FOR THE RECORD
FOR VICE CHAIRMAN DANIEL PEARSON**

**United States Senate
Committee on Finance**

**Hearing on
Oversight of Trade Functions: Customs and Other Trade Agencies
June 24, 2008**

Senator Stabenow:

Question:

While you do a much faster job of resolving intellectual property issues than our courts, the average length of time for an intellectual property-based import investigation and decision is 18 months. It is frustrating that American patent holders must wait a year and a half when there is solid evidence that a counterfeiter is exporting infringing merchandise to this country. A savvy counterfeiter has ample time to game the system. In that year and a half, the counterfeiter could ship as much of the infringing merchandise to the United States as possible, knowing that CBP won't have the exclusion order to stop them. When ITC finally does issue its exclusion order and CBP does enforce it, the counterfeit merchandise already may be in our warehouses, on our store shelves, and possibly in American consumers' hands.

You have asked for additional funding in FY 2009 to hire more staff. Will the additional staff reduce the length it takes for the ITC to complete Intellectual Property-Based Import Investigations?

Answer:

In each year between FY 2002 and FY 2006, the length of intellectual property-based import investigations that concluded based upon a determination on the merits of violation or no violation averaged less than 15 months. In FY 2007, after several years of increased new complaint filings, the average length of such investigations reached nearly 17 months. This year, as new section 337 complaint filings continued to rise, extensions have been occurring with considerable frequency, and it appears the average length of these investigations will again increase. Because the Commission is committed to returning to the shorter time frames achieved in the past for section 337 investigations, it has requested funding for additional staff to work on these investigations, particularly in the Office of the Administrative Law Judges. Indeed, absent additional staff, the length of section 337 proceedings can only be expected to continue to increase. As a practical matter, however, a reduction in the length of section 337 proceedings in the near term is unlikely given the sheer size of the current docket, as well as the presence of several other factors discussed below.

Before discussing specifics regarding section 337 proceedings at the Commission, it bears note that the section 337 docket is not focused upon counterfeiting, which generally concerns the production or sale of a product with a sham mark that is an intentional reproduction of a genuine trademark, often in conjunction with a close copy of the genuine article. Rather, section 337 proceedings typically involve patent-based disputes, which are far more complex than counterfeiting cases. Indeed, imported counterfeits are commonly addressed through recordings of trademarks with, and subsequent seizures by, Customs and Border Protection. In contrast, patent-based section 337 investigations require determinations regarding, *inter alia*, the scope and validity of patent claims and the application of those claims to allegedly infringing articles that may look quite dissimilar from the complainant's products.

With regard to the size of the current section 337 docket, the number of new investigations more than doubled between FY 2002 and FY 2006, and has already reached a record level this year. The number of matters active during the year has also grown dramatically, increasing from 46 in FY 2002 to 70 in FY 2006, and climbing still further to more than 80 active section 337 matters during FY 2008, with several months of the year still remaining.

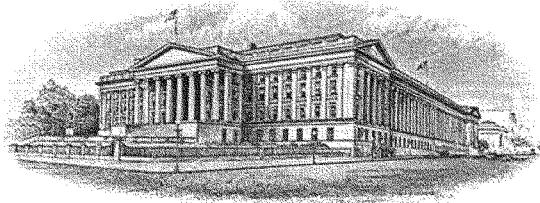
As the section 337 caseload has swelled, the strain on the Commission's Administrative Law Judges has become increasingly evident. Two of the Commission's ALJs have noted in orders issued in recent months that unless some of their investigations are re-assigned to new ALJs and/or settlements materialize in advance of presently scheduled trials, their current case schedules should be viewed as tentative and may well have to be further extended. In the last month, one of these ALJs has extended three of the investigations before him, citing his heavy workload. Another ALJ recently indicated that his exceptionally heavy trial schedule has caused him to establish longer target dates than he would otherwise set in certain investigations.

In addition to the number of investigations pending at this time, and the large number of new complaint filings expected for at least the next several years, other factors also militate against a reduction in the length of section 337 proceedings in the near term. As noted earlier, section 337 proceedings typically involve patent infringement disputes. In recent years, approximately one-third to one-half of the docket has involved patents in the semiconductor, telecommunications, computer, and consumer electronics fields. Many other investigations have focused upon chemical compositions and processes and devices or processes used in the medical field. Not only is the docket dominated by complex technologies, but large numbers of patents are often asserted in these investigations. At present, 17 pending investigations involve allegations of infringement of five or more patents. The number of parties in many section 337 investigations has also added to the complexity of these proceedings. Rulings in some relatively recent cases before the Commission and the Federal Circuit appear to have encouraged complainants to name large numbers of respondents in certain investigations. Currently, three pending investigations involve 30 or more named respondents and at least seven other pending investigations involve more than a dozen named respondents.

None of the ALJs hired in recent years under current OPM requirements has come to the Commission with any background in patent law or experience with the complex technologies that account for the bulk of the section 337 docket. Therefore, the ALJs hired in 2007 and 2008 are still familiarizing themselves with patent law and procedure, and becoming accustomed to adjudicating complex technical subject matter. Unfortunately, so long as the Commission is constrained by the current OPM hiring system for ALJs, it is highly unlikely that the Commission will be able to hire an ALJ with patent background. Thus, the new ALJs at the Commission have, and will continue to have, rather steep learning curves, which may well slow them down for a considerable period of time.

Also, as noted in the Commission's request for additional funding, the Commission is short of courtroom space. As a result, the ALJs have had to compete for courtrooms and have had great difficulty scheduling evidentiary hearings, which has caused delays in several investigations already. Even assuming the agency is successful in obtaining the additional funds it has requested, it cannot realistically expect to have more courtroom space available until FY 2010.

Under these circumstances, without additional ALJs and related support staff, section 337 investigations will only become more protracted, and it will take much longer to clear out the resulting case backlog. Thus, the Commission believes that additional staff is needed now to stem the increase in the length of section 337 proceedings and begin laying the foundation for a return to shorter proceedings in the future.



U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS

**TESTIMONY OF
DEPUTY ASSISTANT SECRETARY FOR TAX, TRADE, AND TARIFF POLICY
TIMOTHY E. SKUD
BEFORE THE SENATE FINANCE COMMITTEE**

Washington, DC—Mr. Chairman, Ranking Member Grassley, and Members of the Committee, thank you for the opportunity to appear here today to discuss the Treasury Department’s responsibilities for customs revenue functions and the International Trade Data System (ITDS).

Treasury Responsibility for Customs Revenue Functions

As the Committee is aware, the Secretary of the Treasury has authority for “customs revenue functions,” as defined by The Homeland Security Act of 2002. Customs policy is important to the Treasury Department not only for revenue collection, but also because the way we approach taxation and regulation of international trade has an important effect on our economy and on promoting global growth. Our overall goals are promoting trade and growth, simplifying and clarifying regulations, and collecting tax accurately and efficiently, with minimal burden on the taxpayer.

While the authority for enforcing the laws involving customs revenue functions has been delegated to the Department of Homeland Security (DHS), the Treasury Department has retained an important role in this area. Specifically, the Treasury Department has sole authority to approve regulations concerning a wide range of functions involving revenue or regulating trade for economic purposes including import quotas, trade bans, user fees, origin, copyright and trademark enforcement, duty assessment, classification, valuation, preferential trade programs, and recordkeeping requirements. The Treasury Department also reviews Customs and Border Protection (CBP) rulings involving these topics that constitute a change in practice. In addition, the Treasury Department shares the chair of the Commercial Operations Advisory Committee (COAC) with DHS.

Moreover, as part of the Treasury Department’s responsibility for customs revenue functions, we have worked with DHS and CBP over the past year on particular areas of concern to this Committee.

One area is simplification of the duty drawback rules, a concept we support. In conjunction with the Committee’s staff and other interested offices, we have worked with CBP to provide detailed technical advice on draft legislation to simplify administration of duty drawback. We appreciate the Committee’s

interest and efforts in this area and look forward to continuing to work with you on this important legislation.

Another area of concern to the Treasury Department, CBP, and other trade agencies has been problems in collecting antidumping and countervailing duties. In response to Congress' interest in this area, the Treasury Department provided a report on this issue last year. Although CBP's collection rate is over 99 percent for duties overall, CBP is able to collect less than 50 percent of antidumping and countervailing duties that have been retroactively assessed in excess of bonds or cash deposits. We concluded in the report that the chief obstacle to ensuring collection of such duties is the difficulty of obtaining adequate security (cash deposits, bonds, or other instruments). This problem appears to have been exacerbated in some cases by unscrupulous importers who imported knowing they were likely to incur duties not fully secured by bonds or cash deposits following retrospective duty assessment and who then absconded when payment was due.

International Trade Data System (ITDS)

One of the most significant areas on which the Treasury Department has worked closely with CBP is the International Trade Data System (ITDS). The SAFE Port Act (P.L. 109-347, October 13, 2006) formally established ITDS and gave the Secretary of the Treasury the responsibility to coordinate interagency participation in ITDS in consultation with an interagency committee consisting of the agencies participating in ITDS and the Office of Management and Budget (OMB).

The goal of ITDS is to make the Federal government's collection of international trade data less burdensome and more efficient by integrating and fully automating the government-wide collection, use, and dissemination of international trade data. Under the ITDS concept, agencies harmonize their data requirements, eliminating redundancies and minor definitional differences. Traders submit standardized electronic import and export data one time to a single collection point, commonly called the "single-window system." The data is then distributed to agencies depending on what information they need to perform their respective trade-related missions.

ITDS is not a separate computer system. Rather, it is a feature of the Automated Commercial Environment (ACE), the new system for processing imports and exports that is being built by CBP. ITDS is being developed and will be operated by CBP with the collaboration of 43 other government agencies.

Today, international traders are confronted with duplicative and non-uniform reporting requirements, both paper and electronic. A number of Federal agencies maintain separate international trade reporting systems. Other agency processes are not automated at all, requiring traders to present CBP officials with paper documentation before their goods are allowed to enter or depart the United States.

The cost of redundant reporting requirements burdens not only importers and exporters, but also the government and the performance of the economy as a whole. These requirements protect consumers, the environment, health and safety; provide information for accurate taxation and for trade statistics; and accomplish numerous other worthwhile goals. Nevertheless, the multiple reporting schemes, superimposed one on top of another, result in a significant cumulative burden.

The very separateness of these collection systems also limits their effectiveness. Agencies do not necessarily have access to information that other agencies collect or know what actions other agencies have taken in response to that information. They act in isolation rather than together.

Benefits of ITDS

Once fully implemented, ITDS will have a number of significant benefits to the private sector and the government, including:

- Reducing the burden on business and increasing the efficiency of the government's collection of international trade transaction data by substituting standard electronic messages for the redundant reporting – often on paper forms – that occurs today.
- Enhancing the ability of CBP and other agencies to target risky cargo, persons, and conveyances.
- Extending the capabilities of ACE by bringing together critical security, public health, public safety, and environmental protection agencies through a common platform.
- Reducing the technical barriers to authorized sharing of data with other governments by accepting electronic filings reported using international standards for trade reporting (World Customs Organization standards).
- Improving compliance with laws and regulations that apply to:
 - Carriers – for example, highway safety and vessel clearance requirements,
 - People – for example, immigration requirements for drivers and crews of commercial conveyances, and
 - Goods – which consist of several hundred laws including those addressing public health and safety, animal and plant health, consumer protection, and enforcement of trade agreements.
- Providing convenient access to data on international trade that are more accurate, complete, and timely for Federal agencies with a statistical mission.
- Providing a single billing and collection point for the variety of taxes and fees incurred by traders.
- Serving as a custodian of records on international trade transactions, providing Federal agencies with a convenient, single point of access to data on trade transactions, with each agency having its own, and appropriate, level of access.

Another important feature of ITDS is that its data requirements are being designed to be consistent with the World Customs Organization (WCO) Data Model, an international standard for reporting customs data. International trade transactions are reported not only to U.S. authorities, but also to other nations with their own electronic reporting formats. Currently, firms operating in multiple countries must report to each country in the unique format each requires. The failure to adopt internationally standardized data requirements not only creates costs for traders, but also hinders collaboration among governments to identify, track, and apprehend dangerous shipments, a matter of great importance today.

Status of the ITDS Program

When I testified before this Committee two years ago, I reported that many agencies with a border role were not participating in ITDS, and that even for the participating agencies commitment had been uneven.

This year, however, I am able to report a significant improvement in agency participation due to a number of factors. First is the Congressional mandate in the SAFE Port Act that all “agencies that require documentation for clearing or licensing the importation and exportation of cargo shall participate in ITDS.”

Secondly, agency participation was spurred by the cabinet-level Import Safety Working Group, (created on July 18, 2007, by Presidential Executive Order 13439), which recognized the value of ITDS for

ensuring import safety. The Working Group report, delivered to the President on September 10, 2007, recognized ITDS as a “key component to improve systems interoperability” in the effort to improve import safety. In addition, the Working Group recommended that OMB direct CBP to accelerate implementation of ITDS and, in particular, to:

- Include information currently reported by importers and carriers to CBP in the ACE Data Warehouse, where it can be accessed by other agencies; and,
- Implement the World Customs Organization Data Model messages, which could provide a platform for electronic reporting of health and safety information in advance of the current ITDS production schedule.

Moreover, following up on the SAFE Port Act and the recommendations of the Import Safety Working Group, OMB issued a policy memorandum (M-07-23) requiring each agency involved in clearing and licensing cargo to designate a senior executive to participate in the ITDS interagency team and to prepare a plan, to be completed by November 12, 2007, outlining the agency’s plan for utilizing ITDS, including any necessary rulemaking or acquisitions. A subsequent OMB memorandum, issued on September 28, 2007, incorporated the Working Group recommendations with regard to ITDS. OMB is tracking each agency’s participation in ITDS by establishing milestones and monitoring progress toward those milestones.

At the passage of the SAFE Port Act there were 31 agencies participating in ITDS. At that time, Treasury identified ten additional agencies required by the SAFE Port Act to participate in ITDS. All of those agencies have since joined ITDS, and OMB has also joined the ITDS Board of Directors. Currently, 43 agencies participate in the ITDS program.

Some ITDS functions are already operational. ITDS agencies are able to obtain, in near real time, detailed information about any importation reported through an electronic filing. Most information currently required by CBP from importers (entry summary data) is transferred daily from CBP’s current processing system to the ACE “Data Warehouse,” which ITDS agencies can access through the ACE Portal, a secure web-based interface. For example, an agency analyst using the ACE portal at his or her desk could identify all imports (which were reported electronically) for any given month, day, port, or importer over the past 3 years. Twenty-five of the agencies participating in ITDS already have access to data on import transactions through the ACE portal.

Several agencies have also been able to put this information-processing power to work. For example, as a result of information obtained through ACE/ITDS, the Food Safety Inspection Service increased the amount of ineligible product it removed from commerce 44-fold in 1 year (36,000 to 1.6 million pounds between FY 2005 and FY 2006)¹. Access to the ACE Portal has also allowed agencies to eliminate redundant paperwork requirements. Before obtaining access to the ACE Portal, Treasury’s Alcohol and Tobacco Tax and Trade Bureau required importers of industrial alcohol to file a paper certification that the product was to be used for non-beverage purposes. The import information available through the ACE Portal now allows the agency to eliminate that requirement.

Challenges Remain for ITDS

ITDS still faces a number of challenges, chiefly resource and priority issues associated with any large IT project or multi-agency project. The November 2007 Report to Congress on ITDS made 11 recommendations. While progress has been made on many of the recommendations, several challenges remain. While we will provide a complete status report by the end of 2008, as required by the SAFE Port Act, some key areas of progress are as follows:

¹ Report to Congress on the International Trade Data System, November 2007

- To some extent, ITDS has become a victim of its recent success. Increased agency participation means that fixed ITDS program resources must be spread among more agencies. Another potential issue emphasized by the growth in ITDS participation is the competition between the resources spent on “establishing a data interchange system” and those devoted to related policy and operational matters. With a finite funding stream for ITDS, delays to the completion of the “data interchange system” can put the ultimate success of the program at risk. In part, the energy of the very capable ITDS program team has mitigated this risk. (Recommendation 10)
- CBP has focused its efforts on integrating import safety agencies into ITDS and has been particularly successful in this effort. (Recommendation 1)
- Work on harmonizing data among agencies, which is critical for eliminating redundant data demands and is the basis for the entire ITDS concept, has accelerated but is not complete, in part because the talented data team has earned additional responsibilities. Ways to refocus resources in this area are under discussion. (Recommendation 2)
- ITDS agencies are already able to obtain much detailed import information through the ACE Portal, but are unable to access other data already collected electronically either (1) because the data has not yet been added to the ACE Data Warehouse, or (2) because software for retrieving that data is not fully operational. Making this data available could have immediate benefits (particularly with regard to import safety) and would also accelerate agency plans to fully utilize ITDS. These goals are being addressed but at this point, this additional data has not been made available to ITDS agencies. It may not be possible to do so without a significant impact on the current program schedule. (Recommendation 5)
- The ITDS team is aligning agency data requirements with the World Customs Organization standards for transmitting data from traders to governments, but there are not yet firm plans in place for implementing WCO consistent messaging capability in ACE. (Recommendation 7)

Conclusion

We are very pleased with the progress that has been made to date on ITDS, and we look forward to working with the participating agencies to ensure that each of the recommendations in the November 2007 report are addressed and that ITDS achieves its overall intended purpose. Once fully implemented, ITDS will provide a critical “single-window” for electronic filing by private-sector market participants and subsequent distribution of the relevant information to the appropriate Federal agencies, thereby eliminating redundant reporting and systems, while providing agencies with access to information and processing capability that they do not now have.

Mr. Chairman, thank you again for the opportunity to testify before the Committee this morning. I would be happy to answer any questions you may have.

**QUESTIONS FOR THE RECORD
FOR DEPUTY ASSISTANT SECRETARY TIMOTHY SKUD**

**United States Senate
Committee on Finance**

**Hearing on
Oversight of Trade Functions: Customs and Other Trade Agencies
June 24, 2008**

Senator Baucus:

Question:

Trade enforcement and facilitation are top priorities of the Finance Committee. The International Trade Data System (“ITDS”) will help agencies share information so CBP can better respond to trade enforcement and facilitation needs.

How will the Treasury Department, which oversees ITDS, ensure that ITDS remains focused on its trade enforcement and facilitation mission?

Answer:

The ITDS “single-window” will provide the ability for persons required to report import or export transactions to file a single electronic report rather than separate filings to multiple agencies. ITDS will also help the government target non-compliant shipments by making data available electronically so that it can be analyzed using automated processing. The system will also make data available more quickly than in the past and allow enforcement agencies to share targeting and analysis results. These features are fundamental to the ITDS vision. The Treasury Department and the interagency ITDS Board of Directors work with Customs and Border Protections (CBP) to promote continued progress toward these objectives.

The following 11 recommendations from the 2007 Report to Congress on ITDS were particularly intended to ensure that ITDS remains focused on its trade enforcement and facilitation missions:

1. Agencies, particularly those with an import safety mission, should accelerate development of plans for their participation in ITDS in order to take full advantage of ITDS capabilities.
2. The ITDS Board should ensure that a Standard ITDS Data Set is established.
3. Development of the ITDS program requires the involvement of the appropriate policy and operational offices of all agencies. Agencies may need to realign resources to accommodate the increasing ITDS workload. The ITDS Board and OMB should take steps to ensure that agency participation is adequate and that

Project Team resources are focused on the development of the ITDS IT infrastructure.

4. Agency legal offices must engage in drafting Memoranda of Understanding between agencies which provide the necessary legal foundation for a shared data system, and highlight critical policy and operational issues. Work on MOUs should be accelerated.
5. Plans to add to the ACE Data Warehouse all import data currently reported electronically (rather than selected entry summary data) should be accelerated to CBP so that it can be accessed by agencies through the ACE Portal.
6. Implementation of "Access Filters" (which limit the availability of data to those authorized to access it) should be accelerated.
7. Implementation of World Customs Organization Data Model messages (new international standard for customs reporting) should be accelerated in order to:
 - Reduce computer processing costs for traders by providing a single international format for communicating import and export information to governments rather than requiring traders to adjust to each country's different reporting and electronic communication protocols.
 - Allow rapid and accurate exchange of data between authorities to facilitate international enforcement cooperation and extend our enforcement perimeter beyond our border.
8. ITDS Agencies should determine which automated edits, checks and validations are critical for their purposes and provide that information to the ACE development team.
9. To ensure that ITDS equities and interests are represented, the ITDS Board should be represented in the ACE decision-making process.
10. The ITDS Board of Directors should continue to closely track program expenditures to ensure such expenditures lead directly to delivery of IT capabilities, and that those capabilities are delivered on schedule.
11. Agencies participating in ITDS should ensure their capital planning and investment control processes incorporate plans for utilizing ITDS.

Senator Bunning:

Question:

Please detail the quantity of contraband cigarettes intercepted directly or indirectly by ICE or the Treasury Department during the past fiscal year and the preceding four fiscal years. In each case, please list the number of counterfeit revenue stamps from each state recovered and the results of testing for foreign substances.

Answer:

During an audit of a tobacco manufacturer in fiscal year 2007, Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) found several pallets of cigarettes, many previously stamped with various state stamps and many products with no stamps at all. Tax stamps on these products were from Mississippi, Florida, Louisiana, and Kentucky. Since TTB does not have law enforcement agents, TTB contacted the revenue agency for the state in which the manufacturer was located. The result was a seizure by state officials of 112,497 packs of cigarettes that were not in compliance with state tax laws and thereby considered contraband. TTB has inquired but has not learned whether the product was tested for foreign substances or if the tax stamps were counterfeit.

Since TTB was established in January 2003, TTB has not been involved directly or indirectly in any other seizures of contraband cigarettes. We have been informed by DHS that ICE and CBP are authorized to detain, seize, and forfeit contraband cigarettes imported contrary to law.

