

**Statement of Commissioner W. Ralph Basham
U.S. Customs and Border Protection
Senate Finance Committee
U.S. Senate
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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 scenario. 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 of 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.