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United States Senate Finance Committee

Hearing on

“S. 662, the Trade Facilitation and Trade Enforcement Action of 2013”

Wednesday, May 22, 2013

Introduction

Chairman Baucus, Ranking Member Hatch, members of the Committee, thank you for inviting me to testify this morning on S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013.

My name is David Cooper. I am the Global Customs Compliance Manager at Procter & Gamble where I am responsible for developing and implementing P&G's global tools, standard practices and systems to ensure compliance with customs regulations. My function is part of P&G's international trade global center of excellence. I also work closely with P&G's Global Brand Protection team, which is responsible for protecting consumers, retailers and our brands from the threat of counterfeit goods.

P&G has 33 manufacturing facilities in 22 states (including Delaware, Maryland, Ohio, Utah, New Jersey, Georgia, Iowa, Kansas, North Carolina, and Pennsylvania) and approximately 126,000 global employees. Ninety-nine percent of American households contain at least one P&G product and over 90% of the products we sell in the U.S. are manufactured in the U.S. More than 4.6 billion times a day, our trusted brands—Pampers, Tide, Bounty, Pantene, Olay, Gillette, Crest and many others—touch the lives of consumers in virtually every country.

P&G's Supply Chain

P&G's supply chain reflects our business operations and indeed our consumer base. It is global, diverse and key to our success as a company. We have thousands of U.S. suppliers from which we purchase raw materials, equipment, packaging and other inputs that allow us to manufacture our brands at our 33 U.S. manufacturing facilities. We also import raw materials and equipment for our U.S. manufacturing operations, and we indirectly purchase other imports that are brought into the U.S. by our suppliers as part of their own supply chains.

Direct P&G imports amount to more than 35,000 entries each year, with a value of roughly \$3 billion. These shipments come into the U.S. through more than 50 ports of entry by container

ship, rail and truck. On an average day, we manage almost 100 entries at a value of more than \$8 million. The ability of these shipments to quickly and efficiently pass through the Customs and Border Protection (CBP) import process is critical to our U.S. operations.

In many cases, these products cannot be purchased in the U.S. Two brief examples illustrate this point. P&G imports a product not manufactured in the U.S. called pentammine cobalt dinitrate, which is the active ingredient in CoFlake, a proprietary cobalt catalyst used as a bleach activator in our Cascade dishwasher detergent. CoFlake is the ingredient in Cascade that helps prevent spotting and film on dishes. We also import a warp knit fabric that we use as fasteners on Pampers diapers. Again, this key component is not manufactured in the U.S. Keeping dishes spot-free and making disposable diapers more economical and easier to use are just two of the many cases where imports support P&G's U.S. manufacturing base and the performance of our brands. Timely CBP processing of P&G's imported inputs helps us ensure reliable U.S. manufacturing operations.

As important as efficiency is, our supply chain is more than a logistical or operational issue for us. Millions of times every day, imported materials are used by U.S. consumers as part of the Gillette blades we shave with, the Nyquil cold medicine we take or the Cover Girl make up we wear. The safety of these P&G products is our number one priority, and we build our supply chain around that fact. Our foreign suppliers are thoroughly vetted to ensure our products are safe. We have strict policies and standard operating procedures with our partners at all stages of our supply chain. Ensuring that raw materials we import are safe for consumers, and that finished products that cross into the U.S. are genuine P&G brands, are imperatives from both business and consumer protection standpoints.

Intellectual Property Protection

Protecting consumers against counterfeits is consistent with P&G's purpose to touch and improve the lives of consumers around the world. Counterfeit products are substandard, possibly harmful or dangerous and a form of consumer fraud. Counterfeit goods are inferior products and do not deliver on the high expectations and performance consumers expect and receive from

legitimate P&G products, undermining consumer trust in our brands. In fact, a rise in consumer complaints is one indication that P&G consumers may have purchased a counterfeit product. Counterfeit goods confuse consumers with artificially low price points which affect our legitimate sales and profits. This lower rate of return undermines the significant investments P&G makes in creating the intellectual property and developing products that delight U.S. consumers.

Our ability to grow as a company and meet consumer needs depends on successful product and operations innovation. This includes the successful development, introduction and marketing of new products and improvements to our equipment and manufacturing processes. The IP generated from these innovations is sometimes copied and imported into the U.S. by counterfeiters, making a strong intellectual property rights (IPR) enforcement regime at CBP critical to P&G's innovation efforts.

Despite P&G's best efforts, we cannot win the fight against counterfeits alone. A collaborative relationship between CBP and P&G demonstrates the "public-private partnership" that is a crucial element to an effective IPR enforcement regime. Anti-counterfeiting efforts undertaken by law enforcement agencies overlap and intersect with those undertaken by individual rights holders like P&G. P&G assists CBP with its aggressive IPR enforcement program by offering our expertise and cooperation to identify, investigate and seize counterfeit products at the manufacturing site or within the supply chain.

For example, each year we conduct many training sessions for up to 800 law enforcement officials and Customs' officers on how to distinguish genuine P&G products from counterfeits. P&G works in consultation with CBP on roughly 70 - 80 cases a year, from port seizures to full fledged undercover investigations with global sourcing. Also, P&G has an advisory role on CBP's Commercial Operations Advisory Committee (COAC) IPR Subcommittee, where P&G provides the voice of the consumer packaged goods industry on IP enforcement issues that rights holders face with CBP around the world.

While P&G has been incredibly impressed with CBP's efforts and its willingness to collaborate on IPR enforcement matters, there are several intellectual property provisions in the Bill that we believe would remove current impediments to CBP's and rights holders' IPR enforcement efforts.

P&G Views of S. 662

P&G applauds the efforts of Chairman Baucus, Ranking Member Hatch and others on this Committee in addressing trade facilitation, customs modernization and intellectual property protection in S. 662, the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013. Balancing the trade facilitation, trade enforcement and national security missions of CBP is not a simple task. We support the bill and find particular value in the following provisions:

- Section 201—Improving Partnership Programs: P&G is a Tier II company of the Customs-Trade Partnership Against Terrorism (C-TPAT) program and we have incorporated direct C-TPAT language into our existing standards and policies. To be clear, P&G's supply chain security is driven by consumer protection and operational considerations. Irrespective of our C-TPAT status, our internal and supplier policies would maintain a high level of import and supply chain security. However, having met or exceeded the security requirement for this program, we anticipated receiving in a measurable way the benefits highlighted by CBP for C-TPAT companies—lower inspection rates, expedited processing at ports of entry, expedited treatment when containers are selected for scanning or inspection, and others.

To date, we have not seen these benefits apply in a measurable way to our entries. We support the requirement in this provision that the Commissioner of the CBP consult with private and public sector stakeholders to ensure that C-TPAT and other partnerships provide participating companies commercially meaningful and measurable benefits.

- Section 202—Trade Facilitation Program: The trusted importer program authorized in this section is powerful trade facilitation tool for CBP and participating stakeholders. The

prospect of preclearance for imports is a powerful incentive for companies to adopt or maintain the highest levels of compliance with U.S. trade and customs laws and regulations. We support the Committee's requirement that CBP work with private stakeholders to ensure that the benefits provided under this program facilitate trade in direct, measurable and specific ways.

- Sections 206—Automated Commercial Environment Computer System: Two decades have passed since the Automated Commercial Environment (ACE) was authorized in the 1993 Customs Modernization Act. Section 206 provides the resources and timeline required to fully implement the customs modernization requirements of ACE. If all 30 aspects of this program are fully implemented as intended in the 1993 Modernization Act, importers like P&G will benefit from a simpler, more transparent, more efficient customs experience, facilitating legitimate trade.
- Section 231—National IPR Center: P&G also supports the codification of the National Intellectual Property Rights Coordination Center (IPR Center). The IPR Center stands at the forefront in the global fight against intellectual property crime, as it seeks to coordinate investigation and interdiction efforts of key law enforcement agencies. The IPR Center provides an efficient, single point of contact for rights holders seeking assistance when their valued IP is under attack. P&G has worked closely with the IPR Center on a number of critical counterfeit investigations and has benefited greatly from coordinated enforcement efforts.
- Section 241 - Sharing Information with Rights Holders: P&G supports Section 241 because it gives CBP personnel the unequivocal authority to seek, and to receive assistance from experts in the private sector in determining whether a suspect shipment is genuine or counterfeit. The most qualified individuals to make such a determination are those who own the product's IP.

For example, P&G can quickly identify if a suspect laundry detergent is legitimate or counterfeit in most cases if CBP provides us with a photo of its granules. In the case of

suspect shampoo, if CBP provides us with printed identifiers from the bottle, P&G can identify which of the hundreds of P&G shampoo formulas correspond to the genuine product, and give that information to CBP so the officer can run the appropriate field test to authenticate.

Prior to the implementation of provisions included in last year's National Defense Authorization Act (NDAA), CBP interpreted the law and its own policies as preventing its officers from providing suspect counterfeit product samples to rights holders and requiring officers remove various markings, including UPC codes and other preprinted codes. During this period, P&G has been presented with evidence of suspected counterfeit products that was so heavily redacted, or refused photos or samples, so as to make the authentication process impossible.

Upon implementation of these provisions last year's NDAA, CBP officers can now send un-redacted samples to rights holders but only after requesting proof of authentication from the importer and waiting a 7-day period. While an improvement, the communication process between CBP officers and rights holders is cumbersome and highly inefficient. It also creates a delay in identifying counterfeits that may pose a health and safety risk to consumers.

Section 241 is a legislative fix that is necessary for CBP to bring rights holders into the authentication process as soon as possible. The faster CBP can conclusively determine the authenticity of suspect goods, the faster legitimate goods make it to market. Any can increase costs to manufacturers and consumers. Unnecessary detention or seizure of legitimate goods mistakenly believed to be counterfeit, or entry into market of counterfeit goods mistakenly believed to be legitimate, creates additional issues for manufacturers and consumers.

Conclusion

Mr. Chairman, Senator Hatch, thank you again for the invitation to testify this morning. P&G values our partnership with you and this Committee on this important Bill. We also value our partnership with the CBP and we believe this bill will help CBP keep our country safe while allowing globally engaged companies like P&G to be competitive here in the U.S. and throughout the world.