

Submission for the Record by
Senators Ron Wyden, Olympia Snowe, Claire McCaskill, and Roy Blunt

House Committee on Ways and Means, Subcommittee on Trade Hearing on:
Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation and Enforcement

May 17, 2012

Chairman Brady and Ranking Member McDermott, thank you for holding this important hearing.

Tasking the Department of Homeland Security with facilitating trade and enforcing trade laws has created challenges. Challenges to which Customs and Border Protection, or CBP, have not adequately responded. That's why there is such broad, bipartisan, bicameral support for legislation to reshape CBP to hold it accountable to its core mission.

With respect to CBP, a central concern of ours is the issue of duty evasion. Increasingly, foreign suppliers are laundering merchandise through third countries, or engaging in other nefarious schemes to avoid our nation's trade remedy laws.

For over two years, we have constructively engaged with industry, with workers, and with the relevant government agencies to determine the magnitude and scope of the problem of the evasion of anti-dumping and countervailing duty orders, or AD/CVD.

One effort included determining how easy it may be for an unscrupulous importer to evade an AD/CVD order. Senator Wyden's staff set up a fictitious company on a popular online business to business platform. Within a matter of days they identified Chinese suppliers that detailed in writing how they would transship goods to avoid U.S. anti-dumping and countervailing duties.

Evasion of AD/CVD is a major problem. CBP treats allegations of duty evasion like a hot potato to quickly hand off to a faraway bureaucrat or another government agency.

Last Spring, the Senate Committee on Finance convened a hearing into the matter. Many of us participated in the hearing. CBP testified that they would renew their efforts to combat duty evasion by establishing a "task force" to inform their efforts. While we were pleased that CBP recognized that there is a problem, it is clear to us that the agency has failed to adequately address it.

At the request of Senators Wyden and Snowe, the Government Accountability Office conducted an examination of CBP's practices. The GAO began the requested investigation well after CBP established its task force and set out to improve its efforts to deter duty evasion. Regrettably, the GAO report issued today provides little confidence that CBP is taking the necessary steps needed to protect revenue and American jobs.

The GAO report shows that, even when CBP suspects that certain products are imported through evasion, there is little communication among ports of entry to take coordinated steps to stop it.

CBP boasts about its renewed use of single transaction bonds to insure revenue, but, according to the GAO, there isn't communication or coordination to ensure that each port requires these bonds on suspicious cargo. We are all for competition, but we are not for port shopping.

Unfortunately, the GAO critique of CBP's bonding practices is not a new one. The gaps identified by the GAO are the same identified last year in a report issued by the Inspector General of the Department of Homeland Security.

Duty evasion – merchandise laundering – is not some new issue that allows for time to see how CBP responds. The problem is well-known and so is CBP's response to it: inaction.

Furthermore, CBP's discussions with our staff indicate that even when a single transaction bond is actually obtained for questionable cargo, the agency continues to liquidate the previously entered merchandise, which triggered the original suspicion. In other words, without the legal jargon, even when CBP takes one step to stop evasion, they continue to assign what they suspect are incorrect tariff rates to merchandise that raised their suspicion.

What's also concerning is that the GAO determined that CBP still has not adopted a practice of systematically collecting the vital information needed to detect and deter evasion. This was a problem identified nearly two years ago. This includes:

1. How many confirmed cases of evasion it has detected
2. The outcomes of the evasion allegations submitted by private sector tipoffs. When CBP testified before the Senate, it said that a key element of its efforts to combat evasion is the information it receives from the private sector, yet it does not keep track of what happens with such information.
3. Failing to systematically determine how much in duties is assessed for evasion and how much are collected. The GAO determined that CBP only collects two percent of the duties it assesses due to evasion. In fact, of the \$208 million it assessed in just civil penalties between 2007 and 2011, CPB collected only \$5 million. CBP is unable to provide information about the duties CBP determined were owed through successful evasion investigations and how much of those duties were collected.
4. When evasion is uncovered, CBP does not systematically keep track of the country-of-origin, the product information, the method of evasion, and who the importer of record is.

In other words, whatever system CBP uses to detect evasion, it does not appear to be based on the most relevant data. And when CBP suspects evasion of a specific product, there is no integrity in its approach to combating it and to ensuring that duties and penalties that are owed can actually be collected.

Over the past two years, we worked with petitioners, respondents, producers, importers, organized labor, and various federal agencies. We worked to understand the problem of evasion better, and how to combat it better. We came up with the ENFORCE Act, which enjoys broad support. In fact, there is no private sector opposition to the bill of which we are aware. As a result, the foundation is laid for Senate passage of legislation that includes the main elements of the ENFORCE Act. A central component

of the legislation would require CBP to adhere to timelines for investigating allegations of evasion and, along the way, take steps to ensure that an affirmative determination that evasion occurred enables the agency to actually collect the AD/CVD duties and penalties that are owed.

Enactment of meaningful legislation, like the ENFORCE Act, to combat duty evasion will not happen without the leadership of the House Committee on Ways and Means. As it considers this issue and advances its own legislative approach, our hope is that you will keep in mind this final point:

Just as CBP needs statutory discipline to facilitate trade, it needs statutory discipline to enforce our nation's trade laws, particularly AD/CVD laws that represent a key element of protecting American producers from unfair imports and whose even and consistent application help sustain broader public support for American trade policy.

Despite two years of intense congressional pressure – including two Senate hearings, several legislative proposals, GAO testimony and an Inspector General report little has changed at CBP. If the agency is to do the most effective job at combating AD/CVD evasion possible, we conclude that it will require Congress to act where CBP's leadership has not.

There is no evidence, that without statutory discipline, CBP will effectively use its current authority to detect or deter evasion and carry out its responsibility to protect American businesses and the workers upon which they rely from unfair trade practices.

We thank you for considering our views and look forward to working with the Committee on this and other important issues.