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Testimony before the

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Thank you Chairman Landrieu and Ranking Member Coats for inviting me to appear before you today to discuss the issue of the evasion of antidumping duty and countervailing duty orders and the efforts of the Commerce Department (Commerce) to enforce the trade remedy laws.

As the Deputy Assistant Secretary for Import Administration (IA) at the Department of Commerce, my primary responsibility is to administer the antidumping duty and countervailing duty (AD/CVD) laws, which are designed to counter unfair trade practices that injure U.S. industries in our domestic market.

As part of the Trade Agreements Act of 1979, the Congress transferred from the Department of the Treasury to Commerce the responsibility for administering the AD/CVD laws. And, then, in the late 1980s, the Congress gave Commerce additional authority, under section 781 of the Tariff Act of 1930 (the Act), to deal with the potential circumvention of AD and CVD orders. Moreover, as a matter of daily business, we cooperate with U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) in a variety of ways to try to counter and thwart various duty evasions schemes.

Commerce conducts AD and CVD investigations and administrative reviews to determine whether imported merchandise is dumped (that is, sold in the United States at less than fair, or normal, value) or subsidized by foreign governments. If our investigation finds that imports have been dumped or unfairly subsidized, and if the International Trade Commission finds that a domestic industry has been injured as a result of the unfairly-traded imports, we issue an antidumping duty or countervailing duty order. When that happens, we instruct CBP to require importers to pay cash deposits whenever they import merchandise subject to that order. Thereafter, on an annual basis, we will conduct an administrative review of the entries from the past year to determine the actual level of dumping or subsidization during the prior one-year period.

Commerce's role in detecting and deterring the circumvention of antidumping and countervailing duties is addressed in Section 781 of the Act. Pursuant to those provisions, Commerce may conduct circumvention inquiries when:

- It is alleged that minor alterations have been made to subject merchandise in order to evade AD/CVD orders; or
- It is alleged that merchandise subject to an order is completed or assembled in the United States or other foreign countries from parts and components imported from the country subject to the order.

Commerce can also find under these provisions that later-developed merchandise may be included within the scope of an existing order.

If it is determined that an order is being circumvented, Commerce may, after taking into account any advice provided by the International Trade Commission, direct CBP to suspend liquidation of the entries and require a cash deposit of estimated duties on all unliquidated merchandise determined to be circumventing the order. For example, in October 2006, Commerce published the final affirmative determination of circumvention of the AD order on petroleum wax candles from China. Commerce determined that candles composed of petroleum and over fifty percent or more palm and/or other vegetable oil-based waxes ("mixed-wax candles") were later-developed merchandise and, thus, were circumventing the AD order. In addition, we determined that mixed-wax candles containing any amount of petroleum are covered by the scope of the order.

Commerce is currently investigating seven allegations of circumvention, including steel wire garment hangers from China, laminated woven sacks from China, small diameter graphite electrodes from China, glycine from China, tissue paper from China, cut-to-length carbon steel plate from China, and ferrovanadium from Russia.

In the tissue paper inquiry, Commerce recently made a preliminary determination that certain tissue paper processed and exported to the United States by a Vietnamese company was circumventing the AD order on tissue paper from China. Based on this determination, Commerce directed CBP to suspend liquidation and collect cash deposits at a rate of 112.64 percent for all exports from the Vietnamese company retroactive to the date we initiated the circumvention inquiry. We will be taking comments from interested parties prior to making a final determination in this case in August.

Similarly, in a case involving cut-to-length carbon steel plate (steel plate) from China, it was determined that a Chinese producer was adding boron to the steel plate in an attempt to circumvent the order and avoid paying AD duties by making the boron-infused steel plate an out of scope product. In August 2009, Commerce determined that imports of steel plate produced by the specific Chinese exporter involved in this scheme should be covered by the steel plate order and directed CBP to suspend liquidation of entries of the merchandise. We are now conducting another inquiry to determine if a similar ruling should apply to all imports of the same merchandise from China.

In addition to the authority specifically prescribed to Commerce by the statute, we work in close cooperation with CBP, ICE and the Department of Justice (Justice) to assist them in enforcing the customs laws and ensuring our border measures are effective.

In 2006, Import Administration formally established a Customs Unit, which falls under the direction of our Deputy Assistant Secretary for AD/CVD Operations. The Customs Unit serves as our primary staff-level liaison with CBP and ICE on many of the fraud/evasion matters related to our AD/CVD measures. The members of this staff meet regularly with personnel from CBP and ICE to discuss enforcement issues, share information and coordinate our interaction to address potential fraud and evasion of AD/CVD duties in a timely manner.

In February of last year, the AD/CVD portion of CBP's new commercial trade tracking system—the automated commercial environment, or ACE—went “live” for entries of merchandise subject to AD/CVD orders. ACE allows Commerce to maintain much more efficient communication with CBP in the implementation and application of the AD/CVD duty rates.

For example, ACE enables the application of AD/CVD rates on a per-unit basis, as opposed to the typical *ad valorem* rates. The application of a per-unit amount is important to counter situations where companies regularly understate the value of their imported merchandise. Cash deposit rates are typically calculated as a percentage of the entered value of the imported merchandise. By undervaluing the merchandise, importers avoid paying the full duties owed. To forestall such activity, we have resorted to the use of per-unit rates in several AD cases including crawfish, honey, activated carbon, and garlic from China, as well as fish fillets from Vietnam. As an illustration, Commerce has imposed a cash deposit rate of \$5.23 per/kilogram for an exporter's entries of crawfish from China. Thus, even if the value of the merchandise is undervalued upon entry, the full amount of the duties owed is being applied.

In the course of our proceedings, particularly our annual administrative reviews, our staff occasionally comes across information indicating the possible evasion of AD/CVD duties, and Commerce has also encountered situations in which foreign manufacturers have presented false documents during the course of an AD/CVD proceeding. In response to such behavior, we recently amended our regulation governing the certification of factual information submitted to Commerce by a person or his or her representative during AD/CVD proceedings. The amendments aim to strengthen the current certification requirements by mandating that the party submitting the documents: 1) identify to which document the certification applies, 2) to which segment of an AD/CVD proceeding the certification applies, 3) who is making the certification, and 4) the date on which the certification was made. These new requirements will better ensure that parties and their counsel can be held legally responsible for the authenticity of specific documents and are aware of the consequences of certifying false documents.

When Commerce uncovers information that indicates possible evasion of the AD/CVD laws, we have the statutory authority to provide that information to the U.S. Department of Homeland Security. Upon examination of the information provided, authorities at the U.S. Department of Homeland Security may initiate an investigation which may result in the imposition of civil or criminal penalties and fines on parties involved in the evasion scheme. Once a fraud/evasion investigation involving an AD/CVD case is initiated by ICE, Commerce is frequently asked by CBP/ICE agents or the Assistant U.S. Attorney prosecuting the investigation to provide assistance.

Cooperation among Commerce, CBP, ICE, and Justice has resulted in indictments, convictions, and prison sentences for evaders of AD/CVD orders. Such cooperation led to the indictment of Alfred L. Wolff GmbH, a German food conglomerate, and 10 executives. Federal prosecutors alleged that the conglomerate and 10 of its executives conspired to illegally import more than \$40 million of honey from China between 2002 and 2009, and concealed its country of origin in order to avoid paying nearly \$80 million in AD duties. Also indicted was Gong Jie Chen, a Chinese national who was the sales manager for a company called QHD Sanhai Honey Co., Ltd., located in Hebei Province, China. He allegedly set up this company as a front to conceal the Chinese origin of the honey being shipped to the United States and to avoid paying AD duties.

The defendants were charged with conspiracy and smuggling, falsifying documents submitted to CBP and Commerce, and violating food and drug safety laws. The defendants allegedly destroyed records and other evidence of fraud, including internal e-mails and documents that were allegedly used to falsify the origin of the honey and to avoid paying the AD duties. If convicted, some of the defendants could face more than 20 years in prison.

During a fraud investigation of steel wire garment hangers from China, Commerce assisted the Assistant U.S. Attorney prosecuting the investigation by providing background and guidance regarding the antidumping process. After completion of the fraud investigation, a U.S. importer was arrested and charged with fraud, smuggling, and money laundering in connection with bringing Chinese-made hangers into the United States via a third country and falsely claiming a country of origin other than China. Conviction on these felonies carries a maximum prison term of between five and 20 years per count, plus substantial monetary fines and the payment of applicable dumping duties.

Further, during verification of the respondent CATACO in the first administrative review of frozen fish fillets from Vietnam, Commerce officials found evidence of mislabeling and duty reimbursements. This information was conveyed to ICE, providing critical information for their criminal case against one of CATACO's importers. As a result, in 2007, the U.S. District Court in Panama City, Florida, sentenced Danny Nguyen to Federal prison, and issued criminal fines to Panhandle Seafood, Inc., and Panhandle Trading, Inc. for a multi-year scheme that involved smuggling and distributing mislabeled frozen fish fillets into the United States and Canada from Vietnam. The 42-count criminal indictment charged that from 2002 to 2005, Mr. Nguyen and his two companies conspired with Vietnamese fish exporters to intentionally mislabel hundreds of thousands of pounds of Vietnamese frozen fish fillets. Nguyen was charged with importing fish into the United States that was incorrectly labeled as grouper and other fish types in order to avoid U.S. antidumping duties.

After pleading guilty, Mr. Nguyen received a sentence of 51 months imprisonment and three years supervised release. Panhandle Seafood Inc. received five years probation and forfeited the real property of the business. Panhandle Trading Inc. was also ordered to pay restitution of \$1.3 million and received five years probation.

In another evasion scheme involving frozen fish fillets from Vietnam, Commerce found that some Vietnamese exporters and U.S. importers were mis-labeling the subject merchandise as other types of fish that were not subject to antidumping duties in order to avoid those duties. Investigation and cooperation

among several federal agencies have resulted in several convictions, indictments and prison sentences. For example, in October 2008, 12 individuals and companies were convicted of criminal offenses related to a scheme to avoid paying duties by falsely labeling fish for import and then selling it in the United States at below market price. Two Virginia based companies, Virginia Star Seafood Corporation and International Sea Products Corporation, illegally imported more than ten million pounds of frozen fish fillets from companies in Vietnam, valued at \$15.5 million.

In the 2005-2006 AD review of freshwater crawfish from China, Commerce obtained evidence showing that imports claimed by the respondent to be whole crawfish (non-subject merchandise) were in fact imports of crawfish tail meat (subject merchandise). Commerce worked with CBP and the Food and Drug Administration (FDA) to obtain evidence that Commerce ultimately used in its determination to base the respondent's dumping margin on adverse facts available, resulting in a relatively high dumping margin. Some of the evidence obtained by Commerce included entry, sales and shipping documents, FDA photographs of the imported product in question showing that the bags contained crawfish tail meat, not whole crawfish, warehouse records, FDA surveillance reports, and information regarding CBP's reclassification of merchandise from "certain disputed entries" to "entries of subject merchandise."

The examples I have just provided illustrate the close and expanding relationship between Commerce, Justice, ICE, and CBP with regard to stopping duty evasion. Commerce is committed to strict enforcement of the unfair trade laws, and will continue to work intensively and actively with our sister agencies to minimize evasion of AD and CVD duties.

Thank you for providing me the opportunity to testify. I am happy to take your questions.