# STATEMENT
# OF
# THE HONORABLE BART STUPAK
# SUBCOMMITTEE ON
# OVERSIGHT AND INVESTIGATIONS
# "FDA'S FOREIGN DRUG INSPECTION PROGRAM: WEAKNESSES PLACE AMERICANS AT RISK."
# April 22, 2008

Today's hearing will once again explore the question of whether the Food and Drug Administration (FDA) is adequately regulating the overseas manufacture of pharmaceutical products. As this Subcommittee has reported before, a significant and still growing quantity of pharmaceutical products used by Americans are now manufactured with ingredients obtained overseas from countries on almost every continent. While the exact quantities and sources for these drugs are difficult to determine, the general consensus is that at least 80 percent of all active pharmaceutical ingredients (APIs) used by U.S. manufacturers to produce drugs are imported. More importantly, much of this production occurs in regions that lack robust regulatory systems—areas such as China and India. China alone has more firms registered to export drugs to the U.S. than any other country, posing major challenges to the FDA. As was noted by former FDA Commissioner David Kessler in a major news publication, "China is 'as close to an unregulated environment as you can get.' In fact, it's a lot like the USA was in 1906, he says —'that's why we developed an FDA.'"

The U.S. Food and Drug Administration is the agency responsible for overseeing the safety and effectiveness of all human drugs marketed in the U.S.. As part of its effort to oversee the safety and quality of these products, FDA's policy is to physically inspect foreign establishments that ship drugs to the American market.

Last year, this Subcommittee asked the Government Accountability Office (GAO) to undertake a comprehensive audit of FDA's foreign drug regulatory system. The preliminary findings of that audit were presented at a hearing before the Subcommittee on November 1st of last year. GAO reported that a substantial lack of human and economic resources, weaknesses in the databases and IT systems used by FDA to track inspections and drug imports, and a lack of permanent operational support in foreign locations were major challenges facing the program. GAO also found that many of the FDA databases used to track foreign firms that export to the United States contain substantial material inaccuracies that have yet to be reconciled by the Agency.

More specifically, a lack of resources was determined to be a major factor undermining FDA's drug inspection program. For example, while current law requires FDA to inspect domestic firms once every 2 years—which FDA is managing to do roughly every 2.7 years—, GAO reported that FDA only has enough resources to inspect foreign firms about once every 13 years. In China—one of the largest producers of active pharmaceutical ingredients (API's) for the U.S. market, FDA only inspects about 10 to 20 firms each year against an inventory of more than 700 firms. At this rate, FDA can only inspect each Chinese firm once every 30 to 40 years.

Worldwide, GAO concluded that on an annual basis, the Agency only has enough resources to inspect about 7 percent of existing foreign plants, which amounts to inspecting once every 13 years. Given that these inspections are the most important tool the FDA has to ensure firms are meeting U.S. drug safety regulations, these rates are unacceptable.

FDA's IT system for managing inspections and prioritizing risk was another major concern highlighted at the November 1st hearing. GAO testified that this system was antiquated, not designed for this purpose, and fraught with duplicative and inaccurate data. Such flaws made it difficult for the Agency to assess risks and prioritize inspections. Further, FDA could not determine how many foreign firms were subject to FDA inspection or where they were located: One database suggested that there were 3,000 foreign firms registered with FDA to market drugs in the U.S., and yet another database seemed to show that almost 7,000 foreign actually shipped products to the U.S. How can there be any confidence that the FDA is adequately regulating foreign drug firms when the FDA has no idea who is making what, where they are physically located, and when they were last inspected? These problems highlighted 10 years ago still plague the Agency today.

If the GAO and Subcommittee findings were not enough to demonstrate that the FDA's regulatory systems are broken, allow me to provide more evidence. In December of last year, a specially formed subcommittee for the FDA presented a comprehensive 2-year study entitled, "FDA Science and Mission at Risk: Report of the Subcommittee on Science and Technology. This Science Advisory Board Report assessed the Agency's ability to support a variety of existing and future regulatory operations. The special subcommittee that conducted this review was comprised of nearly three dozen external experts who represented industry, academia, and other Government agencies.

This Subcommittee held a hearing on January 29, 2008 to explore both the general concerns raised in the Science Board Report and their implications for food and drug import issues. The report advisors—including its Chairperson, Dr. Cassell who will again testify today—provided alarming testimony regarding FDA's deficiencies in meeting its regulatory responsibilities. The panel was particularly troubled by the multitude of IT issues affecting the entire Agency, including those related to the foreign drug inspection program. With regard to the scarcity of resources for conducting foreign drug inspections at the Agency, the report states:

> "Although approximately 80 percent of the active pharmaceutical ingredients used in our prescription drugs are imported from abroad, and foreign imports of drugs and active pharmaceutical ingredients were valued at more than $42 billion in 2006, FDA conducted only 361 foreign drug and biological product establishments in 2006. Only 32 Field inspections were made in India and 15 in China, the two largest sources of pharmaceutical exports to the United States. Millions of shipments of FDA-regulated products are imported into the country each year from foreign facilities that have never been inspected by FDA and, with current appropriations, never will be."

The FDA Commissioner was present at the January 29th hearing. During his testimony, the Commissioner agreed to further consult with the Subcommittee to explore ways to resolve the many problems identified in the Science Advisory Board report and address the multitude of

concerns raised by GAO, the Subcommittee and others, relating to food and drug imports. Almost immediately on the heels of this January hearing, the FDA was quickly overwhelmed by the very type of crisis these reports and audits predicted would eventually occur: contaminated heparin from China.

As we are now familiar, in late 2007 and early 2008, FDA began noticing reports of hundreds of adverse reactions to heparin, including vomiting, breathing difficulties, low blood pressure, and as many as 81 deaths. We would soon after learn that tainted heparin was imported from China, and that the Chinese facility—Changzhou SPL—which made the active ingredient, had never been inspected by FDA because of multiple internal failures. Laboratory testing revealed that a foreign ingredient called "oversulfated chondroitin sulfate" had somehow been added into the heparin production chain. While an investigation into the origin of this contaminant continues, this tragic episode underscores the vulnerabilities in the current system used to regulate foreign drugs.

We have spent almost a year investigating the nature and extent of failures in FDA's foreign drug inspection program. After several hearings, the findings of GAO, FDA's own Science Board, countless press articles, and the Subcommittee's own work, there are enough red flags to suggest to this Chairman, that it is time to act and fix this program. GAO said it perfectly in last year's testimony: "[U]ntil FDA responds to systemic weaknesses in the management of this important program, it cannot provide the needed assurance that the drug supply reaching our citizens is appropriately scrutinized, and safe." To date, FDA has been unable to assure the public these products are safe because they have not addressed the numerous systemic weaknesses many of us have identified. Because GAO and others will report today that many of the same problems we identified last year are still with us today, I can only conclude that American lives are still unnecessarily being placed at risk.

I look forward to hearing from the Commissioner today. However, given the current nature of his agency's foreign drug inspection program, I think it is incumbent upon him to lay out a credible plan that demonstrates what steps the FDA has or will take to close these gaps, and what resources and regulatory tools he needs to do this job. Last year, this nation's regulatory failures resulted in dead dogs and cats; this year, it has tragically led to the deaths of people. If we don't make some rapid progress on fixing the foreign drug inspection program, the next "melamine" or "heparin" tragedy will soon be upon us.

With that, I yield back.