



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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REGARDING A HEARING ON

“CUSTOMS TRADE FACILITATION AND ENFORCEMENT”

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

**COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE**

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INTRODUCTION

Chairman Brady, Ranking Member McDermott, and distinguished Members of the Subcommittee:

It is my privilege to testify before you today and discuss U.S. Immigration and Customs Enforcement's (ICE) investigative efforts and strategies to combat illegal trade practices and commercial fraud activities. The growth of international trade is an integral part of our nation's economic prosperity, and we must ensure we are attuned to the new threats to public safety and national security it may pose.

ICE's Homeland Security Investigations (HSI) directorate is the largest investigative program within the Department of Homeland Security (DHS), with an extensive portfolio of enforcement authorities. Notably, HSI Special Agents possess statutory authority to enforce more than 400 federal laws. Specifically, HSI investigates a wide range of trade fraud, including intellectual property (IP) theft and commercial fraud. Both IP theft and commercial fraud pose significant threats to the U.S. economy and the health and safety of the American public.

To focus government efforts and enhance government efficiency, HSI led the creation of the National Intellectual Property Rights Coordination Center (the IPR Center), which combats violations of intellectual property rights, specifically trademark counterfeiting and copyright piracy. Now with 20 partners, including other federal agencies, Europol, INTERPOL, and the governments of Mexico and Canada, the IPR Center brings together the full range of legal authorities and law enforcement tools to combat IP theft in the United States.

Through the IPR Center's Commercial Fraud Unit, HSI aggressively pursues commercial fraud violations, including dumping and countervailing duty evasion schemes, pharmaceutical smuggling, tobacco smuggling, and border enforcement. HSI enforces U.S. trade laws and international agreements, as well as investigates and aggressively seeks prosecution of noncompliant importers, exporters, manufacturers, brokers, and others who commit trade-related crimes. HSI works closely with U.S. Customs and Border Protection (CBP) in these efforts, and engages the trade community through an active outreach program.

Today, I would like to discuss some of the innovative HSI initiatives and operations instituted as part of this ongoing strategic effort. In particular, I will focus my remarks on our efforts to keep dangerous and substandard products out of the U.S. marketplace, the methods by which we protect intellectual property rights, and the approaches we use to target schemes designed to circumvent lawful trade mechanisms.

PROTECTING INTELLECTUAL PROPERTY RIGHTS

U.S. law enforcement agencies have overlapping areas of responsibility for enforcing intellectual property laws. Recognizing that the collective leverage of resources is essential to success, the IPR Center was designed to share information and promote a coordinated U.S. government response to criminal IPR enforcement.

The IPR Center includes embedded, co-located representation from the following agencies: CBP; Federal Bureau of Investigation; Food and Drug Administration Office of Criminal Investigations (FDA-OCI); U.S. Department of Commerce's Office of Intellectual Property Rights; U.S. Patent and Trademark Office; Consumer Product

Safety Commission (CPSC); U.S. Department of State's Office of International Intellectual Property Enforcement; U.S. Postal Inspection Service (USPIS); Defense Criminal Investigative Service; Air Force Office of Special Investigations; U.S. Naval Criminal Investigative Service; General Services Administration's Office of the Inspector General; U.S. Army Criminal Investigation Command; Defense Logistics Agency; National Aeronautics and Space Administration; Mexican Revenue Service; Royal Canadian Mounted Police; INTERPOL; and Europol.

The IPR Center utilizes a multi-layered approach consisting of investigation, interdiction, prosecution, and outreach/training to fight IPR crime. To accomplish this, the IPR Center is organized into four units: the Field Support Unit, the Programs Unit, the Outreach and Training Unit, and the Policy and Administration Unit.

The Field Support Unit executes the IPR Center's command and control function for multi-jurisdictional, large-scale investigations. This unit is responsible for de-conflicting leads that are received at the IPR Center among all partner agencies and then forwarding actionable information to the field. The Field Support Unit also runs a certified undercover operation to target proactively the sale and distribution of counterfeit, substandard and tainted products online, and works closely with the Department of Justice to prosecute IPR violators domestically and internationally.

The Programs Unit develops HSI's enforcement initiatives, as well as interagency initiatives. In addition, it develops procedures for HSI's many different IPR actions and activities, including ongoing operations, and coordinates HSI's participation in international enforcement operations.

The Outreach and Training Unit is the point of contact for all potential partners and sources of information, including the private sector, federal, state, local, and foreign law enforcement, as well as the public. The IPR Center also coordinates with the World Customs Organization, INTERPOL and the U.S. Departments of Commerce, Justice and State to conduct training and provide support for anti-counterfeiting efforts with international customs administrations and law enforcement agencies domestically and internationally.

Finally, the Policy and Administration Unit coordinates the IPR Center's standard operating procedures and policies, and performs collaborative work with other U.S. Government agencies and the Office of the U.S. Intellectual Property Enforcement Coordinator.

The central goal of the IPR Center is to provide a "one stop shop" for IPR law enforcement and industry around the U.S. and the world. We recognize that law enforcement cannot do it alone, and so we look to partner with private industry in our efforts. To enhance and facilitate productive partnerships with the public and private sectors, the IPR Center launched Operation Joint Venture in FY 2008. This effort is designed to increase support, communication, coordination, and cooperation for our ongoing IPR enforcement initiatives and our critical public health and safety efforts. Operation Joint Venture is an HSI initiative designed to provide all private industry with valuable information about our efforts to combat the importation of hazardous and counterfeit products. It gives industry a point of contact they can use to provide us with leads and tips regarding efforts to combat intellectual property right infringement.

Since July 2008, the IPR Center has coordinated and conducted 671 outreach events with approximately 35,000 public and private sector partners. This outreach is paying dividends. For instance, in June 2009, the IPR Center received information from the Motion Picture Association of America that a website, ninjavideo.net (NinjaVideo), was illegally distributing pirated copies of motion pictures and other audiovisual works. NinjaVideo provided its millions of visitors the ability to illegally download high quality infringing copies of copyrighted movies including movies that were currently in theaters or not yet released, as well as television programs. Despite receiving Digital Millennium Copyright Act takedown notices, the NinjaVideo organization continued to distribute the infringing material.

To date, the NinjaVideo investigation has resulted in the arrests and convictions of five of the six co-conspirators with sentences ranging from 22 months in Federal prison to three years' probation with a combined restitution exceeding \$470,000 to the victims. A sixth co-conspirator remains a fugitive. The defendants in this investigation collected more than \$500,000 from online advertisers and donations by users during the website's 28 months of operation and facilitated the infringement of millions of dollars of copyrighted movies, television programs and software products. During a one week period the NinjaVideo website distributed nearly 600,000 copyrighted motion pictures and more than 1.1 million copyrighted television programs.

Overall, IPR enforcement statistics for HSI increased dramatically over the last three years. From Fiscal Year (FY) 2009 to FY 2011, arrests jumped 115 percent from 266 to 574, indictments rose 206 percent from 116 to 355, and convictions climbed 77 percent, a notable increase from 164 to 291. FY 2012 arrests have already reached 373 in the first

six months of this fiscal year—a strong indicator that our IP enforcement will again surpass the previous year’s results.

PROTECTING HEALTH AND SAFETY

Operation Guardian

Operation Guardian (Guardian) is the IPR Center’s public health and safety initiative. Guardian was initiated in October 2007 in response to several incidents in which hazardous imports into the United States caused serious public safety concerns.

The IPR Center leads a working group comprising HSI, CBP, the FDA-OCI, USPIS, the Department of Justice Computer Crime and Intellectual Property Section, the U.S. Department of Agriculture, and the CPSC to target, interdict and investigate substandard, tainted and counterfeit products being imported into the United States that pose health and safety risks to consumers.

Since the inception of Guardian, HSI and its partners have initiated more than 700 investigations resulting in nearly 200 criminal arrests, obtained over 260 indictments, executed 282 search warrants, secured 171 convictions, and made more than 3,200 seizures valued at over \$87 million.

Operation Safeguard

Operation Safeguard, formerly Operation Apothecary, began in FY 2004 and is an ongoing operation that identifies, measures, and attacks potential vulnerabilities in the entry process that might permit the smuggling of commercial quantities of counterfeit, unapproved, and/or adulterated pharmaceuticals, using international mail facilities,

express courier hubs, and land borders. The name was changed in FY 2012 in order to consolidate the HSI and CBP operations under one name. Operation Safeguard is also being utilized to evaluate the type, volume, and quality of declared pharmaceutical products being shipped in international mail packages. Safeguard combines the expertise of HSI, CBP, FDA-OCI, and USPIS to conduct regular surge operations to secure new intelligence, investigative leads, and assess the deterrent effect of the prior surge.

In support of the Safeguard mission in FY 2011 and thus far in FY 2012, HSI personnel have coordinated and conducted 18 Safeguard enforcement surges in conjunction with CBP, FDA and USPIS at international mail facilities and express courier hubs throughout the United States. These surges have resulted in the examination of more than 8,800 parcels, more than 1,100 of which were either detained or seized. In FY 2011 and thus far in FY 2012, through Operation Safeguard, HSI special agents have conducted 66 investigations, 25 criminal arrests, 6 indictments, the execution of 30 search warrants, obtained 18 convictions and made 341 seizures valued at over \$33.2 million.

INTERNATIONAL EFFORTS

Recognizing that enforcing intellectual property laws is an international effort, the IPR Center works with the World Customs Organization (WCO), INTERPOL, and the U.S. Departments of State, Commerce, and Justice on a variety of initiatives, including providing training in IPR enforcement to our foreign law enforcement partners.

HSI is recognized worldwide as an expert on criminal customs matters, and holds positions as Chair for the WCO's Enforcement Committee and Chair of the Commercial

Fraud Working Group. In addition, HSI has assigned a Deputy Director to Brussels to coordinate our international IP efforts. In March 2011, the IPR Center proposed, and the WCO accepted, Operation Short Circuit, a three month surge operation in July 2011 through September 2011 to combat the importation and distribution of substandard and counterfeit electrical items. Over 43 countries participated in this operation which resulted in the seizure of more than one million items, including; almost 4,800 boxes of holiday lights, over 350 boxes of surge protectors, over 3,700 boxes of extension cords, almost 800,000 individual batteries, 18,000 boxes of batteries, 42,000 power supplies, 33,600 power adaptors, and 115,000 chargers.

COMMERCIAL FRAUD

HSI has a long history of engagement in commercial fraud enforcement dating back to our past as investigators for the former U.S. Customs Service. HSI, as the Department of Homeland Security's investigative arm, investigates U.S. importers, companies or other entities that attempt to circumvent lawful trade mechanisms, including payment of required duties.

Illicit cargo and goods are often smuggled into the U.S. through methods similar to those utilized by drug traffickers and human smugglers. Individuals illegally import items by sea, air and land, penetrating U.S. borders with falsely described and/or mislabeled merchandise. Schemes include the exploitation of the in-bond system, transshipping to third countries and falsifying the country of origin, or stealing the identity of a legitimate importer. HSI works closely with CBP and numerous other law enforcement partners to identify and combat these schemes.

In-Bond Diversion and Trade Schemes

HSI and CBP have identified illegal diversion of in-bond merchandise as a vulnerability that can endanger public health and safety, damage the U.S. economy, and facilitate or finance the illegal activities of organized crime. The in-bond system allows foreign merchandise to physically enter the United States at a port of entry to transit the United States for export to a third country. When conducted properly, in-bond transactions facilitate trade by allowing the use of U.S. infrastructure for the transportation of goods to foreign markets. In-bond movements are incredibly valuable to trade, but also have an inherent vulnerability because they can be diverted to smuggle restricted or high-duty items into the United States.

To mitigate potential vulnerabilities in the entry process that might allow smuggling of commercial merchandise via bonded warehouses, HSI established Fraud Investigative Strike Teams (FIST). FIST operations, which began in 2004, focus on protecting the integrity of the in-bond process. FIST personnel consist of HSI special agents, CBP officers and representatives from other federal agencies. These teams focus on identifying unauthorized manipulations of commercial merchandise within bonded areas and preventing unauthorized access by employees who lack proper immigration documentation and/or the background investigations required to have access to the bonded warehouses.

Trade Scheme Utilizing the Identities of Legitimate Importers

HSI uncovered an elaborate trade scheme to smuggle counterfeit goods manufactured in China into the United States utilizing containers falsely associated with legitimate importers. Through the use of an unwitting customs broker, the conspirators fraudulently stole the identities of legitimate corporations to import counterfeit goods to evade detection at the Port Newark-Elizabeth Marine Terminal. In total they imported, or attempted to import, more than 135 containers of counterfeit goods into the United States. Many of the containers of goods held millions of dollars in merchandise; together they had an estimated retail value of more than \$300 million.

Some of these same conspirators also engaged in a conspiracy to launder what they believed to be the proceeds of narcotics and illegal gambling activity through banks in China, the United States and elsewhere. As of April 2012, 26 individuals associated with this investigation have been arrested and more than \$3 million in proceeds have been recovered.

Anti-Dumping and Countervailing Duties

The HSI Antidumping and Countervailing Duty (AD/CVD) Program is another illustration of how HSI and CBP protect U.S. businesses from unfair trade practices and protect the revenue of the United States. When the U.S. Department of Commerce (Commerce) determines that an imported product is being dumped or benefits from an actionable subsidy and the International Trade Commission finds injury or threat of injury to a U.S. industry, an anti-dumping duty order or countervailing duty order is imposed to offset the dumping or actionable subsidization.

HSI, with assistance from CBP and Commerce, investigates importers or other entities attempting to circumvent payment of required duties. The goal of an HSI AD/CVD evasion investigation is to ensure that U.S. industry is protected against unfair trade practices and to ensure that the United States receives the legally required tariff revenue.

Currently, HSI is involved in approximately 100 investigations relating to open Commerce AD/CVD orders covering commodities such as honey, saccharin, citric acid, tow-behind lawn groomers, shrimp, steel, and wooden bedroom furniture.

Operation Unravel

Textile imports represent approximately 43 percent of all duties collected by CBP. In 2009, HSI and CBP officials were alerted to several schemes used in the undervaluation of textile products imported from China, including, but not limited to, incorrect classifications, underreported quantities, and questionable entry documentation. Due to the severity of the problem, HSI and CBP, with the cooperation of the Mexican Government, initiated Operation Unravel.

Operation Unravel was a three-phased initiative, commencing in March 2011, which was designed to identify shipments of Chinese textiles that were ultimately being smuggled into Mexico, frequently in contravention of the North American Free Trade Agreement (NAFTA). The first phase focused on shipments at the port of Los Angeles/Long Beach and then moved under bond to and through a port of export to Mexico. This phase involved physical cargo examinations at the unloading stage and corresponding examinations at the point of export.

The second phase involved intensive data analysis by the CBP New York National Targeting and Analysis Group on imports of apparel into the United States from Mexico with a preferential NAFTA duty/origin claim. Based on this analysis, a group of Mexican producers was identified for additional scrutiny by CBP field personnel in the form of extensive entry/declaration reviews. Thirty-two percent of the companies targeted produced discrepancies that resulted in recovery of over \$200,000.

The third phase involved HSI and CBP personnel visiting the premises of 38 U.S.-based exporters of NAFTA originating goods used in the production of wearing apparel that was ultimately imported from Mexico with a preferential NAFTA claim. Nearly all of the companies were found to be issuing invalid NAFTA certificates of origin for export to Mexico. Furthermore, most of the company officials did not, or claimed they did not, understand the requirements of the agreement.

The results of Operation Unravel are still being analyzed to identify additional vulnerabilities in the bonded movement system and have led to the referral of four companies to HSI for potential criminal investigation.

Overall, commercial fraud enforcement statistics increased over the last three years. Arrests climbed 24 percent from 90 in FY 2009 to 112 in FY 2011; indictments increased by 53 percent from 43 to 66; and convictions rose slightly from 59 to 62 – an increase of 5 percent.

Trade-Based Money Laundering

Another scheme designed to circumvent lawful trade mechanisms is trade-based money laundering. HSI's Trade Transparency Unit (TTU), which aggressively targets

trade-based money laundering and commercial fraud, has partnerships with Argentina, Brazil, Colombia, Paraguay, Mexico, Panama and, most recently, Ecuador. The core component of the TTU initiative is the exchange of trade data with foreign counterparts, which is facilitated by existing Customs Mutual Assistance Agreements or other similar information-sharing agreements. The partner countries recognize the value of sharing trade data with the United States and gaining the tools to analyze their own data.

Recognized as the best mechanism to combat trade-based money laundering, TTUs have been highlighted in numerous U.S. government publications including *The National Money Laundering Threat Assessment*, the Department of Treasury's *National Money Laundering Strategies*, and the Department of State's *International Narcotics Control Strategies*.

By combining international efforts, TTUs can identify international trade anomalies indicative of trade-based money laundering. This information is then used to initiate and support international criminal investigations related to customs fraud, tax evasion, money laundering and other financial crimes. It bears mention that HSI is the only federal law enforcement agency capable of exchanging trade data with foreign governments to investigate these types of crimes.

Additionally, TTUs are contributing to the successes of HSI investigations. With the assistance of the HSI Headquarters TTU, the HSI office of the Special Agent in Charge (SAC) Los Angeles, California in July 2010 closed a two-year investigation of a Los Angeles based toy company suspected of money laundering, cash transaction structuring, and bulk cash smuggling. HSI Headquarters TTU personnel provided analytical support and assisted the SAC office with the execution of a search warrant

issued on the company. The case culminated in the arrest of the company's Chief Executive Officer, company owner, and accountant. Additionally, a Colombian businessman involved in the aforementioned criminal activities with the company was also arrested.

Additionally, in February 2010, three individuals were arrested and three Miami businesses were searched on charges involving the export of goods to a U.S.-designated terrorist entity in Paraguay. The enforcement actions were a direct result of cooperative efforts among HSI, the Joint Terrorism Task Force, CBP, and the Paraguay TTU. By analyzing both sides of the trade transactions, special agents were able to detect fraudulent shipments of electronic goods destined for Paraguay from Miami. HSI special agents worked closely with Paraguayan TTU counterparts to identify false invoices containing fictitious addresses and consignee names, concealing the true destination of prohibited shipments.

CONCLUSION

IPR theft and unlawful importation of illicit goods pose a significant threat to national security, public safety and the economic security of the United States. HSI investigations have shown that these illegal traders and criminal organizations are profit-driven, and exploit loopholes and vulnerabilities in the in-bond system and financial sectors to advance their criminal enterprises. HSI has unique expertise, as well as the necessary infrastructure and established key law enforcement partnerships, to effectively support investigative and operational activities focused on dismantling criminal

organizations – thus reducing public safety hazards and limiting negative economic impact to this country.

HSI will continue to leverage all its tools to coordinate and unite domestic and international law enforcement efforts to combat international trade crimes. We are also dedicated to building on agency outreach programs with the trade community to enhance cooperation with all private sector partners.

Thank you again for the opportunity to appear before you today, and for your continued support of ICE investigative efforts.

I would be pleased to answer any questions you may have.