



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

REGARDING A HEARING ON

**“CUSTOMS TRADE FACILITATION AND ENFORCEMENT IN A
SECURE ENVIRONMENT”**

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

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

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INTRODUCTION

Chairman Tanner, Ranking Member Brady, 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. However, the growth of international trade and commerce brings with it the potential for an increase in economic crimes, border security compromises, and threats to public safety and national security.

Led by ICE, the National Intellectual Property Rights Coordination Center (IPR Center) is the U.S. Government's clearinghouse for investigations into the theft of intellectual property, specifically trademark counterfeiting and copyright piracy. We administer and enforce U.S. trade laws and international agreements, and investigate and aggressively prosecute noncompliant importers, exporters, manufacturers, brokers, and others who commit trade-related crimes. ICE works closely with its law enforcement partners in these efforts, and engages the trade community through an active outreach program.

Today, I would like to discuss some of the innovative ICE 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 myriad approaches we use to target schemes designed to circumvent lawful trade mechanisms.

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 the Interagency Working Group on Import Safety and several incidents in which hazardous imports into the United States caused serious public safety concerns.

In developing Guardian, ICE solicited the assistance of numerous law enforcement and regulatory agencies, including U.S. Customs and Border Protection (CBP), the U.S. Food and Drug Administration's (FDA's) Office of Criminal Investigations, the FDA's Division of Import Operations, the U.S. Postal Inspection Service (USPIS), the Department of Justice's (DOJ's) Computer Crime and Intellectual Property Section, the Consumer Products Safety Commission, and the U.S. Department of Agriculture (USDA). These agencies formed a Headquarters Working Group (WG) to target high-risk commodities from foreign sources. Objectives of the Guardian WG include:

- Targeting, interdicting, and investigating imported substandard, tainted and counterfeit products, including medication or food products that pose health and safety risks to consumers;
- Conducting assessments to identify high-risk commodities and specific ports of entry for enforcement activities;
- Creating inspection and investigative standard operating procedures to be employed during Guardian enforcement actions;

- Developing specific surge activities targeting known shipments, commodities and/or identified smuggling organizations;
- Conducting outreach to and coordinating with private sector and industry representatives to strengthen and enhance our overall effectiveness in responding to the threat of hazardous importations; and
- Enhancing coordination, de-confliction and intelligence sharing among the participating agencies.

Since the inception of Guardian in FY 2008, ICE and its partners have initiated 437 investigations resulting in 102 criminal arrests and 25 administrative arrests, obtained 123 indictments, executed 155 search warrants, secured 70 convictions, and made 925 seizures valued at over \$26 million.

Every year, the Guardian WG initiates surges to target commodities that pose a health and safety risk. Commodities seized since the inception of the program include pharmaceuticals, circuit breakers, extension cords, surge protectors, steel components, honey, shrimp, condoms, and toys, among others. Working Group members continually evaluate the surge activities, initiatives, and commodities targeted to ensure the overall success of the program.

Operation Apothecary

Operation Guardian member agencies have also conducted numerous surges and investigations under an ongoing initiative called Operation Apothecary (Apothecary). Apothecary addresses, measures, and attacks potential vulnerabilities in the entry process to stymie the smuggling of commercial quantities of counterfeit, unapproved, and/or

adulterated drugs through the Internet, international mail facilities, express courier hubs, and land borders.

In support of the Apothecary mission in FY 2009 and thus far in FY 2010, ICE personnel have coordinated and conducted 19 Apothecary 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 20,000 parcels, 1,968 of which were either detained or seized. The intelligence gathered during these surges, since the inception of Apothecary in FY 2004, has resulted in the initiated 274 investigations, 87 criminal arrests, 118 indictments, the execution of 58 search warrants, obtained 90 convictions and 664 seizures valued at over \$2.7 million.

PROTECTING INTELLECTUAL PROPERTY RIGHTS

Historically, there have been overlapping areas of responsibility for intellectual property rights protection among U.S. law enforcement agencies. 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 U.S. agencies: CBP; the Federal Bureau of Investigation (FBI); FDA; USPIS; the Defense Criminal Investigations Service; the Naval Criminal Investigative Service; the U.S. General Services Administration's (GSA's) Office of Inspector General; Department of Commerce's (DOC's) International Trade Administration; and the U.S.

Patent and Trademark Office. Additionally, the IPR Center works closely with the DOJ's Computer Crime and Intellectual Property Section, which provides guidance and prosecutorial support. In October 2009, the IPR Center welcomed its first international partner when the Government of Mexico assigned a Tax Administration Service official to assist with cross-border targeting, interdiction, and enforcement of counterfeit goods. These counterfeit items pose a threat to markets in both the U.S. and Mexico.

In December 2009, the IPR Center coordinated Operation Holiday Hoax—a massive, six-day enforcement surge aimed at identifying and seizing counterfeit goods in transit and at transportation hubs throughout the U.S. and Mexico. The results were outstanding. In the U.S., ICE seized more than 700,000 counterfeit items, including apparel, pharmaceuticals, electronics, cosmetics, and DVDs with a total value of more than \$26 million. Fifteen individuals were arrested in New York and Texas. In parallel enforcement activities, the Government of Mexico conducted 8,111 inspections, executed 100 search warrants and seized 274 tons of counterfeit merchandise.

In April 2010, the IPR Center initiated Operation Spring Cleaning, a national intellectual property theft operation in 22 domestic ICE offices targeting the manufacture, distribution and retail sale of counterfeit goods. The efforts of Spring Cleaning partners, including ICE, CBP, DEA, FBI, and 38 state and local law enforcement agencies, resulted in 45 arrests and the seizure of 700,000 counterfeit items with an estimated value of \$44 million. As part of a separate intellectual property theft investigation during Spring Cleaning, ICE Baltimore agents seized more than one million items, including smuggled counterfeit shoes and luxury goods with an estimated value of \$219 million.

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 around three units: the Field Support Unit, the Programs Unit, and the Outreach and Training 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 prior to forwarding actionable information to the field. The Field Support Unit also utilizes a certified undercover operation to proactively target 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 ICE's own enforcement initiatives and joint agency initiatives. In addition, it develops procedures for ICE's many different IPR actions and activities, including operations Guardian and Apothecary.

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 Departments of Commerce, Justice and State to conduct training and provide support for anti-counterfeiting efforts with international customs administrations and law enforcement agencies.

The central goal of the IPR Center is to provide a "one stop shop" for IPR law enforcement and industry around the United States and the world. However, ICE recognizes that law enforcement cannot do it alone, and so we look to partner with

private industry in our efforts. In a market economy, no one has a greater incentive for protecting IPR than the private sector, which seeks to protect its investment in research, development, manufacturing, sales, marketing, and distribution.

To enhance and facilitate productive partnerships with the public and private sectors, the IPR Center launched Operation Joint Venture. This effort is designed to increase support, communication, and cooperation for our ongoing IPR enforcement initiatives and our critical public health and safety efforts. Operation Joint Venture is ICE's method to provide industry with valuable information about our efforts to combat the importation of hazardous and counterfeit products, and it gives industry a point of contact they can use to provide us with leads and tips regarding efforts to compromise intellectual property rights.

Since July 2008, the IPR Center has coordinated and conducted 420 outreach events with approximately 24,000 industry partners. This outreach is paying dividends. The following examples were the direct result of private sector partnership with the IPR Center that led to successful anti-counterfeiting investigations.

- **International Internet Week of Action**

From November 15-20, 2009, the IPR Center coordinated the U.S. Government's participation in Operation Pangea II, an International Internet Week of Action conducted in 25 countries that targeted counterfeit pharmaceuticals and medical devices sold online. ICE, FDA, CBP, Drug Enforcement Administration (DEA) and USPIS agents and officers conducted interdiction operations at four domestic mail facilities and three express courier hubs. The FDA issued warning letters to 22 Internet Service Providers after identifying 138 websites that were selling counterfeit, adulterated or misbranded

drugs, resulting in 136 websites being suspended. The international enforcement efforts resulted in the inspection of more than 21,200 packages, the seizure of more than 2,300 packages, 153 websites being suspended, and new investigations or formal charges of at least 59 individuals for various violations.

- **Cisco Systems Joint Investigation**

ICE joined forces with CBP, the FBI, DOJ's Computer Crimes and Intellectual Property Section, and the Royal Canadian Mounted Police (RCMP) in an ongoing international enforcement initiative between the U.S. and Canada that targets the illegal distribution of counterfeit network hardware manufactured in China. As part of this initiative, Cisco Systems, Inc. has provided technical assistance in the identification of the counterfeit network hardware.

In July 2008, ICE, working in conjunction with CBP, the FBI and the Defense Criminal Investigative Service, developed information that Ehab Ashoor, in connection with his company, Corporate Data Systems Federal, Inc. (CDS), was importing and trafficking counterfeit Cisco network computer parts. Further investigation revealed that Ashoor was awarded a contract to supply genuine Cisco parts to the U.S. Marine Corps, and provided counterfeit versions instead. Ashoor was subsequently arrested, tried and found guilty of trafficking counterfeit goods. On May 6, 2010, Ashoor was sentenced in the Southern District of Texas to four years and three months incarceration and ordered to pay \$119,400 in restitution to Cisco Systems.

This landmark initiative has achieved significant successes in protecting the public from the risk of network infrastructure failures associated with counterfeit products. In support of these efforts, ICE opened 34 investigations in 18 separate field

offices, eight of which were jointly investigated with the FBI and several with the RCMP. ICE investigations accounted for 115 seizures of counterfeit Cisco products with an estimated retail value of \$26.4 million.

- **Xydeas Unapproved Haloperidol Counterfeit Drug Investigation**

In February 2007, the FDA issued a consumer warning that U.S. consumers who ordered drugs online were receiving the powerful anti-psychotic drug, Haloperidol, rather than the specific products they had ordered. Some consumers became ill and had to seek emergency medical treatment.

Joint investigations by ICE and FDA identified Georgios Xydeas, a Greek national who was allegedly the supplier for counterfeit and unapproved prescription drugs, including some controlled substances, for several web-based dealers. Over the course of the investigation, agents in ICE and FDA's Office of Criminal Investigations received critical assistance from several major pharmaceutical companies, the Department of State, the Government of Panama and the British Medicines and Health Care Regulatory Agency. On April 1, 2008, Mr. Xydeas was arrested in New York City and charged with 43 criminal counts, including trafficking in counterfeit goods, importing controlled substances, misbranding drugs and smuggling goods into the U.S.

Xydeas eventually pled guilty to the introduction of misbranded drugs into the commerce of the U.S., and was sentenced to 16 months in prison. Additionally, Xydeas agreed to administratively forfeit \$100,000 and participate in the investigation of others who use the Internet to prey upon the public.

These cases underscore the importance of the ICE industry outreach program in combating illicit trade. Partnership with the trade community provides ICE with

information, tips and insight from businesses that encounter suspicious activity in the course of normal business. Moreover, industry representatives often provide technical guidance to law enforcement and prosecutors in support of investigative efforts while ICE provides training to educate industry on lawful business practices.

INTERNATIONAL EFFORTS

The IPR Center works with the World Customs Organization (WCO), INTERPOL, and the Departments of State, Commerce, and Justice on a variety of initiatives, including providing training in IPR enforcement to our foreign law enforcement partners.

ICE is recognized as a worldwide subject matter expert on criminal customs matters, and holds positions as Vice Chair for the Enforcement Committee and Chair of the Commercial Fraud Working Group. In March 2010, the IPR Center proposed, and the WCO accepted, Operation Mercury II, which will consist of a five-day surge operation in June 2010 to combat the importation and distribution of substandard and counterfeit pharmaceuticals. This operation will enable WCO members to exchange data, such as addresses, postal markings and other data found inside or outside the parcel, to allow for possible enforcement action.

In addition, ICE has been an active member of the US delegation that has been negotiating the Anti-Counterfeit Trade Agreement (ACTA). The goal of the ACTA initiative is to work with other like-minded countries which are interested in having and promoting strong enforcement of IPR. ACTA aims not only to strengthen legal frameworks, but also to bridge the gap between laws on the books and strong

enforcement on the ground, and to foster ongoing cooperation among the ACTA participants.

TARGETING THE SCHEMES DESIGNED TO CIRCUMVENT LAWFUL

TRADE MECHANISMS

Beyond protecting intellectual property rights and trademarks here at home through education and partnerships with legitimate businesses, ICE is working to target illicit schemes designed to circumvent lawful trade mechanisms. ICE works closely with CBP and numerous other law enforcement partners in these efforts.

In-Bond Diversion

Illicit cargo and goods are 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 mis-described and/or transshipped merchandise, utilizing third countries or diverting merchandise from the in-bond system. The in-bond system allows foreign merchandise to physically enter at a port other than the official port of importation or to transit the U.S. for export. When conducted properly, in-bond transactions facilitate trade by allowing the use of U.S. infrastructure for the transportation of goods to foreign markets. The goods never formally enter U.S. commerce, but instead transit the U.S. under bond by air, truck or rail before exiting the country en route to a foreign destination. 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.

Exploitation of this vulnerability is evidenced in a successful ICE investigation, called KDL, which was conducted by the Special Agent in Charge (SAC) New York. Consolidated containers were imported from China utilizing false documents listing the merchandise as being inexpensive, low-duty rate items such as plastic shower curtains for multiple companies. The importers, through their fraud scheme, falsified entry documentation and substituted the counterfeit merchandise with pre-staged items prior to inspection. In this way, the importers facilitated the illegal entry of more than 950 containers of counterfeit merchandise with an estimated value of more than \$700 million during a two-year period. SAC New York arrested 30 individuals for various smuggling and IPR violations. ICE agents also coordinated efforts with CBP to seize 103 containers of counterfeit merchandise with an approximate value of \$230 million. To date, there have been a total of 30 indictments and 28 convictions in this case. Currently, there are two fugitives at large.

To help attack potential vulnerabilities in the entry process that might allow smuggling of commercial merchandise via bonded warehouses, ICE established Fraud Investigative Strike Teams (FIST). FIST activities, which began in 2004, focus on protecting the integrity of the in-bond process. FIST personnel consist of ICE Special Agents, CBP Officers and representatives from other federal agencies who conduct joint operations that focus on identifying the 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.

Anti-Dumping and Countervailing Duties

The ICE Antidumping and Countervailing Duty (AD/CVD) Program is another illustration of how ICE and CBP protect U.S. businesses from unfair trade practices and protect the revenue of the United States. AD/CVD orders are issued by the Department of Commerce, and CBP administers the collection, and when required, the distribution of the assessed AD/CVD duties. AD/CVD duties are assessed when imports have been found to be sold in the United States at unfair prices or are being unfairly subsidized and a U.S. industry has been materially injured, or is threatened with material injury, by such imports.

ICE is responsible for investigating importers that evade the payment of AD/CVD duties on imported merchandise. ICE special agents work closely with CBP officers, import specialists and regulatory auditors on these investigations. The evasion of AD/CVD orders are often long-term investigations that involve global investigative leads. ICE conducts joint investigations with CBP, the National Oceanic and Atmospheric Administration's Office of Law Enforcement, the FDA, and the Department of Justice. Currently, ICE is involved with approximately 90 investigations relating to open Department of Commerce AD/CVD orders that include honey, saccharin, citric acid, pencils, lawn groomers, lined paper products, pasta, polyethylene bags, shrimp, steel and wooden bedroom furniture.

Operation Mirage

Textile imports represent approximately 43 percent of all duties collected by CBP. In 2009, ICE and CBP officials were alerted to several schemes used in the under

valuation of textile products imported from China, including, but not limited to, incorrect classifications, underreported quantities, and questionable entry documentation. As a result of this information, ICE and CBP initiated Operation Mirage (Mirage).

Between August and November 2009, ICE special agents and CBP officers conducted Mirage enforcement actions in the SAC New York and SAC Los Angeles areas of responsibility targeting 176 Importers of Record (IORs) under the jurisdiction of 16 SAC offices. These IORs were identified as having potential involvement with the under valuation of textile products imported from China. Pursuant to the operation, ICE special agents and CBP officers identified 90 IORs that imported over \$418 million in merchandise and either did not have a legitimate interest in the goods or were fictitious importers. CBP officials are reviewing the entries in an effort to collect additional duties.

Mirage resulted in the identification of potential criminal practices used by these organizations to circumvent the customs laws enforced by ICE and CBP. ICE and CBP are reconciling results of all Mirage interviews to identify the most egregious violations, and determine how best to pursue criminal or civil investigations.

Trade-Based Money Laundering

Another scheme designed to circumvent lawful trade mechanisms is trade-based money laundering. ICE's Trade Transparency Unit (TTU), which aggressively targets trade-based money laundering and commercial fraud, has partnerships with Argentina, Brazil, Colombia, Paraguay, Mexico and most recently, Panama. 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 *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, by merit of this valuable initiative, ICE 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 ongoing ICE investigations. 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 ICE, the Joint Terrorism Task Force (JTTF), 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. ICE 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.

Contraband Smuggling

ICE works to identify the ways in which organized criminal trafficking organizations exploit legitimate trade at U.S. borders and ports of entry. One constant is the threat of internal conspiracies at seaports and airports. These schemes involve the smuggling of illegal contraband by individuals who are employed in the transportation industry and who use their access to international cargo and conveyances to remove illicit contraband from containers and/or baggage prior to examination. Internal conspirators introduce contraband into otherwise legitimate export cargo or conveyances, and they can remove contraband, including narcotics, from an arriving conveyance or a baggage carousel. ICE works closely with CBP's Office of Field Operations to disrupt contraband smuggling groups attempting to slip in amongst the large quantity of goods entering the United States.

Of note are ICE's efforts to counter the smuggling of methamphetamine and its precursors. Criminal organizations manufacture methamphetamine in the United States by illicitly purchasing online the precursors needed to produce it, and illicitly importing these precursors through trade channels and courier services. ICE targets organizations engaged in this activity through a number of ongoing initiatives and investigations. For example, Operation Red Dragon, an internationally coordinated effort, dismantled a criminal organization that distributed methamphetamine precursors worldwide via its website in the United Kingdom.

The case involved six undercover purchases of Red Phosphorus and 600 grams of Iodine Crystals, and resulted in the following significant enforcement results: 138 methamphetamine laboratories dismantled in the United States; 15 methamphetamine

labs dismantled in Australia, Germany and the United Kingdom; six search warrants executed in Scotland and the seizure of 47 different chemicals; and over 90 arrests, including the apprehension of main suspects Kerry Ann Shanks and Brian Howes, pursuant to international arrest and extradition warrants.

CONCLUSION

Intellectual Property Rights theft and unlawful importation of goods pose significant threats to the national security, public safety and the economic wellbeing of the United States. ICE investigations have shown us that these illegal traders and criminal organizations are profit-driven, and exploit loopholes and vulnerabilities in the transportation, importation in-bond system, and financial sectors to advance their criminal enterprises. ICE 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 – reducing public safety hazards and limiting negative economic impact to this country. ICE will continue to leverage all our tools, including the Trade Transparency Units and the IPR Center, to coordinate and unite domestic and international law enforcement efforts to combat international trade crimes. ICE is 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's efforts. I would now be pleased to answer any questions.