

Hearing on Effective Enforcement of U.S. Trade Laws

HEARING
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION

September 27, 2016

SERIAL 114-TR04

Printed for the use of the Committee on Ways and Means

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C O N T E N T S

[Advisory of September 27, 2016 announcing the hearing](#)

WITNESSES

Honorable R. Gil Kerlikowske
Commissioner, U.S. Customs and Border Protection
[Testimony](#)

Hearing on Effective Enforcement of U.S. Trade Laws

U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:06 a.m., in Room 1100, Longworth House Office Building, Hon. Dave Reichert [chairman of the subcommittee] presiding.

Chairman Reichert. Good morning. The subcommittee will come to order.

Welcome to the Ways and Means Trade Subcommittee hearing on executive -- Effective Enforcement of U.S. Trade Laws.

I would like to extend a special welcome, warm welcome, to the Honorable Gil Kerlikowske. I think most members know that Gil and I were partners in the city of Seattle a number of years ago. Gil was the police chief in Seattle and I was the sheriff in King County, which is -- Seattle is the county seat for King County. So we partnered on lots of things prior to coming to the jobs back here that we hold in Washington, D.C. So it's been a pleasure working with Gil and to have him here this morning. As you know, he is the commissioner of the U.S. Customs and Border Protection and brings a lot of experiences with him that helps him lead that team.

Today, we are going to talk about robust enforcement of our trade agreements and our trade laws. They are essential to ensuring that American businesses and workers are treated fairly by our trading partners. Strong trade enforcement goes hand in hand with the opening of new markets through trade agreements.

It is part of our commitment to the American people that we don't just sign trade agreements and let our manufacturers, farmers, service providers, and workers fend for themselves. If foreign competitors don't play by the rules and ignore their obligations, we will call them out.

U.S. Customs and Border Protection, CBP as its known, plays a key role in ensuring that our trade agreements and our trade laws are enforced, and that legitimate trade is facilitated. Customs serves as the nuts and bolts of trade and a strong customs service is vital to our competitiveness, safety, and security. Over the years, the volume and complexity of trade has grown and the challenges that we confront, such as stopping the evasion of antidumping and countervailing duties and protecting U.S. intellectual property rights, have grown as well. As we face increasing competition around the world, we must keep legitimate trade flowing by focusing on our enforcement efforts of high-risk trade.

The Trade Facilitation and Trade Enforcement Act, or the customs bill, which became law earlier this year, was the result of many years of hard work and commitment by the members of this committee on both sides of the aisle. In it, we established the necessary balance between trade and facilitation and trade enforcement that will help American businesses succeed and keep us competitive. Streamlining legitimate trade will increase U.S. competitiveness in the global marketplace and create jobs here at home.

The customs bill reduces paperwork burdens for low value shipments by increasing the de minimis threshold where paperwork is not required from \$200 to \$800, as well as for the U.S. goods returned, and for residue of bulk cargo contained in tankers. These improvements save time and money for our small, medium, and large businesses that drive our economy.

The customs bill also modernizes and simplifies duty drawback, a popular job-creating export program in place since 1789. To increase accountability, the customs bill also strengthens and establishes reporting requirements for existing CBP trade facilitation programs such as the Centers for Excellence and Expertise, trusted trader programs, and the Automated Commercial Environment. These programs cut the red tape in government, reward businesses for good citizenship, and streamline trade.

The customs bill reporting requirements allow us to do our job as the committee of oversight of ensuring the CBP stays on track with these programs. Strengthening enforcement of U.S. trade laws is the other major pillar of this customs bill. Enforcing U.S. intellectual property rights and antidumping and countervailing duty laws prevents our competitors from gaining an edge by cheating.

The customs bill establishes tools for CBP and holds it accountable to clamp down on evasion of antidumping and countervailing duties, enhance targeting of high-risk shipments by requiring information from brokers, and strengthen internal controls over new imports. To protect intellectual property, the customs bill requires CBP to provide right holders with samples to help them determine if imported products are counterfeit.

I want to congratulate my fellow subcommittee members and thank them for their hard work on the customs bill, former Trade Subcommittee Chairman Pat Tiberi, who led our efforts together with Chairman Brady; Dr. Boustany for his tireless efforts on the Enforce and Protect Act and modernization drawback; Mr. Marchant for his work on reducing paperwork burdens for residue and instruments on international traffic; Mr. Young for his good work on his de minimis bill; Mr. Meehan for his efforts to require country of origin markings on certain goods, which is common-sense approach to increasing transparency; Mr. Jason Smith and Ms. Sanchez, who were also very constructive in working on the Enforce and Protect Act.

We also worked closely with Mr. Blumenauer, Mr. Kind, and others on the enforcement fund, and they joined several of our members in strengthening tools to combat forced labor. And Ranking Member Rangel was instrumental with regard to so many of the trade facilitation provisions.

Today, we will have an important discussion about CBP's efforts to implement this critical new law, which if carried out effectively, will enhance our global competitiveness, level the playing field for our businesses, and prevent our competitors from gaining unfair advantage.

Just on another note, Mr. Rangel, our witness today has to catch an airplane, and so we are going to be going to 3-minute questions. And I now yield to the ranking member for his opening statement.

Mr. Rangel. Thank you, Mr. Chairman, for calling this hearing.

Commissioner, we recognize your tremendous responsibilities, and we are here for you to point out how we can be more helpful, especially during the crisis that we are going through. We all are concerned about the forced/child labor law. We understand that there hasn't been an enforcement over 60 years. Antidumping and intellectual property, the chairman has actually covered that. We recognize, in the event you have to leave, we will keep our questions short and hope that you might do the same with your responses to facilitate your departure. And we join with you in support of the hearing and how we can be legislatively helpful to the chairman.

I yield back.

Chairman Reichert. Thank you, Mr. Rangel.

And as I said, today, we are joined by one witness, commissioner of U.S. Customs and Border Protection, Mr. Gil Kerlikowske. And as I said, we are going to limit questions to 3 minutes. He is going to shorten his opening statement.

And, Mr. Kerlikowske, you are recognized.

STATEMENT OF GIL KERLIKOWSKE, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. Kerlikowske. Chairman Reichert and Ranking Member Rangel --

Mr. Boustany. Check your microphone.

Mr. Kerlikowske. Am I on? Okay.

Chairman Reichert, Ranking Member Rangel, members of the subcommittee, it is an honor to be here with all of you. And it is an honor to talk about CBP's role in enforcing what is an incredibly immense and complex area of U.S. trade.

We enforce 500 laws and regulations on behalf of 47 Federal agencies. After the IRS, we collect more money for the Federal Treasury than any other organization. And we understand and recognize the importance of our enforcement efforts, and enforcement has been my entire background before coming to CBP.

Illegal and fraudulent trade practices threaten our economic competitiveness, the livelihood of American workers, and consumer safety. I certainly want to thank the Members of Congress, and particularly this committee, for the Trade Facilitation and Trade Enforcement Act. CBP has been around since 2003 and has never been authorized. And now having the authorization and our regulations and rules all located in one place, along with our increased enforcement authority, is a huge milestone for us.

The numerous parts of the act are complex. We are very engaged in fulfilling every measure of the act and the number of reports that Congress has required. And during the entire time that this process went out, I think the collaboration and the cooperation of the subject matter experts that CBP has in trade would have been very important. We have prioritized the policy, legal decisions, changing resources within our organization to meet this law, and that's been very important to us also.

The chairman mentioned a number of the changes de minimis. The fact that you have approved a group of individuals that report to or work with the commissioner regularly that represent the trade stakeholders, and that has all been very important.

I certainly acknowledge, despite our best efforts, that we are delinquent in some areas of the deadlines on the act, but we are working diligently to put all of that into place and going from not having authorization in 2003 to having this is a great step forward. So thank you.

Chairman Reichert. Thank you.

And we will go to questions quickly. Just a couple from me.

The customs bill provides CBP with new tools to better enforce IPR, enhances opportunities for collaboration with rights holders in the United States, and expands CBP's seizure forfeiture authority to cover unlawful circumvention devices, and strengthens international partnership to stop counterfeiting at the source.

Can you tell us what CBP has been doing to implement these measures and how they are assisting you in your efforts to protect intellectual property rights?

Mr. Kerlikowske. Well, I think the most important thing on the intellectual property rights, Chairman, is the fact that we co-chair or have the deputy's position in the intellectual property rights enforcement center that is run by Immigration and Customs Enforcement. Well over 20 Federal agencies sit in that one location and work very hard to target what may, in fact, be counterfeit or intellectual property rights violation.

I think the highlight that I saw over the Christmastime was, in fact, a very dangerous product, hoverboards. Certainly dangerous, I am sure, if you try to get on at my age and balance on one. But what I would really see is the fact that the underwriters' laboratories seal, they were in fact counterfeit seals. We saw well over 50 fires that have occurred as a result of these. Working with Consumer Product Safety, we worked very hard to make sure that kids didn't get those gifts that perhaps they were expecting. That is just one example.

I know there are a number of other examples where I would emphasize to you all that collaboration and a close working partnership with other Federal agencies is absolutely critical to us doing our job.

Chairman Reichert. Could you also update us on the status of regulation on seized circumvention devices called for in section 303 of the customs bill?

Mr. Kerlikowske. So I know that that is under review. I know that we are working hard with members to produce, not just that information, but also the information that is certainly necessary for some of the other reports. And I would be happy to make sure that we provide an update to your staff on that.

Chairman Reichert. Okay. And, lastly, you did mention that -- you recognized that you are a little bit behind in some of the reporting requirements. Do you have any sort of plan to make sure that -- because it is one of the ways that this committee stays sort of in touch with what is happening within your organization. We are interested in your work, in particular, you know, seeing these reporting requirements established and the customs bill -- customs bill implemented. How have you progressed and proceeded forward with the policy that addresses that?

Mr. Kerlikowske. So our office of trade put together a spreadsheet that actually shows all of the requirements that we have to meet, whether it is in reporting or rules that need to be promulgated, regulations, training, and information that needs to be -- that needs to be communicated to Congress. When we not only put together that spreadsheet about where we were on each one of these requirements, we also took a look at what are the most important, according to staff members and others, and triage those.

I will tell you that we are well on the way. A number of things have already been implemented and people have been shifted to deal with these responsibilities. But I would tell you that we are well on the way before the end of this calendar year to be able to have the majority of these reports, regulations, requirements in place, and we will be more than happy to keep your staffs aware of this, our progress.

Chairman Reichert. Knowing you personally, I know that today we have your commitment that we will have those reports. Thank you.

Mr. Neal, you are recognized.

Mr. Neal. Thank you, Mr. Chairman.

Commissioner, each day 125 Americans are dying from drug-related overdoses, and it is acute in parts of Massachusetts, particularly in the old cities. Many of these victims are succumbing to powerful synthetic drugs like Fentanyl, which are, as you and I both know, hundreds of times more potent than heroin. The toll these drugs are taking is alarming and unprecedented. And I joined Pat Tiberi recently to offer a bipartisan effort to hopefully stem this growing epidemic.

Stopping these drugs from coming through the borders, as you know, is a priority. The Synthetics Trafficking and Overdose Prevention Act is designed to stop dangerous synthetic drugs like Fentanyl from being shipped through our borders. Specifically, the bill would require shipments from foreign countries through our postal system to provide electronic advance data, such as who and where it is coming from, who it is going to, where it is going, and what is in it before they cross our borders. Having this information in advance will enable CBP to better target potential illegal packages and keep these dangerous drugs from ending up in the hands of drug traffickers who do great harm to our communities.

Commissioner, Congress wants to give you the tools to stop these drugs from crossing our borders. Would you agree that this bill perhaps could be very helpful and that there are more tools that you might suggest to us at this moment that can provide better help to get the job done and help fight now what has become a national issue?

Mr. Kerlikowske. Congressman, I really appreciate the effort that Members of Congress -- and I participated in three field hearings on heroin and Fentanyl issues around the country, so I know -- from Arizona to Massachusetts, so I know that this is a significant issue.

As you know, from some of our reporting, our seizures of Fentanyl at the borders, particularly at the ports of entry, have increased dramatically, but we still have, of course, that unknown issue about the Fentanyl that is shipped from overseas and comes in through the air cargo. Having a manifest in advance to be able to target, rather than just the random selection that goes on now, and with the explosion in the increase in air cargo, that information would be very helpful.

And I will be happy to continue to work with you and with the members of the committee and the subcommittee to make sure that if there are additional tools needed -- you know, the difficulties with Fentanyl in both trying to detect it, also the dangers to enforcement personnel. I think Fentanyl is a tremendous threat, not only to the populous, but also to law enforcement personnel. So thank you very much for the work you are doing on that.

Mr. Neal. A colleague recently said -- and you could give us perhaps a quick answer. A colleague recently said that before Fentanyl is treated, that if a dog or a police officer were to sniff it in its rawest form, that it could kill them?

Mr. Kerlikowske. Very much so. That is why we don't train K-9s, because of that. And also the fact that Fentanyl, when you look at it in the hospice -- or the hospital setting, the Fentanyl patches are absorbed through the skin as very, very powerful painkillers. So raw Fentanyl that comes into contact either through nasal passages or through skin absorption can be very dangerous to personnel. So the more -- and, of course, the other part is the Department of State working closely with the countries where we know that this is illegally manufactured and then shipped.

And we had some success, by the way, on synthetic drugs working with the Government of China a few years ago, when I had a different job in the administration. But Fentanyl, I think is -- your recognition of the significant danger that you just mentioned is an important one for us to consider.

Mr. Neal. Thank you very much.

Thank you, Mr. Chairman.

Chairman Reichert. Yes, sir.

Mr. Smith, you are recognized.

Mr. Smith. Thank you, Mr. Chairman.

Thank you, Commissioner, for being here today, and certainly thank you for the service of the men and women of Customs Border Patrol -- Border Protection, I am sorry.

Obviously, the tasks in front of your agency are important from keeping us safe from terrorists to leveling the playing field commercially for U.S. industry to compete on a level playing field. So we thank you for your service.

You mentioned in your testimony that CBP enforces U.S. trade agreement commitments. So I would ask that with China currently negotiating the Regional Comprehensive Economic Partnership with 16 countries in the Pacific region, what would you say is at stake, from an enforcement perspective, should the U.S. fail to act on trade agreements moving forward?

Mr. Kerlikowske. So one of the most important things that we recognize and do is that, frankly, on the trade enforcement issues, we are the pointy end of the sphere. When it comes to the negotiation and the discussion and the work with Members of Congress on trade agreements, we take the advice, although we have embedded someone with the USTR and Ambassador Froman's office. We try to judge all of the information that comes to us. As these discussions and negotiation occur, we try to make sure that our point of view, which is how is this going to be enforced and what are we going to be able to do to enforce it, is absolutely critical.

I mean, we have recognized that we not only have that border security responsibility, but we also recognize the economic security responsibility that we have. And when the chairman and I were in Seattle and you would see that port, you knew how important it was to facilitate particularly exports of produce from Washington State to make sure that it got out.

So we will work closely with Congress. We will work closely with the USTR, who is the lead on this, along with the Department of Commerce, to make sure that the enforcement priorities are recognized and that we have the tools and the capacity to be able to do our job.

Mr. Smith. Thank you. But do you see lost opportunity if we fail to take action on trade agreements moving forward?

Mr. Kerlikowske. Well, it is kind of -- it is a bit out of my portfolio and a bit out of my lane. We tell the people that -- again, with Ambassador Froman in the USTR, we tell them what we need and what is important for us to be able to do the enforcement. We also let them know that we have to be able to be in a position to expedite cargo coming into the country safely and to

expedite our export safely. But when it comes to that area for me that is more of the political decision, I am kind of out of the politics and I am in the enforcement business.

Mr. Smith. All right. Thank you, Commissioner.

I yield back.

Chairman Reichert. Mr. Blumenauer, you are recognized.

Mr. Blumenauer. Thank you, Mr. Chairman.

Welcome, Mr. Commissioner.

Mr. Kerlikowske. Thank you.

Mr. Blumenauer. I want to follow up a little bit. You have alluded to the fact that enforcement is complicated. It involves numerous agencies. You have a piece of the pie, not all of it. I would note that this committee has been aggressive in trying to advance a trade enforcement trust fund so that there would be resources, at least on the House side. There is \$15 million to try and enhance that effort. I assume a portion of which could be made available to you if it were actually brought to bear. Is that your understanding?

Mr. Kerlikowske. It is my understanding. And the working relationship, since the USTR oversees that part. But the working relationship with the USTR and their recognition of our needs is one that I believe they are well aware of, and the support that we have received from Ambassador Froman on these issues is very helpful in a variety of ways, and the money certainly would be helpful to some of our enforcement efforts.

Mr. Blumenauer. Mr. Chairman, I am hopeful that our subcommittee might be able to encourage that. The Senate is AWOL in terms of the additional enforcement resources, which I think we all agree is necessary to be able to make sure that we get full benefit of the trade agreements that we have.

One of the areas that is cloudy for me, I have spent a fair amount of time working on enforcement provisions dealing with illegal logging. And, again, you don't have full thrust with the Lacey Act provisions, but you folks are involved with some illegally harvested timber that is on its way to the United States, recently shipments that have been intercepted. Could you speak a little bit to how we are proceeding with that and what, if anything in addition, would help you with your piece of that responsibility?

Mr. Kerlikowske. So one of the things that I think we have done pretty successfully as a result of the support of Congress, and I know there will be questions about this later, is ACE, the single window or the single portal when it comes to trade. But that has actually forced us to be a bit of the convener and the collaborator with all of those different Federal agencies. Because, frankly, with 60,000 employees, we have more boots on the ground than USDA and a number of the other enforcement provisions. You know, I am very familiar with the incident from last

December involving the Peruvian lumber and the fact that -- how that was brought to our attention. And I appreciate your recognition that USDA, in fact, is the primary enforcement authority. But with a number of people that we have at our ports of entry and the amount of information that we collect on cargo at our national targeting center, makes a huge difference.

So, one, we could not have had better cooperation and collaboration, whether it's on educating us about steel and the dumping of steel or the alleged dumping of steel and also on timber also.

Mr. Blumenauer. Mr. Chairman, I appreciate it. I see that my time expired very quickly. But this is an area that I hope that we again might explore. We have got several agencies that are struggling with making sure that a provision in the existing trade agreement is honored, and I am hopeful that we can continue to work with our witness and others to see if we can sort that out to make it work better.

Chairman Reichert. Great. Thank you, Mr. Blumenauer.

Dr. Boustany, you are recognized.

Mr. Boustany. Thank you, Mr. Chairman.

Welcome, Commissioner. You know, as we have sought American leadership in creating a rules based trading system, enforcement is clearly important, and, which is why I worked very hard over a number of years to give you the PROTECT Act, which provided a full array of tools so that you could be much more effective and aggressive in going after abuses.

But one my priorities was section 605. I know you are aware of it. We have spoken about it before. And this was to undo a great injustice that came about because of inaction at Customs and Border Protection with respect to crawfish producers and other small producers across our country, honey, mushrooms, garlic.

Under the law, we have seen crawfish producers entitled to antidumping duties collected as a result of dump crawfish from China from 2000 to 2007, well over \$100 million in abuses and duties owed. But unfortunately, slow enforcement from CBP, unjustifiable delays from the insurance companies that post these bonds, these collections are still underway and going painfully slow.

We finally had a little breakthrough with \$6 million collected from one insurance company. And instead of turning over that money to these crawfish producers, who are going out of business, CBP chose instead to deduct 90 percent of that to pay self -- pay itself interest.

Now, section 605 was designed by myself and Senator Thune to stop that and to assure that these poor producers who are going out of business are paid what they are owed under American law. And yet I understand now CBP is simply ignoring this section 605 as written and putting its own wishful analysis in place to continue to hold onto this interest. Frankly, I think that is just unacceptable, and I am not going to let up until this abuse is corrected.

Mr. Kerlikowske. So a couple of things I mentioned on that. One, it wasn't until -- in fact, the crawfish producers and the others came to Washington, D.C., asked to meet with me and we sat down that I had the recognition and the information, the fact that when we collect those interest duties -- that the interest went back under the law, under the existing law then, that the interest went back to CBP. I said, you know, when I was the police chief, if you were the victim of a crime and the perpetrator had to pay a fine, the fine shouldn't go for the police department. The fine should go back to the victim.

That's been changed. And a lot of progress has been made. And I was proud and pleased to see the \$6 million. I would tell you there is another substantial amount of money that is in the work also to go back.

The one thing where I think there is certainly some disagreement, and I understand that it is in litigation right now, is how far back the understanding is that interest payments would be, in fact, returned to a victim. There is also a bit of a technological problem, because we have to figure out, in those fines and information collected, what was interest versus what was the penalty. And not all of our systems are, frankly, that accurate and that flexible to go back X number of years.

So if you think about where we were and the money coming to us instead of going to the victim, if you think about our interest now and working very hard -- and, in fact, we have even gone to a collection agency to look at, is where a collection agency that could do a better job of trying to go after the money that we have been unsuccessfully attempting to get. So I think we are pretty close, but I understand your frustration, and I recognize it.

Mr. Boustany. Thank you. I am going to stay on this. And we want as prompt an action as possible. This has to be resolved, because if America is going to lead in trade, we have to have enforcement of our laws and they have to be enforced with the intent that Congress lays out.

Thank you. My time has expired.

Chairman Reichert. Thank you.

Mr. Kind, you are recognized.

Mr. Kind. Thank you, Mr. Chairman.

Commissioner Kerlikowske, first of all, I want to commend you. I worked hard to get included in the Trade Enforcement Act, shutting down this loophole on the exploitation of child or forced or slave labor. And since its enactment in February, you, under your leadership, the agency has brought four enforcement actions already against China on that front. And, you know, for 85 years, there was a prohibition against it, but because of the loophole, it was seldom enforced. And now you are taking that tool, you are running with it. I commend you for doing so.

My question is how pervasive do you think this problem is? How many more future actions? But before you answer that, can I also get your opinion, because it is my sense that in those bilateral, multilateral trade agreements that we have with other nations, those countries tend to act like better actors when it comes to playing by the rules, not trying to cheat, you know, living up to the standards and values that were included in those agreements, as opposed to nations that we don't have any trade agreement with. Is that an accurate description of what you see out there?

Mr. Kerlikowske. I think what I have seen is the leadership that the United States -- and I lead the delegation to the World Customs Organization, 180 members. And what we have tried to communicate to customs organizations all over the world is that they need to have this recognition and understanding about the importance of facilitating lawful trade, but also the importance of doing enforcement.

I think in far -- in too many countries that I have seen, the issue is always around how much money can customs collect, versus what is their enforcement posture. Because it costs -- you know, takes people to do the enforcement and it costs money. So I would tell you that I think we have made some progress in that particular area.

It is hard for me to judge exactly on the forced labor and the child labor issues and prison labor, because one of the things that we did was to reach out and gather as many of the nongovernmental organizations who exist within those countries. They are frankly the eyes and ears on the ground, and we needed to make it easier and we needed to welcome the information that they would give us about what is a potential violation.

And as you know, there is only a reasonable suspicion standard. It wasn't a probable cause standard. We can take action on a less critical amount of information, and I have made it clear to everyone in our organization that we do need to take the action once we reach that threshold of reasonable suspicion.

Mr. Kind. What about the distinction as far as those nations that we have a trade agreement with versus those -- the vast majority that we don't as far as compliance and playing by the rules?

Mr. Kerlikowske. You know, I don't have an opinion. I have the list of the number of free trade agreements that we have, but I have never really given it the analysis about whether or not they are greater at playing by the rules. I am sure there are some real experts that can inform you.

Mr. Kind. Okay. Fair enough. Thank you.

Thank you, Mr. Chairman.

Chairman Reichert. Thank you.

Mr. Paulsen.

Mr. Paulsen. Thank you, Mr. Chairman.

And, Commissioner, thanks for being here. You know, a key component of the customs modernization is the completion of ACE, the Automated Commercial Environment, and ITDS, the International Trade Data System or that single window. These systems are going to help provide Customs Border Patrol, obviously, and other Federal agencies with the improved real-time information on imports and manual processes then get streamlined -- they are automated in 200 different paper forms -- end up being eliminated. I know that ACE has been in development for a long period of time, but I want to commend CBP, the Customs Border Patrol, for the great strides you have made in the last couple of years towards implementation.

I know, although your efforts are to be commended, there are some Minnesota businesses that I have had contact with that continue to express some concerns about the implementation process because large companies, of course, are able to be in a position where they can absorb large losses that may result from a shipment that gets held up at the border due to a technical issue with ACE. But the smaller companies that operate on a relatively thin margin, they don't have that same luxury.

So can I just have your commitment or can you chat a little bit about how you are going to continue to work with the trade community and partner with government agencies as that rollout goes forward to make sure it is smooth?

Mr. Kerlikowske. Sure. Part of the fact that in our authorization that you have affirmed that there will be a standing committee that will report with or to the commissioner that represents trade stakeholders, freight forwarders, business people, importers, manufacturers, et cetera. We have had that in place for a number of years, but frankly, a change in administration could have done away with that. The fact that that is in the law now I think is one very helpful.

So four times a year for 2 days each we get direct feedback from the people that are doing the work, and we have had great participation in that. So I would commit to you two things. One is that we are very intent. And after all of the platforms that have been launched, that ACE will be a running viable commercial entity for both the private sector and also for government by the end of this calendar year. And we appreciate the support from Congress for all of the work.

And if you go back -- you know, even when we were working through some the more difficult platforms, we ended up having daily phone calls with well over 100 participants, including the small business people, to make sure that they were getting their questions answered and to make sure that we were doing our job of telling them, well, where are we with the implementation. So thank you.

Mr. Paulsen. Thank you, Mr. Chairman.

Chairman Reichert. Mr. Pascrell.

Mr. Pascrell. Thank you, Mr. Chairman.

American companies that invest in designing in marketing valid products are losing sales and seeing their brands tarnished by manufactured products that violate United States law.

I am pleased that the customs bill we passed earlier this year included several provisions to strengthen intellectual property rights enforcement at the border, including raising the enforcement priority for counterfeit products.

So we don't want open borders to people and we don't want open borders to products, yet that is exactly what is going on here in terms of products. Given this enforcement prioritization for counterfeit products, can you outline the screening process for packages marked as gifts, and can you share any new steps the CBP is taking to enhance enforcement in the area?

Mr. Kerlikowske. I can. I think there are several things. I can't give you the specific information on the gift issue, and I think you are mostly talking about that air cargo environment and the mail environment.

I will be the very first to admit to you that, given the explosion of e-commerce and air cargo, this is one that we're working on very closely. Having manifest information in advance is certainly going to be an issue that is critically important. Having enough people at the locations at FedEx and UPS and, frankly, at our international -- our five international mail facilities is also important. And the fact that UPS and FedEx have been incredibly good partners in putting forward enforcement funds and, essentially, boots on the ground to assist us. The international -- the intellectual property rights center for the targeting is very important. And about 2 weeks ago we cut the ribbon on the new national targeting center for CBP, which has been mentioned. So we are making progress.

Mr. Pascarell. Thank you. I am very concerned about the staffing shortfall at CBP. That is very dangerous. You know, we have four borders. You would think, listening to the Congress, we only have one border, the Rio Grande River, that is it. We have ports in New Jersey that are facing increased wait times for incoming shipments.

The staffing, how would this impact staffing shortages that you have? And are these -- are there things that you can do to address the shortfall?

Mr. Kerlikowske. So we are very disappointed that, one, we haven't been able to hire with the money that Congress gave us a number of years ago after working closely with Members to show that when you put people on board at CBP, they actually help to make money for this country by speeding things through.

We are a law enforcement organization. We are not about to reduce our stringent hiring standards. And I haven't spoken to a local police chief or a sheriff or a Federal law enforcement official that has not expressed the difficulty of hiring. But we are working very closely. And I think the bright spot is one with the military, because we are now accepting -- and I just was down at Fort Bliss to recruit people. We are now looking for people to leave one uniform and come into another uniform coming out of the military. And also reducing the amount of processing time, because there are a lot of jobs available for qualified people. And we have gone from over 400 days of processing time, way, way too long, down to about 160 days.

So we are making progress, and we are going to do our very best to use the appropriated funds that Congress has given us to hire up to the number that are authorized.

Mr. Pascrell. Mr. Chairman, in conclusion, I would really, since we have worked very close on public safety issues, I would really ask you to take a look at the number of personnel that they have and the more responsibilities that have been given to them, now that we have discovered also that we have three other borders. We need to take a very extended look at this, and I would trust your judgment as to the conclusion. Thank you.

Chairman Reichert. Well, Mr. Pascrell and I chair the Law Enforcement Caucus together, and as the commissioner said, sheriffs and police chiefs across the country are having the same problem that his agency is having, and that is finding, first of all, people who want to come into law enforcement positions; secondly, not only finding people who have the desire but who have the qualifications. And I commend the commissioner for making the statement that there is no way that he is going to lower his standards. And I think that should hold true for law enforcement agencies across the country.

So I appreciate your concern. And, yes, I look forward to working with you on this through the caucus.

Mr. Meehan.

Mr. Meehan. Thank you, Mr. Chairman.

And thank you, Commissioner, for your long service to law enforcement. And I thank you for your efforts in working so quickly to help draft an interim guidance with respect to the Enforce and Protect Act. We are already seeing some cases that are being prosecuted or investigated, and I think that is very, very helpful. But as you know, we are getting a lot of activity on the part of those who find ways to circumvent the process.

When I was a United States attorney, we worked -- and I am glad to hear you talk about collaboration with other partners. One of the most effective things that we had to use the Federal laws to enforce violations for things like qui tam laws and others, which invited the participation of interested parties and, actually, the investigative resources that we were then allowed and able to work with.

When I have looked at your efforts with respect to the drafting of the interim final rule, you narrowly defined the parties to the investigation more narrowly than I would expect it would be. Can you look at that and determine whether we ought not have a larger classification of those who can participate in as a, quote, "parties to the investigation"? I think we are going to have an awful lot of resources that could be available to help us get around this.

Mr. Kerlikowske. Congressman, I appreciate your recognition, particularly of qui tam cases. And I meet regularly with U.S. attorneys, particularly the U.S. attorneys that are border U.S. attorneys. We are a huge part of their portfolio. And the qui tam cases are not -- as a U.S.

attorney, they are not always one -- the one that is going to get any headlines. And, number two, they can be very labor intensive. So we have done a couple of things.

One is we have some real subject matter experts in these cases. And we want to be able to hand to an AUSA, an assistant U.S. Attorney, on a silver platter a case that is already put together and to make it easy for them.

The other thing that I have done is to call, whether it is the U.S. attorney in the Southern District of New York or the former U.S. attorney in Los Angeles, when they have made those kinds of trade cases, I have called them up to congratulate them and to tell them, you know, how much we appreciate their work. I will be happy to take -- to go back and take a look at the recognition that you have --

Mr. Meehan. And I am -- my time is limited, so I want to ask one more question with respect to specific importers.

Mr. Kerlikowske. Sure.

Mr. Meehan. Part of the problem we see, particularly in the steel industry, is the ability for importers to go through third parties, to dump into another country, and then to get that steel into the United States. And one of the problems with steel, but it can be any number of products, is the requirement that we go back more specifically and identify the country of origin. And it works against the ability to have more of a deterrent effect.

Can you see if there is any ability to drop the requirement for allegations to identify a specific importer to be able to police this kind of -- you know, this kind of circumvention?

Mr. Kerlikowske. Sure. I would be happy to look at that. I would also tell you that we have made significant improvements with our laboratory sciences division to be able to test steel, regardless of whether it comes from Mexico or Canada or another country, to be able to determine the country of origin. And, in fact, whether, as the Wall Street Journal just recently reported, on some allegations and concerns about aluminum and steel in Mexico, we are -- our scientists are better at determining that country of origin now.

Mr. Meehan. Thank you, Mr. Chairman. I yield back.

Chairman Reichert. Mr. Doggett.

Mr. Doggett. Thank you, Mr. Chairman.

And thank you, Commissioner. Commissioner, as I know customs is aware, 1 year ago today, 71 containers filled with Amazon rainforest timber, enough estimated to cover a number of football fields, almost 4 million pounds of timber, arrived from Iquitos, Peru, in the Port of Houston, Texas. And based on specific actual information, customs properly used its legal authority to exclude that shipment for 30 days. Did it not?

Mr. Kerlikowske. Yes, we did.

Mr. Doggett. And that specific actual information came from the Peruvian environmental authority. After that, as you know, a coffin was carried through Iquitos with his name on it, and he was eventually fired by the Peruvians.

During the year, other than what the Peruvians did, what has Customs done? Have there been any other shipments of logs from Peru that have entered the U.S. since that time?

Mr. Kerlikowske. Congressman, I am not familiar with any additional shipments of timber from Peru. I was very involved that weekend, as many of our personnel were, on making sure that we have the right authorities and the right people. Because if we don't allow that commodity then to come into the country and that commodity no longer makes a profit, that sends a powerful message back --

Mr. Doggett. So it is your belief that since that shipment arrived in Houston, that there have been no other shipments in the United States of Peruvian timber?

Mr. Kerlikowske. I can't answer that, but I have not been --

Mr. Doggett. That is a question that I -- I didn't want to surprise you with any questions today.

Mr. Kerlikowske. Right.

Mr. Doggett. That was one of the questions that I sent you last week that your staff said that you could answer today.

Mr. Kerlikowske. I am sorry. You know, I think I probably received about 120 different questions from different members. I am happy to take a look.

Mr. Doggett. Well, can you tell me, one of the other questions I asked was, during the 8 years that the Peru trade promotion agreement has been in effect, do you know how much Peruvian timber has been imported into the United States?

Mr. Kerlikowske. I don't.

Mr. Doggett. Do you know the answers to any of the questions that your staff said you would be prepared to answer today?

Mr. Kerlikowske. I do know, and I think I have been -- I have done my very best to help make an understanding that with 60,000 people and 800 people --

Mr. Doggett. My only -- I appreciate your testimony, but since I have 30 seconds, my question is can you answer any of the questions that I posed to you last week that your staff told me you would be ready to answer today? There were five of them.

Mr. Kerlikowske. I think I did.

Mr. Doggett. You have not answered any of them yet. And I would just ask you, do you know when you can answer them, when you can provide an answer to those questions?

Mr. Kerlikowske. I think I can provide an answer at the conclusion of the hearing.

Mr. Doggett. Great. Well, I would like to have had it before so we can discuss it. But you are aware of the percentage of that shipment in Houston that was illegal timber, are you not?

Mr. Kerlikowske. I am aware of that shipment, having worked it all over the whole weekend with Ambassador Froman, the Department of Commerce, the Department of Agriculture. So it wasn't like anybody was asleep at the switch on that, and we --

Mr. Doggett. I think there is a question about indifference, but you know the specific percentage of that shipment of 4 million, almost 4 million pounds of timber, you know the specific percentage that was illegal timber, don't you?

Mr. Kerlikowske. I don't know. I don't.

Mr. Doggett. Your office knows that information?

Mr. Kerlikowske. Well, I think -- and I would be happy to communicate right after --

Mr. Doggett. Yes, sir. But I had an opportunity to ask you about it today, and that is why I sent you the questions in advance that you have not answered, but thank you.

Mr. Kerlikowske. Okay.

Chairman Reichert. Thank you, Mr. Doggett.

Mr. Marchant.

Mr. Marchant. Thank you, Mr. Chairman.

Commissioner, I represent one of the largest airports in the United States, the DFW airport. Could you share with us, please, the problems and the major challenges that you are presented with in enforcing the trade pact of 2015 as it relates to DFW airport and then specifically the larger airports in the United States?

Mr. Kerlikowske. I need just a little bit of clarification. On trade or on the travel issues?

Mr. Marchant. On --

Mr. Kerlikowske. Because we get a lot of air cargo that comes in.

Mr. Marchant. Yes.

Mr. Kerlikowske. And so the inspections at air cargo, whether at DFW or Miami, when it comes to produce and other things, you know, we have our agricultural inspectors, many of whom will be graduating from a class, in fact, today down in Florida -- in Georgia.

So we do a lot of inspections of those things, whether it is fresh produce or others, or people coming in that, in fact, have plant material that can harm our agriculture industry.

We get 112 million international passengers a year, so the challenges in an airport the size of DFW or JFK or LAX are pretty immense, but I think our folks do a very good job of trying to make sure that they are protecting the environment and protecting our agriculture industry.

Mr. Meehan. Thank you, Mr. Chairman.

Chairman Reichert. Mr. Rangel.

Mr. Rangel. Thank you, Mr. Chairman.

Thank you, Commissioner. I know you have to leave. Does your commission involve itself with the need of improvement in infrastructure? Would the improvement of infrastructure be of any assistance to you in the enforcement of laws?

Mr. Kerlikowske. Yeah. The infrastructure improvements that were made to our ports of entry as a result of the American Recovery Act were immense. Many of those projects were already planned in the works --

Mr. Rangel. Are you satisfied that we are keeping up with our infrastructure in order to support your efforts to enforce the law effectively?

Mr. Kerlikowske. We have a number of plans to increase our ports of entry. The new JFK terminal with JetBlue, the work that has gone out at Houston Hobby and others.

Mr. Rangel. How do you share your plans? Were they included in the omnibus bill where you had input?

Mr. Kerlikowske. They are. We work closely with the interagency, with GSA and others, and we work closely with Members of Congress who have particular interest in trying to improve their facilities.

I couldn't agree with you more when it comes to an efficient, well-planned infrastructure for international air travel or cargo makes a huge difference in us being able to enforce.

Mr. Rangel. Well, my point is, do you have an overall plan that you can present, rather than depending on Members, so that when we are talking to a President, no matter who she might be,

about a plan for infrastructure, we could include your plan as a part of that overall plan as relates to commerce and interstate trade? Do you have that?

Mr. Kerlikowske. We do have that -- we do have that plan. We do work it through the interagency.

Mr. Rangel. Could you share your commission's plan as it relates to improvement in infrastructure as it impacts on your job?

Mr. Kerlikowske. I can.

Mr. Rangel. And I might say, if you can recommend anything to this committee that you think could help you to enforce the laws that we have already passed, it would be helpful.

Mr. Kerlikowske. I can.

Mr. Rangel. I yield back.

Chairman Reichert. Mr. Young.

Mr. Young. Hello, Mr. Commissioner. Thanks for being here today.

Mr. Kerlikowske. Thanks.

Mr. Young. So it is no secret there is a major trade agreement that will soon come before Congress. And sort of outside the scope of this hearing, I have got major concerns about several provisions of that agreement, including intellectual property protections. But with that said, I am not confident that agreement will move forward.

There is a school of thought out there, however, that we should wait to consummate any trade agreements whatsoever until we fully enforce all existing trade agreements. And I feel very strongly, as do so many of my colleagues on both sides of the aisle, that we have to be very vigilant about enforcing trade agreements. This is why I and others have supported giving tools, a new Trade Enforcement Trust Fund, new legal options to those whose rights have been violated or intellectual property stolen. And your agency, Customs and Border Protection, we have given you new tools to go after those who would evade antidumping and countervailing duties provisions.

So my question is this: Though I know you have already reassured us that you will be vigilant, what impact do you think it would have on, say, Indiana manufacturers, Indiana ag producers, who want to sell to 95 percent of the world's consumers who are outside of the United States, if we waited until we fully enforced every existing trade agreement?

Mr. Kerlikowske. So I think my answer on full enforcement is one that I am often asked in other settings, and that is on border security, also exactly what is border security and what are the numbers? We make a lot of seizures. We seize a lot of products that come in. We work very

hard to be open and transparent with the agriculture and the manufacturing stakeholders. And I think you all have heard that repeatedly from the trade.

Full enforcement is probably one of those that's in the eye of the beholder. But I think the fact that we send a strong message to the rest of the world that we are going to work very hard to inspect and to seize and to enforce the laws that Congress has passed.

Mr. Young. Yes. So in short, as the commissioner of Customs and Border Protection, do you believe that we can make significant improvements, stay vigilant, enforce our trade laws, while opening up foreign markets to Indiana manufacturing goods, food, fiber, et cetera?

Mr. Kerlikowske. Yeah. I think we know very well the --

Mr. Young. Yes?

Mr. Kerlikowske. Yes.

Mr. Young. Thank you.

I yield back.

Mr. Doggett. Mr. Chairman, I neglected to ask you for unanimous consent to insert into the record of the hearing my letter to the commissioner on September 23 with the questions that I referenced.

Chairman Reichert. Without objection.

Mr. Doggett. Thank you.

[The information follows: [The Honorable Lloyd Doggett](#)]

Chairman Reichert. Mr. Tiberi.

Mr. Tiberi. Thank you, Mr. Chairman.

Mr. Commissioner, I recently introduced a bill with several of my colleagues called the STOP Act, Mr. Neal referenced to you earlier, to try to keep illicit drugs from entering our country through foreign posts. And just this last weekend in Cleveland, Ohio, seven folks died from overdoses of these drugs.

This bill would extend the same level of advanced electronic security screening to packages coming into the United States from overseas through the postal system, the U.S. Postal System, that currently applies to the same packages that come in through private carriers. Senator Portman has introduced it in the Senate on a bipartisan basis as well.

And last week, in the Senate in front of the committee, the assistant commissioner in the Office of Field Operations of CBF -- CBP stated that having access to advanced electronic data would allow CBP to be more effective in targeting potentially illicit shipments. Do you believe that having access to advanced electronic data from these foreign shippers would help you all perform more sophisticated risk analysis in order to target these potential illicit shipments?

Mr. Kerlikowske. I do. Just as the information that's been helpful in recognizing people that shouldn't get on an airplane because of advanced passenger information and the same way with cargo that comes into this country that is manifested, for instance, on a ship 72 hours in advance and even preloading, having that information so that we can do everything that we can based upon risk is important, and yes, I agree.

Mr. Tiberi. Thank you. Certainly, I appreciate your efforts in drafting an interim final rule on the Enforce and Protect Act. I was Trade chairman when that process began. And we were very clear that CBP was to operate under specific deadlines. The law created a mandatory deadline of 300 days to make a final determination, but in your interim role, sir, in the discussion section, CBP seems to imply that these rules are aspirational. So in our opinion, there is no flexibility under the statute in these deadlines.

Can you clarify to the committee what plans you seem to want to follow in terms of timeline set in the statute by Congress?

Mr. Kerlikowske. Well, we do want to obey and follow all of the timelines that have been set. And I wasn't aware of the kind of distinction that you were talking about, that the proposal may be more aspirational than fact based, and I am happy to spend a little time looking into that and finding out about that.

But, you know, we were given a lot of timelines with a lot of work, and I can assure you we are going to do our very best to meet those and we are going to do our very best to prioritize and triage those as the most important to the subcommittee and the committee as a whole.

Mr. Tiberi. I appreciate that. Thank you for your leadership, sir.

Mr. Tiberi. Appreciate that. Thank you for your leadership, sir.

Chairman Reichert. Thank you, Mr. Tiberi.

We moved through the questioning rather quickly, but I want to give the members who are still present here one last opportunity, if anyone has a burning question left, I would like to recognize that member.

Mr. Doggett.

Mr. Doggett. Thank you very much, Mr. Chairman.

Just continuing then, Commissioner, this action that you took in September of last year concerning this approximately 4 million pounds of Peruvian timber, had that ever been done before or since?

Mr. Kerlikowske. We have seized lumber -- I don't know about Peruvian timber, but we have seized lumber in the past and held it. Of course, it can be expensive and difficult when you are making those seizures, so --

Mr. Doggett. Yes, sir. When you do make those seizures, who is responsible for storing the timber?

Mr. Kerlikowske. We ask that the private sector, that the party that was involved in this, that they bear the cost of that rather than the American taxpayer.

Mr. Doggett. And they are requested to provide a bond or insurance on the timber?

Mr. Kerlikowske. We request that they make the payment, whether it is through a bond until a final determination is made, but we want that -- we work very hard to try and get that money in advance on a seizure storage.

Mr. Doggett. With the information that has come out, that is still -- a very significant portion of Peruvian timber is illegally harvest, does that not provide you specific actionable basis for holding each shipment that comes to the United States from Peru?

Mr. Kerlikowske. I think it would provide, with the United States Department of Agriculture, under their authority, a great deal of information. As I said earlier in the testimony, we have a lot of boots on the ground in a lot of places where USDA or Consumer Product or others don't. That is why collaboration is really important.

Mr. Doggett. Well, they have authority. You have authority for the 30-day hold like that that you put -- or the 30-day preventing them from entering the United States that you utilized last September.

Mr. Kerlikowske. And we need to make sure that we do it in conjunction with the information that they provide us. You are right.

Mr. Doggett. And you don't -- you say you do not know how much Peruvian timber has come into the United States in the last 8 years?

Mr. Kerlikowske. Congressman, I just don't have that right in my mind. It actually may be in the book with all of the information.

Mr. Doggett. All right. So I may be able to get it afterwards, as well as to find out how much of that has been inspected?

Mr. Kerlikowske. I am happy to tell you that.

Mr. Doggett. And the 4 million pounds of timber, is it still sitting in Houston today, a year later?

Mr. Kerlikowske. It was excluded from entry into the country.

Mr. Doggett. Does it sit in a ship? Has it gone back to Peru? Or what has happened to it?

Mr. Kerlikowske. I know that it was excluded so that the profit that could be made of that timber coming into the United States could not be -- could not go back to the illegal loggers.

Mr. Doggett. Is it being held in Houston?

Mr. Kerlikowske. I don't believe it is.

Mr. Doggett. Okay. You think it is not anywhere within the boundaries of the United States, including our territorial waters?

Mr. Kerlikowske. I don't believe it is.

Mr. Doggett. And are you able to identify to us the importers and our consignees of that timber?

Mr. Kerlikowske. I believe we have protests filed by several different organizations so that some of the -- over that seizure. So some of this is in litigation.

Mr. Doggett. What are the --

Chairman Reichert. The gentleman's time has expired.

Mr. Doggett. Thank you.

Chairman Reichert. Any other member have -- wish to be recognized?

Well, I want to thank the commissioner for his testimony today. Thank you for answering the questions and also committing to providing us with follow-up information and the reports that we have requested.

Please be advised that members will have 2 weeks to submit written questions to be answered later in writing. Those questions and your answers will be made a part of the formal hearing record. Our record will remain open until October 11th. And I urge interested parties to submit statements to inform the committee's consideration of the issues discussed today.

With that, the subcommittee stands adjourned.

[Whereupon, at 11:09 a.m., the subcommittee was adjourned.]

[Public Submissions for the Record](#)