

**TESTIMONY OF SENATOR ROB PORTMAN
TO THE UNITED STATES SENATE
COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND
GLOBAL COMPETITIVENESS**

MAY 5, 2011

Thank you Chairman Wyden and Ranking Member Thune for this opportunity to talk about the important issue of customs evasion. I know this issue is a personal one for both of you – for both Oregon’s steel tube industry and South Dakota’s honey producers – and it is certainly a crucial issue for numerous Ohio industries.

As you may know, I have visited over 90 Ohio factories during the past few years and have hosted economic roundtables talking to business leaders and workers, which has given me a clear sense of what needs to be done here in Washington. Small business owners, workers, plant managers and local economic development leaders all shared their insights regarding the roadblocks they face when it comes to growing their businesses and expanding employment.

To no one’s surprise, Ohioans and all Americans are most concerned about jobs, and increasing exports is key to American job growth. Exports support over 10 million American jobs. By gaining access to markets for workers, farmers, and service providers, we’re not just helping the economy and creating better jobs, we’re also seeing an increase in our exports relative to the rest of the world.

We need to expand foreign markets for American products, and we can start by passing the export-opening agreements that have already been negotiated. I am pleased by yesterday’s announcement that technical negotiations on the South Korean, Colombian, and Panamanian agreements will begin shortly. These agreements will knock down barriers to American goods and services and add U.S.

jobs at a time when we need them badly. According to the President's own analysis, these agreements could create 250,000 American jobs. Every day that we wait is another day that we fall behind. As other countries move forward and sign agreements, we are stuck not even on the playing field. The European Union's agreement with Korea goes into force on July 1, the same day that the Canada-Colombia agreement goes into force.

Opening markets and vigorous enforcement of trade laws go hand-in-hand, which was my approach as U.S. Trade Representative. I am proud of my record standing up for American workers against illegal trade practices. In fact, at USTR, I initiated the first-ever legal case to be litigated and won against China before the World Trade Organization because of China's unfair treatment of U.S.-made auto parts.

While opening markets is key, it is also important to enforce the trade laws that are currently on the books. As fast-growing economies establish a larger presence in global markets, it is important that they adhere to international rules. Countries like China are not playing by the rules. A lot of people talk about China's currency manipulation – and I agree, China is manipulating their currency. However, this isn't just about currency. This is about a variety of policies and practices like indigenous innovation, transshipment, violations of intellectual property rights and the anti-competitive practices of its State Owned Enterprises. While the opening of China's market represents a huge opportunity for American companies, China is also practicing a form of state-led economic development by systematically distorting its markets in ways that give certain of its companies an artificial and unearned advantage over American companies in global markets.

When countries or individual companies violate the rules of trade, it is vital that the sanctions that discipline these violations are aggressively enforced. Customs evasion is a particularly troubling way for some companies to avoid the rules of the road in international trade. When goods are illegally dumped in the United States, jobs in Ohio and around the country are put at risk. That is why American companies spend millions of dollars every year on anti-dumping and countervailing duty cases. Therefore, after all of the time, effort and resources that are expended to get a protective order put in place, it is extremely concerning that these goods continue to illegally enter our country through illegal transshipment and falsified country of origin markings, undervalued invoices to pay less duty, and misclassification of goods. While most companies play by the rules, too many do not. Left unchecked, this situation has the potential to erode American confidence in the global trading system and diminish support for measures that improve our global competitiveness.

Customs evasion is also a problem for our federal budget with hundreds of millions of dollars of duties not paid each year. While I believe that the federal government has grown beyond appropriate limits, and we should not look to extract more resources from the private sector to fund this expansion, I think we can all agree that funds owed to the federal government by law must be paid. Every dollar in customs duties that bad actors illegally evade represents a dollar of additional borrowing that will be heaped on our \$14 trillion debt. Future generations should not have to subsidize customs duty evasion by those who refuse to play by the rules.

Ohio industries have been particularly impacted by customs evasion including pipe and tube, prestressed concrete steel wire strand and lined paper products. Let me give you a couple examples.

U. S. Steel makes seamless oil country tubular goods (OCTG) -- a sophisticated type of pipe used in drilling for oil and gas -- at a mill in Lorain, Ohio. V&M STAR makes the same product at its mill in Youngstown. Together, these mills employ almost 1,000 Ohioans in good-paying jobs.

I visited V&M STAR earlier this year and they were very concerned about this issue. V&M STAR is a great example of what we have seen in so many other industries. When given a level playing field, Ohio workers, like those at V&M STAR, can compete against anybody. In fact, they just invested \$650 million in their Youngstown facility, creating 350 full-time jobs.

Concerns have also been raised by JMC Steel, the largest independent producer of pipe and tubular products in North America. JMC produces two million tons of standard pipe and tube, line pipe, OCTG, electrical steel conduit, and hollow steel structural pipe every year. They are headquartered in Beachwood, Ohio with facilities across the state in Cambridge, Niles and Warren. They have experienced many of the same problems facing the pipe and tube industry, and I know JMC submitted a statement for the record that specifically outlines their areas of concern.

Just a few years ago, the U.S. OCTG industry was severely impacted by a surge of dumped and subsidized imports from China. In 2008 alone, over \$2.8 billion worth of unfairly-traded Chinese OCTG entered this market -- making this one of the largest trade cases in U.S. history. The effects on the economy of northern Ohio -- and everywhere in the United States where this high-end product was produced -- were devastating.

Subsequently, the U.S. Department of Commerce found that Chinese mills were trading unfairly, the International Trade Commission (ITC) granted relief, and

Chinese imports declined. But almost as soon as the relief was put in place, evidence of fraud and circumvention began to turn up everywhere. Numerous Chinese web sites actively promote their ability to evade this critical trade relief by falsifying the country of origin of Chinese pipe products. Traders in other countries apparently engage in the same type of illegal activity. This often is as simple as shipping a Chinese product through a third country, without any further processing, and fraudulently changing the documentation to indicate a new country of origin. Other reports indicate that trading companies will often engage in minimal processing in a third country -- for example, merely "threading" pipe, which is not enough to change the origin under U.S. law -- and nonetheless report the third country as the country of origin. Finally, there have been persistent reports of Chinese pipe products being brought in under the wrong tariff heading, presumably as a means to evade unfair trade orders in the United States.

Another impacted industry in my state produces prestressed concrete steel wire strand (PC strand). PC strand is steel wire strand produced from carbon wire rod that is used to compress concrete structural members to allow them to withstand heavy loads. Typical uses for PC strand include bridges, parking garages, and certain concrete foundations. The domestic PC strand industry employs roughly 250 production and related workers and has annual net sales of about \$400 million, including 80 workers at American Spring Wire Corporation in Bedford Heights, Ohio. Along with two other producers, American Spring Wire was a petitioner in the successful 2009 trade action against China. As a result of that action, both antidumping and countervailing duties at significant levels were imposed against imports of PC strand from China.

Even before the case ended, however, Chinese traders began to approach U.S. producers and importers with proposals to circumvent any resulting trade orders. The Chinese producers proposed a plan they called “carry trade,” whereby they would send PC strand from China to a third country where the PC strand would be relabeled and possibly repackaged to reflect a different country of origin. By doing so, the antidumping and countervailing duties would be avoided. Malaysia was expressly identified as a proposed country for this unlawful transshipment of PC strand. The Chinese trader stated that an importer could open a letter of credit in Malaysia, where an agent of the trader’s company would be located, and that agent could in turn open a letter of credit to the Chinese PC strand producer. The country of origin certificates would then be changed to say “Malaysia” rather than “China,” even though the PC strand was produced in China, and all duties that should be paid would be avoided.

Once the trade orders against PC strand were entered, Malaysia did indeed become a new source of significant imports through use of this transshipment approach. While imports from Malaysia were non-existent in 2008, they increased to 4.7 million pounds in 2009 and then surged to 32.8 million pounds in 2010, while imports from China – now subject to trade orders – declined. Although the U.S. PC strand industry has met with and provided detailed information to Customs and Border Protection on this transshipment scheme, no action has been taken to correct this problem to date.

Evasion has also been extremely harmful to the U.S. companies and workers who make lined paper products, several hundred of whom live and work in Ohio. For example, after duties were imposed on dumped and subsidized imports of lined

paper school supplies from China, Indonesia, and India, producers in these countries began to circumvent the order by transshipping through third countries.

As these examples demonstrate, customs evasion is a big issue for companies in Ohio and across the country. I commend the Chairman and his staff for your report last year on this issue. While we need to avoid disrupting the orderly flow of legal goods and services entering our country, we need to take concrete steps to stop the flow of illegal imports and put an end to these unlawful practices that are bad for our economy and bad for American workers.

As we think about ways to combat this problem, I hope we will look both at specific steps to stop evasion and broader ways to modify our duty assessment system.

Our discussions with Customs and Border Protection (CBP) lead us to believe that the agency has difficulty quickly investigating suspicious trade flows and acting on information provided by industry sources. Concerns about CBP's ability and interest in focusing on trade are not new. It takes an average of almost a year for CBP to respond to allegations of evasion and circumvention and several years to conclude an investigation. Even once evasion or fraud is discovered, CBP only is able to collect about 1-2 percent of the duties and penalties owed. This is not a sufficient deterrent to unscrupulous actors that are interested in evading trade remedy duties either through transshipment or document fraud and misrepresentation.

It is important that our trade laws be enforced with consistency. I understand that CBP may be interested in implementing a stronger, more coherent approach to combating evasion, but it may be necessary to have some statutory guidance that ensures consistent enforcement of trade remedy duties and accountability by

CBP. A variety of ideas have been discussed, and I believe industry and CBP should work collaboratively to find ways to combat this problem, possibly through a formal task force.

We also need to consider how CBP allocates its resources. CBP needs to better focus its resources so that a disproportionate amount is not focused on the lowest risk importers, while leaving fewer resources for others whom are likely to be more suspect.

Other ideas include CBP developing and implementing an account management system whereby importers and shippers have fully integrated and automated security and customs accounts, allowing the various agencies of the Department of Homeland Security to work in a more coordinated fashion.

Thank you again for the invitation to testify on this important issue. I appreciate your attention to this issue and hope we can work together on ways to prevent goods from illegally entering our country.