STATEMENT OF

AMERICAN BEEKEEPING FEDERATION

AMERICAN HONEY PRODUCERS ASSOCIATION

NATIONAL HONEY PACKERS & DEALERS ASSOCIATION

HEARING ON

"The U.S. – China Trade Relationship: Finding a New Path Forward"

Committee on Finance

United States Senate

Wednesday, June 23, 2010

We applaud the Senate Finance Committee for this timely hearing on the U.S. – China trade relationship. As beekeepers, honey packers, and importers, our challenges seem to grow faster than we can produce honey. The ever-evolving and complex schemes devised to enter honey into the United States without paying the U.S. antidumping duty on Chinese honey imports is mind-boggling, to say the least. Our comments are intended to shed additional light on these schemes, so the committee fully understands the gaps in our current laws and is better positioned to develop legislation that will provide the relevant federal agencies with the enforcement tools necessary to fight this very real threat to our future in the honey industry.

We also commend officials of the U.S. Immigration and Customs Enforcement (ICE) as well as U.S. Customs and Border Protection (CBP) for their dedicated efforts to combat the illicit trade in Chinese honey, which continues to be a major ongoing issue, as unscrupulous but resourceful market participants continue to develop multiple ways to evade antidumping and other U.S. laws. ICE special agents have recently had success in working closely with CBP officials on various honey laundering investigations. Their efforts offer some hope for the future to our industry, which suffered a 34% loss of U.S. managed honeybee colonies (over the last seven months ending in April 2010) due to the mysterious phenomenon known as Colony Collapse Disorder (CCD) and poor weather conditions.

U.S. Import Statistics Highlight the Honey Import Circumvention Problem

U.S. Department of Agriculture Honey Market News data shows the U.S. imported less than 200,000 pounds of honey from China in 2009, despite the fact that China was one of the two largest U.S. honey suppliers before imposition of the Chinese antidumping duty in December 2001. Prior to implementation of the antidumping duty, China had shipped 58.7 million pounds of honey to the United States in 2000.

Record levels of honey are now being imported into the United States from Thailand, Taiwan, Malaysia and Indonesia. These last three countries do not have commercial beekeeping industries with anywhere near the capacity to produce significant quantities of honey, but somehow were able to export 35.5 million pounds of honey to the United States in 2008. In fact, Malaysia has only 25 beekeepers with the capacity to export about 45,000 pounds of annually.

How is it possible for Malaysia to ship 5.4 million pounds of honey to the United States in just the first two months of 2010? The answer is entirely economic, since the honey is transshipped from China to Malaysia. In 2001, Malaysia exported 44,837 pounds of honey valued at $50,000, and after implementation of the antidumping duty on Chinese honey in 2001, Malaysia was already exporting 1.7 million pounds of honey valued at $1.4 million in 2002.

The average price of honey from Malaysia, Indonesia, Taiwan, and Thailand is about $0.75 per pound. Compare this price to the honey from the U.S., Canada, Argentina and Brazil, and the reality that it costs about $1 per pound to produce honey normally. According to USDA, the average price of U.S. honey sold in the United States was $1.41 per pound, while transshipped Chinese honey is being offered as low as $1.15 per pound (which is only possible because no antidumping duty will ever be paid on the imported honey).

Transshipment of Chinese-origin honey through other countries is not the only problem. Chinese shippers and others are also misdescribing honey as blended syrup, honey syrup, and malt sweetener to avoid paying the antidumping duty. Nearly half of the honey entering the United States without payment of the duty is imported as a misdescribed product.

In both 2008 and 2009, at least 80 million pounds of Chinese-origin honey entered the United States each year without paying the anti-dumping duty. This means that uncollected duties totaled $200 million in lost revenues for the U.S. Treasury for this two-year period.

In 2008, 35% of all U.S. honey imports entered our market without payment of the antidumping duty. In 2009, circumvented honey imports grew to 44% of total imports.

The Impact of Transshipments on the U.S. Honey Sector

Increasingly sophisticated honey import schemes are creating drastically diverging market prices. There is now one price for legitimate honey and another rock bottom price (which is sometimes available at one-half the cost of legitimate honey) for transshipped honey. This trade makes it almost impossible for honey packers who refuse to purchase this transshipped product to compete against those who are engaged in this activity. Additionally, the unfair competition is detrimental to the legitimate honey importer segment of the honey industry.

Honey laundering undermines the credibility of the entire honey sector, since the image and reputation of honey as a safe and wholesome product is put into question. Such schemes mean there is greater risk of adulterated honey products being sold as pure honey in the U.S. food chain with increased potential of residues entering the U.S. food supply, since Chinese honey has been found to contain a variety of antibiotics.

The honey laundering trade undermines the image and reputation of honey among U.S. consumers. This illicit trade opens the honey industry to questions of commercial fraud, food safety and security. Clearly, consumers and food manufacturers are also being cheated as this practice spreads.

Department of Homeland Security Continues to Investigate Illegal Activities

In his written statement submitted to the committee, CBP Commissioner Alan Bersin highlighted the agency's "targeted enforcement" approach, including the use of laboratory resources to identify suspected transshipments. We believe this approach has proven effective in detecting transshipped honey and we strongly support these efforts.

We are encouraged that the Department of Homeland Security is continuing to investigate and U.S. Attorneys are continuing to prosecute those who support illegal honey laundering activities. In May of 2008, two Chicago executives of a German-based food company were arrested for allegedly conspiring to illegally import honey from China that was falsely identified as coming from other countries to avoid antidumping duties. According to the government complaint, the company imported honey into the U.S. valued at almost $30 million since 2005. CBP agents tested samples of honey whose shipping documents indicated they were produced in Russia, and the lab results showed that some of the samples contained honey produced in China. The complaint noted that when ICE agents searched the company's Chicago office, they seized documents that showed the company had sold an adulterated shipment to an unidentified company in the U.S. at a discount rate.

Federal authorities have also pursued other schemes, including the activities of Chinese nationals and importers to defraud the United States with false paperwork used to hide Chinese-origin honey. On August 19, 2009, a citizen of China pleaded guilty in U.S. District Court in Seattle, to "conspiracy to enter goods in the United States, and introduction of adulterated food into interstate commerce."

An importer from Bellevue, Washington, was also arrested on May 6 and his trial is forthcoming. According to the complaint filed in the case, his two companies purchased honey from China, and then had it shipped to other countries where it was re-labeled to make it appear it is a product of these other countries. More recently, on October 29, 2009, the U.S. Attorney for Chicago announced that the "president of a honey manufacturer in China" pleaded guilty "to conspiring to illegally import Chinese honey."

Abuse of "New Shipper" Bonding Under the Antidumping Law

Leading up to 2006, Chinese exporters widely exploited the "new shipper" provision of the U.S. antidumping law, which resulted in severe undercutting of U.S. antidumping orders that were meant to protect domestic agricultural markets, including honey. Prior to 2006, cash deposits were required on honey imported from Chinese shippers in order to cover estimated anti-dumping duties in the event that the Department of Commerce later found fault with the shipments and determined that duties were owed. However, "new shippers" of Chinese honey were given a break on the grounds that they had not been a part of the prior dumping activities that had resulted in the anti-dumping order in the first place. As a result, these "new shippers" were given the option to post bonds in lieu of cash, thus significantly decreasing their cost of doing business when compared to "old shippers". Over time, the bonding privilege was exploited and flagrantly abused by "old shippers" posing as "new shippers" to obtain the bonding privilege – only to disappear when Commerce sought to collect the duties owed.

The Pension Protection Act of 2006 included a provision that temporarily suspended the ability of importers of honey from new shippers to choose to post a bond or security in lieu of cash deposit of estimated duties. The amendment served to prevent serious harm to U.S. domestic honey producers and other antidumping petitioners, including domestic producers of fresh garlic, canned mushrooms and freshwater crawfish tail meat. This temporary suspension expired on June 30, 2009, and unfortunately, market data suggests that certain shippers may be laying the foundation to again exploit this loophole in U.S. trade law to the detriment of the domestic agricultural market.

The New Shipper Review Process Was Repeatedly Abused

"New shippers" are foreign exporters who did not ship during the original antidumping investigation. WTO rules provide that imports from new shippers are to be reviewed on an accelerated basis. U.S. law, prior to the bonding privilege suspension, also gave importers from new shippers the added privilege of posting low-cost bonds to secure their dumping duty deposits in lieu of full cash deposits. This bonding option was not required by WTO rules.

The U.S. new shipper review process had been repeatedly abused by alleged new shippers from China. After often lengthy reviews, the Commerce Department has dismissed multiple new shipper cases after determining that Chinese shippers provided false information to qualify for new shipper status. CBP also reported that abuses in new shipper cases were a significant factor in its inability to collect over $100 million in antidumping duties on imports from China during fiscal year 2003.

The bonding option provided a powerful financial incentive for Chinese exporters to falsely claim new shipper status, because dumping duty deposits on imports from new shippers could be secured by low cost-bonds (obtained for pennies on the dollar) rather than by the full cash deposits required in most other cases. Once Chinese exporters obtained new shipper status, they harmed U.S. producers by shipping massive volumes of honey or other commodities at very low prices. These massive imports cause devastating and potentially irreparable harm, particularly to domestic agricultural sectors. Moreover, if the government eventually determines that substantial antidumping duties must be paid, the shipper's affiliated U.S. importer can evade payment by defaulting or disappearing. In effect, this scheme enables Chinese exporters to undercut and avoid almost all of the remedial effect of antidumping duties.

Abuse of the Bonding Option is a Significant Concern of U.S. Honey Producers

In 2001, at considerable expense, domestic producers obtained an antidumping order imposing a substantial dumping duty deposit rate on all imports of Chinese honey. This antidumping order reduced imports of Chinese-origin honey from almost 59 million pounds in 2000 to 17 million pounds in 2002. In 2003, however, low-priced Chinese imports surged by 200 percent to 53 million pounds. This import surge continued in 2004, with imports of almost 24 million pounds through the first half of 2004, compared with almost 15 million pounds in the first half of 2003. If Chinese honey imports continued at that torrid pace, total imports for 2004 would have exceeded 81 million pounds. Moreover, the average import price for Chinese honey was almost 40 percent below the average price for all other imports.

These alarming trends were fueled primarily by abuse of the new shipper bonding privilege. For example, a single self-styled Chinese “new shipper” sent over 11 million pounds of low-priced honey to an affiliated importer in the United States in the six months after the August 2003 start of its new shipper review – an amount equivalent to two-thirds of all imports from China for all of 2002. Continuation of these abuses would have devastated the U.S. honey industry. Other sectors, including domestic producers of fresh garlic, canned mushrooms, and freshwater crawfish tail meat, faced similar abuses.

By suspending a key financial incentive in U.S. law that had been repeatedly abused and was not required by the WTO, the 2006 Act eliminated serious abuses of the new shipper process virtually overnight. Unfortunately, the expiration of this Act in 2009 and subsequent inaction by Congress in extending the law has encouraged Chinese shippers to again set up “shell” companies for the sole purpose of receiving very low dumping margins. At least three companies have shipped one to three containers of honey beginning in December 2009 at what is presumably a “fair” price with the idea of subsequently requesting that the Department of Commerce undertake a new shipper review of its export sales price. Of course, while the new shipper review is underway, the importer posts a bond – generally for much less than the antidumping duty amount that is assessed at the end of the investigation.

Observations

Efforts to stem the flow of Chinese honey imports, which have been shown to be contaminated with antibiotics, are being severely weakened by intentional circumvention of U.S. trade and food safety laws. These circumvention schemes often depend upon unscrupulous actors to establish importing companies that are thinly-capitalized and specialize in importing food products of questionable provenance into the United States. When enforcement actions are taken, these companies shut down operations and become insolvent. They are then replaced with new undercapitalized importers that pick up where the shuttered companies left off.

U.S. honey producers and processors are concerned that history will repeat itself with millions of pounds of honey ultimately shipped to the U.S. through sham companies (whether it is the shipper or importer, or both) that go out of business or declare bankruptcy by the time that the final duty rate is established. Of course, this means that the U.S. government is unable to collect significant antidumping duties that are supposed to be paid into the U.S. Treasury and U.S. honey businesses are undercut by imports that successfully avoid the payment of duties. Therefore, we urge Congress to take action to keep unscrupulous shippers and importers from again taking advantage of a loophole in U.S. trade law.

We concur with the assessment of Department of Treasury Deputy Assistant Secretary Timothy Skud, who submitted the following comments to the committee for this hearing:

> "One area of concern to the Treasury Department, CBP, and other trade agencies has been problems in collecting antidumping and countervailing duties. In response to Congress' interest in this area, the Treasury Department has provided two reports on this issue in recent years. Although CBP's overall duty collection rate is over 99 percent, CBP is able to collect less than 50 percent of antidumping and countervailing duties that have been retrospectively assessed. The conclusion of our reports is that the chief obstacle to ensuring collection of retrospectively assessed duties is the absence of adequate security, such as cash deposits or bonds. *This problem has been exacerbated by unscrupulous importers who knew they were likely to incur retrospective duty assessments and absconded when payment was due.* We and CBP are also working with colleagues at the Department of Commerce to prepare a report requested by Congress on the relative advantages and disadvantages of prospective and retrospective anti-dumping and countervailing duty systems, including the extent to which the respective approaches would minimize uncollected duties and reduce incentives and opportunities for evasion of the anti-dumping and countervailing duty laws."

Mr. Skud's comments are based on a Department of Treasury Report on "Duty Collection Problems," which determined that some importers may be bankrupted, while others "game" the system:

> "In some cases, importers are unable to pay the final duty bill because the bill exceeds their assets. In other cases, it appears that some importers expect that their final assessment will exceed their cash deposit, and that *these importers plan to be 'unavailable' to pay their duty obligations. Some importers establish shell companies that they intend to close if CBP attempts to collect and duties that are determined retrospectively.* In some cases, *importers do not have sufficient attachable assets for the government to pursue.*"[1]

It is our duty to help our government officials ensure that imported honey in safe, legal and properly labeled as to country of origin. Your support of efforts to combat fraudulent Chinese honey import practices could make all the difference in preserving our viability as a beekeeping industry that is absolutely critical to American agriculture and contributes more than $15 billion to U.S. farm output. The adverse affects of this fraudulent trade on legitimate businesses who ethically source honey will not be stopped without the concerted involvement of us individually and the federal government collectively.

CBP officials have had some success in intercepting containers of questionable honey, and we need them to continue their efforts. To enhance this work, we urge this committee to continue to ask the tough questions and develop new legislation that will give CBP and ICE officials the appropriate authorities to address the various import schemes.

To ensure the integrity of the honey sector, it is critical that this committee craft legislation that will put an end to the entry of transshipped and misdescribed honey into the United States. Through targeted enforcement, ICE and CBP agents have had success in continuing to closely track honey shipments, but they may not always have the necessary resources and tools to aid their investigations that will lead to further convictions.

We believe the Customs Reauthorization bill under consideration by this committee provides an excellent vehicle to address a number of concerns that affect the trade relationship between the United States and China. If strong trade rules can be established and enforced, constructive trade between our countries will be enhanced.

Recommendations

Thus, we ask the committee to consider the following provisions for inclusion in the Customs Reauthorization Bill:

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[1] Duty Collection Problems FY 2003-2006, Department of the Treasury (July 2007), p. 9.

1. Extend the new shipper bonding privilege suspension for a period of three years, if not permanently;
2. Require collection of cash deposits on suspect subject commodities, which means CBP would demand cash deposits on U.S. imports where CBP has sufficient evidence to support that the commodity was imported for the purpose of evading antidumping duties;
3. Require CBP to compile a database of individual characteristics of honey produced in foreign countries to facilitate the verification of country of origin markings of imported honey;
4. Add enforcement of "antidumping and countervailing duty laws" to other priority areas such as IPR and health and safety laws;
5. Establish procedures for CBP investigations regarding allegations of transshipped commodities;
6. Require at least one CBP official at each major port who is dedicated to the enforcement of antidumping and countervailing duty laws;
7. Increase CBP and ICE resources for the enforcement of antidumping and countervailing duties, since there is a significant return on investment if these agencies are able to better collect on the $900 million in uncollected duties owed to the U.S. Treasury on honey, mushrooms, crawfish, and garlic; and
8. Implement technologies that will facilitate communications between and among the numerous government agencies with regulatory authority over commodities that enter the United States.

By enhancing CBP's authorities and capabilities, this committee can help minimize the potential risk of adulterated honey products being sold as pure honey in the U.S. food chain, avoid any risk of residues in the U.S. food supply, respond to numerous commercial fraud schemes, encourage compliance with U.S. laws, restore the integrity of U.S. trade law, and collect substantial antidumping duties for the U.S. Treasury.