

Hearing Transcript

Senate Finance Committee Hearing on Customs and Border Protection Oversight

May 11, 2016

HATCH:

The committee will come to order.

I would like to welcome everyone to our hearing this morning, and welcome to the Honorable Gil Kerlikowske, the commissioner of U.S. Customs and Border Protection.

The commissioner last appeared before this committee during his confirmation hearing in January of 2014. A lot has happened since then, so we're happy to have the commissioner here again today.

The Finance Committee, and in fact the entire Congress, has been extremely active on trade over the past year-and-a-half. Just last night, the Senate by unanimous consent passed the American Manufacturing Competitiveness Act, a bipartisan, bicameral bill that will provide tariff relief to American job-creators by establishing a reformed process for the consideration and passage of miscellaneous tariff bills, or MTBs.

Once it's signed into law, this legislation will allow American manufacturers to lower their production costs on parts that cannot be found in the United States. This is absolutely essential if we want American companies to be able to compete effectively in the 21st century global marketplace. Passage of the MTB bill is long overdue and I'm very pleased that we've finally gotten it through Congress and over to the president for his signature.

Many members of this committee on both sides of the aisle worked to get this bill over the finish line. And I want to commend everybody on the committee, especially Senators Portman, Burr and Toomey, for their efforts and others on the Democrat side as well, especially my ranking member and others.

This MTB bill closely resembles legislation we reported out of the Finance Committee last year. In fact, it was just about a year ago that we began floor debate on several of our committee's trade bills that all eventually became law.

One of those bills, the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the customs bill, was signed into law on February 24th of this year. The passage and signing of the customs bill marked the end of a legislative process that began almost 10 years ago and underwent many, many iterations. With the law now in place, CBP and other agencies have the tools necessary to ensure that America is able to compete in the world economy, while also ensuring that our trading partners play by the rules.

As we all know, CBP has the dual responsibility of facilitating legitimate trade and travel, while also protecting the United States from illicit goods and inadmissible people such as terrorists. This dual mission is vitally important to ensure -- ensuring the -- the strength of our economy and the security of our borders.

The overarching goal of our customs bill was to facilitate the efficient movement of low-risk and compliant goods to the marketplace, while also allowing CBP to focus resources on goods that could do harm to the economy or to the economic or physical security of the United States. To that end, I'd like to take a few minutes to discuss some specific ways that the recently passed law enhances and modernizes the way CBP operates.

The new statute includes a number of elements that were designed to help facilitate trade. For example, the law requires CBP to consult with private sector entities to identify commercially significant and measurable trade benefits for participants in public- private sector partnership programs. It also raises the de minimis level from \$200 to \$800, and modernizes the duty drawback process.

In addition, the new law provides a number of new enforcement tools. These tools include a new process at the CBP with strict deadlines and judicial review for dealing with evasion of our antidumping and countervailing duties laws, and a significant expansion of CBP's authorities to protect intellectual property rights at the border. Given the importance of intellectual property to our economy, these new authorities are long overdue and they were among my top priorities in crafting and passing the customs bill.

On top of that, the law includes a codification of the Centers of Excellence and Expertise, which among other things ensures that the post-release process for goods coming in to the United States will be aligned by industry, rather than the port of entry where a shipment arrives. These centers provide tailored support to unique trading environments and eliminate the need for importers to work with individuals at multiple ports of entry that may slow down legitimate trade with needless and duplicative inquiries. The centers also allow CBP to enforce our trade and customs laws uniformly on a nationwide basis, and to prevent nefarious trade practices, including what some have called, quote, "port shopping," unquote.

The new statute also provides the necessary authorization and funding to fully implement the automated commercial environment, or ACE, and requires the completion of the international trade data system, or ITDS, by the end of this year. The completion of ACE and ITDS will allow for the electronic submission of all import requirements through a single window and process. Once fully implemented, this will simplify and streamline the submission of import documents, reducing the paperwork burden on the private sector and ensuring that the CBP has the data it needs to identify high-risk imports and importers.

Much has changed since 2003 when CBP was first established. The new law is the first comprehensive authorization of the agency since that time, and many of the improvements that CBP has made internally over the years have been codified in the statute, including increased

coordination between the two offices primarily responsible for trade facilitation and trade enforcement: the Office of Trade and the Office of Field Operations.

HATCH:

We included this codification to address concerns that many have expressed about CBP over the years, namely that its security mission to overshadow its trade mission. There are many other significant provisions in this bill, several of which were championed by members of this committee on both sides.

I hope we will have an opportunity to touch on some of those in more detail today. While most of us are pleased with these new changes in our customs laws. Simply providing new tools and putting new mandates in place, will not in and of itself improve conditions on the ground.

And as with the passage of any new law dealing with any important government agency, congressional oversight is going to be key to ensuring that the statute is implemented in a manner that reflects our intent. That is why I am requesting permission of Kerlikowske to appear before the committee today.

With passage of the Customs Bill, the commissioner has many new authorities to implement. And I'm looking forward to hearing about how the commissioner intends to use these authorities, as well as the robust discussion of CBP's ongoing efforts to facilitate trade and enforce our laws.

And with that, I'll now turn to Senator Wyden for any opening remarks he'd care to make.

WYDEN:

Thank you Mr. Chairman.

Across the world, trade cheats are looking for any way they can to break our trade laws and rip off American jobs. Customs and border protections is often our number one defense against them. It's tasked with spotting the illegally dump steel and solar technology, the counterfeit chain saws and computer chips for jobs, or lost or economic damages done.

Earlier this year, the Finance Committee spearheaded the first big package of customs legislation in decades as part of the Trade Enforcement Act. Back when the last overhaul was passed, our customs agency was fighting a very different foe. And suffice it to say, Gil Kerlikowske, who comes from the Pacific-Northwest, is -- this individual who's really reached out to this committee.

I very much have appreciated it. And I remember those days because I was chair of the Trade Subcommittee here at the Finance Committee. And suffice it to say, those were days when it was a lot easier for foreign companies to evade duties by concealing their identities.

Now, the internet makes it easier to move quickly and stay hidden in the shadows. Blocking counterfeit products from creeping into our market used to mean stopping the right shipping

container. Now counterfeit products are often tougher to trace. They can be spread out in individual boxes, shipped straight to the doorsteps of American homes.

Since the last customs overhaul, China turned its unfair trade practices into overdrive. And in many cases, the old schemes to get past our trade laws and rip off American jobs have taken on a new spin. So, in the wake of the Trade Enforcement Agreement becoming law, this committee has an important role to play in ensuring that the Customs and Border Patrol is meeting the mark on its trade mission.

This mission remains -- is critical than ever, even with CBP now under the Department of Homeland Security. It's all about focusing. Focusing like a laser on enforcing the trade laws, protecting American workers and defending our economy. I've indicated that I've spoken with Gil Kerlikowske on this issue and he has made it clear that he wants to make tough enforcement -- tough, aggressive, strong enforcement of our trade laws a top priority on his watch.

The early signals are, this focus is producing concrete results. For example, our new legislation closed a truly, outrageous old loophole in U.S. trade law that allowed for certain products made by slave or child labor to be imported to this country.

Now, commissioner, throwing this loophole into the trash can was a priority for Senator Brown and I. And the reason why that was particularly offensive is you had a doctrine known as consumptive economics, where basically, economics trumped human rights. And to me, that's contrary to everything that the United States stands for.

So, I have been very glad to see that we're starting to see real action in terms of enforcing a trade law. I know the agency has taken action to stop the imports of soda ash and several other industrial products from two companies there were alleged to be using forced labor. That is not what our country is all about. That's why Senator Brown and I pushed so hard that legislation and we're glad to see the agency moving to bring actions against these companies.

Now, the agency has a variety of other tools to fight against the trade cheats. And our new customs legislation added to the kick. I'll be especially interested in hearing about the CBP's plans to enforce the Enforce Act, which gives the agency six months to put in place procedures to ensure that American workers aren't injured by foreign products that are evading our laws.

And this has been particularly important because on another front, when I was chairman, we set up a sting operation to catch people who were cheating. And basically, we were flooded with requests from people who wanted to evade our laws. Finally, the agency has an important role to fight unfair competition and job loss by cracking down on duty evasion and bringing in revenue for taxpayers.

CBP is also responsible for keeping illegally harvested timber out of our market and for protecting consumers from unsafe products. It's essential that in the fight against trade cheats, each of these enforcement tools are fully implemented. We tried in the Trade Enforcement Act to say that we were really going to start a new day, Mr. Commissioner.

A new day where we would have what I call, trade done right. And the center piece of it is tougher and stronger in real enforcement of the trade laws. Because otherwise, in this trade debate, people say, I hear Congress is chasing a bunch of new trade deals and new trade agreements. How about enforcing first the laws that are on the books.

You can talk to us about new trade laws in the future after you've been serious and aggressive and strong about enforcing the laws on the books. And I've been pleased that you're sending a signal that that is your top priority. We're glad to have you here Mr. Chairman. And obviously members feel strongly about these issues. And I look forward to our colleagues' comments.

HATCH:

Well, thank you Senator Wyden.

Once again, our witness today is U.S. Customs and Border Protection Commissioner, Gil Kerlikowske. Mr. Gil Kerlikowske was nominated to his current position by President Obama and was sworn in March 7, 2014 in this position. He oversees an annual budget of more than \$12 billion and manages more than 60,000 employees.

Commissioner Kerlikowske's role is to oversee the dual CBP mission of protecting our national security objectives and promoting economic prosperity and security. As commissioner, he runs the largest federal law enforcement agency and the second largest revenue collecting agency in the federal government.

HATCH:

As a head of an agency with such broad authorities and responsibilities, Mr. Kerlikowske relies on the advice of experts in their respective areas while making determinations on issues that can range from admissibility of a foreign traveler to the classification of the newest smart phone. Before his nomination, to his current position Mr. Kerlikowske served as Director of the White House Office of National Drug Control Policy.

Prior to that, Mr. Kerlikowske spent four decades serving in various law enforcement and drug policy positions including nine years as Chief of Police for Seattle, Washington, Deputy Director for the U.S. Department of Justice Office of community oriented policing services. Police commissioner of Buffalo, New York and a lengthy career in as a law enforcement officer in the St. Petersburg, Florida Police Department.

Mr. Kerlikowske, we just want to welcome you to the committee. We're glad to have you here. So we welcome you once again to the finance committee, your full written statement will be placed on the record. So I would invite you summarize your testimony at this time.

KERLIKOWSKE:

Well thank you Chairman Hatch, Ranking Member Wyden. It's an honor to be back with you and the members of the committee. In your opening statement and the ranking members over each state, you covered quite a bit of many of the important things that I was going to mention. And to say that it's a bit intimidating with the knowledge level of trade and intellectual property, I think Senator Portman in his previous life has forgotten more about trade issues than I will probably ever know.

But it's important for me to have promised at the confirmation hearing in front of you several years ago that as much as the security issues were absolutely primary for me. The border security issues it was also very clear that our economic security was of critical importance also. I think there was great concern expressed to members during the confirmation process. That as a former police chief, that I would be solely be focused on the border security issues and not recognize the importance of the trade issues and our economic security.

I would like to tell you that I believe that in the two plus years that I've had the job that I have made every effort to make sure that I am open to the trade community, that I recognize the importance of trade, that I recognize the importance of leveling the playing field. I would also tell you that certainly enforcing 500 U.S. trade laws for 47 federal agencies, \$2.4 trillion in imports, \$40 billion in fees that are collected, 26 million truck, rail, and sea cargo containers a year, 328 ports of entry only helps to explain, not only the importance but also the complexity of this.

During the two plus years that I've had the job I think the trade transformation has been primary with me. How we will work with, communicate and cooperate with the private sector, our other governmental agencies and the consumers have been absolutely important. And you mentioned the automated commercial environment or the single window, which we are on track to complete at the end of this year. Which will give all of those, not only partner government agencies but all of the importers and exporters a view into where their property is and to where things are.

So it streamlines and automates the process. And we have already implemented, I believe, seven of the eight key elements and it is progressing well. And that is again as a result of the partnership. Chairman, you mentioned the centers of excellence and expertise so I won't belabor that but all 10 are up and running as of March of this year and it adds subject matter expertise in a variety of commodities. Such as automotive, electronics, pharmaceuticals, et cetera, that as you mentioned apply to all 328 ports of entry.

The act passed and signed into law is tremendously helpful for us in many areas. And I think that coming from an enforcement background and being able to replicate enforcement priorities and strategies throughout the 60,000 members of customs and border protection will only lead to a robust enforcement of the variety of laws and a strong utilization of the tools that have been provided.

In -- on March 29th and April 13th I issued what are called withhold release orders to two large various shipments of chemical fiber, potassium products, all as the result of the reasonable suspicion standard that they were derived from forced labor in China. In other words, they were not allowed to be brought here to this country. You will see more of that.

We've established a trade enforcement task force. I wanted to call it a SWAT team but it is a trade enforcement task force whose sole objective will be to look for and identify potential violations under that reasonable suspicions standard and to be able to take the appropriate action that's needed.

We'll continue to work closely with the members of this committee and certainly with the staff. And also having had the experience to work with a number of members that are currently in the President's cabinet. In my earlier position, has made relationships strong and powerful in this area, so I appreciate the opportunity to be here.

HATCH:

Well, thank you so much. I think we'll have some questions. I'll turn to Senator Grassley first and then Senator Wyden.

GRASSLEY:

Mr. Director, earlier this year the Washington Times reported that you told the border patrol agents to quote, unquote, "look for another job that has views that different of those of the Obama administration." You apparently made that comment and response to criticism by border patrol agents of the new catch and release policy for agents in the field.

In testimony before the House Judiciary, Brandon Judd, President of the Border Control Council, claimed that agents were told not to do the paperwork to initiate removal proceedings before releasing unlawful border crossers.

GRASSLEY:

I want to quote Mr. Judd, "It has been so embarrassing that DHS and the U.S. Attorney's office has come up with a new policy. Simply put the policy makes mandatory the release with out an NTA of any person arrested by the border patrol for being in the country illegally as long as they do not have a previous felony arrest, conviction or as long as they claim to have been continuously in the United States since January 2014. The operative word in this policy is claim."

Such a remark and such a policy sends a signal to the men and women in the field protecting our borders that they're not valued and that their mission to secure the homeland is not taken seriously. So a very simple question, do you regret telling the agents to find a new job if they don't like the administration's immigration enforcement policies?

KERLIKOWSKE:

I'll be happy to answer that question, but I would like to just for a second, take a little bit of the context. For 14 years I ran two of the largest police departments in this country. And not every police officer agreed with every administrative decision or decisions that were made by mayors and city council members.

If you were unable to follow the rules and regulations and the lawful and ethical authorities who were put forward, and you were not able to do that, then you shouldn't hold that position. You should look for someone else. That's exactly the statement in the context that I would make to the members of the United States Border Patrol, who by the way, I believe, follow the rules, regulations and laws as authoritatively as possible.

During the two plus years that I've served in this position, the United States Border Patrol has not had a stronger supporter. So I would answer your question and say no. In the context I explained, I do not regret my statement.

GRASSLEY:

Well, that's sad that you wouldn't regret that, because what they want to do is protect our borders. And by this policy, they aren't able to protect our borders. Back in November, I and House Chairman Goodlatte sent Secretary Johnson a letter asking about aliens from countries of concern.

For example: Syria Iraq Afghanistan, who have been apprehended while attempting to cross the U.S. border. The letter asked for information related to each such apprehension, including whether the alien made a claim of asylum, whether the alien was detained and what if any, relief from removal or immigration benefit the alien was granted.

It is unacceptable that four and a half months have gone by and the department has not answered. So let me ask you, have Syrians been apprehended at the border in the last fiscal year? And I can say the same thing for Iraqis or Afghanis, but have any been apprehended?

KERLIKOWSKE:

Yes, there have been apprehensions. I think at the end of each fiscal year when I take a look at the numbers, we apprehend people from well over 100 different countries. So you are correct senator.

GRASSLEY:

Should we be concerned that terrorists posing as refugees are potentially slipping across the border?

KERLIKOWSKE:

I think we should be concerned about anyone attempting to enter the country illegally and particularly from special interest countries where there could be even greater concern that they could be a threat. and that's why we put into place as many oversight mechanisms for the people that are apprehended.

And I know, Senator Grassley, that your letter is very important to Secretary Johnson. It is also a bit complex because it does involve CBP, USCIS and immigration and customs enforcement.

GRASSLEY:

Whatever it takes, four months. Do what you can to get us an answer as soon as you can.

KERLIKOWSKE:

I will.

GRASSLEY:

My last question. In July 2015 the Mexican drug lord El Chapo, escaped from maximum-security prison. He was recaptured by Mexican police January this year. El Chapo's daughter is a U.S. citizen, told the Guardian newspaper that the drug lord visited at her California residence twice in 2015 during the period that he was on the run from police after escape.

Can you, with 100 percent certainty, say that these reports are false and that El Chapo did not enter the United States during the seven month period after his escape from Mexican prison?

KERLIKOWSKE:

I could say that we look into that very thoroughly. We had absolutely no piece of evidence other than her antidote remark to a reporter that he had entered the country. But I certainly cannot say with absolute authority that no, that never happened. We just never found any hint or scintilla of evidence that he ever did.

GRASSLEY:

I assume you interviewed the daughter?

KERLIKOWSKE:

I don't know whether the daughter was interviewed by Customs and Border Protection. That would actually be either through the FBI or through Immigration and Customs Enforcement, but I will be happy to ask if that was done.

GRASSLEY:

Well if it hasn't been done, that's a sad comment.

Thank your Mr. Chairman.

HATCH:

Thank you senator.

Senator Wyden?

WYDEN:

Thank you Mr. Chairman. Let's go to the Enforce Act, if we could commissioner, because this was a special priority of mine. It was begun when I was chair of the subcommittee. Many colleagues on both sides of the aisle worked on this. And what I was just stunned by was just how brazen some of these so-called trading partners have been with respect to trying to get around our trade laws.

In China, for example, there were websites on how to avoid duties, how to avoid their legal responsibilities and offers to provide to services to carry this out. You had the website and then people on top of that were talking about how they could offer services.

Basically just scofflaws, thumbing their nose at U.S. trade law enforcement, because they knew they could get away with it. Because too often they would look at trade enforcement and there wasn't any there there.

And so, that's what we begin pushing back on when we wrote the law. And obviously, these past remedy laws were pretty much useless in protecting American jobs.

So, we wanted to turn the page and go to something different. Why don't you begin today by describing how you're going to implement the Enforce Act within the 180 day deadline. In other words, this is going to be a special priority of mine and of this committee. And I'd think it'd be very good if you kind of go step-by-step.

Obviously, you're going to have to have some conversations with domestic industries directly impacted by invasion. But if you would, tell us step-by-step how you're going to implement the law.

KERLIKOWSKA:

So one is, I've made it very clear and it's been very, very clear from not only this committee, but also from the intent of Congress, that a much more aggressive and assertive enforcement posture is needed within Customs and Border Protection.

KERLIKOWSKA:

And by announcing the fact that we have the Trade Remedy Law Enforcement Division by adding a -- essentially a SWAT team within customs and border protection to look for these violations, is important. We will plan on issuing an interim final rule within that 180 day process.

We have certainly heard quite a bit in my meetings with non- governmental organizations and the stakeholders, some of whom are represented in this room: what they hope and would like to see that would be possible to give us a more forward leaning posture when it comes to that enforcement.

So the Trade Remedy Law Enforcement Division, the fact that we're communicating a change in the way we go about enforcing -- looking for these violations. Too often I would see that we would request or want a position paper issued by a non-governmental organization.

I said we don't need as much as a formal position as just give us a tip, just give us the information and we'll proceed with it. Because not everyone is equipped or has the finances within the private sector to do that.

So there is a host of duties that we have taken and a host of outreach mechanisms that we have taken to make sure that we're going to be doing the enforcement, and I think that our staff or my staff has heard more than 100 times or at least 100 times is that we have to points on the board. That means those withhold release orders, seizures, going after the money and we can much more aggressive than in fact we have been in the past and we will be.

WYDEN:

And the point is I think I've used that phrase point from the board. The point is you're not going to bring thousands and thousands of tough enforcement actions in the first 15 minutes. The point is to try to bring a handful of really well targeted enforcement actions so that these rip off artists say it's a new day out there. That you can't just brazenly violate the trade laws and expect to get away with it. I think I've sensed that is your take as well and I appreciate it.

Now, up to now, the agency has used what's called the e- Allegations system to accept allegations of evasion. How does that system differ from enforce as you see it?

KERLIKOWSKE:

So the e-Allegations system has been around for several years and it allows more sophisticated, more knowledgeable organizations or stake holders to give us the information electronically. And I don't think that's much different than when we would get tips in a police department. There was one, I think, primary problem with the e-Allegations system and that is that going back to my law enforcement experience, if your home was burglarized and we took a report and we never told you what happened -- what we were doing, what did the investigation produce, did we get your property back? -- If we never closed the loop with you, you would become very frustrated and maybe perhaps not a crime again.

I think that closing the loop with the people that provide the e- Allegation within the constraints of the law that we have to follow has been very important and I think that the trade community has heard that message and we're going to do a better job.

WYDEN:

One last question, if I might. On the implementation of the forced labor changes, and as I indicated, I thought that the previous loop hole was just offensive to all the values that the country stands for.

This notion that somehow economics, you know, trumps human rights and concern for people who have been exploited in the past.

As I understand it, non-governmental organizations and importers and others are asking some questions as well on how this is going to be implemented. I can tell you that at home in Oregon, I was particularly proud because of our chocolate industry is stepping up. And a company called Tony Choclonely and it was Choclonely because he was the only person at that time, the only person in the chocolate industry who's willing to say I am not going to condone these forced, slave labor kind of practices. They're really stepping up.

But they're a lot of questions from the non governmental organizations and importers on how you're going to implement the provisions, so if you would your thoughts on that?

KERLIKOWSKE:

Sure. Our standard of reasonable suspicion is frankly a low or moderate standards from the standard that, of beyond and to the exclusion of every reasonable doubt. So we can make that decision and of course if that decision is incorrect, that in fact it wasn't produced from derived labor -- prison labor, there can be an appeal, and we are certainly willing to listen and to go through the process of those appeals.

But it's absolutely critical that we go beyond waiting for a petition that we take the information that we need. And I think I was never more moved in this process than just a couple weeks ago, when after issuing a withhold release order those had come about from Mr. Harry Wu who just recently passed away, a renowned human rights activist and active in the Pacific Northwest, who was so pleased and proud of our actions.

WYDEN:

Thank you.

HATCH:

Senator Menendez.

MENENDEZ:

Thank you Mr. Chairman. Mr. Chairman the United States is the world's leader in trusted and recognized brands. The ones in demand, the ones that command the best prices and therefore the most vulnerable to knockoffs and it's our hard-earned reputation as a global economic and cultural leader that makes us a target.

And that makes protecting that reputation and the investments that we put into them so important. That's why I know that my colleagues are as shocked as I am by the latest report by the OECD showing that of the nearly half a trillion dollars in global trade that is made up of counterfeited and

pirated goods, the United States is the biggest victim of all, Accounting for fully 20% of the knockoffs.

And postal parcels are the top methods of shipping these fake goods amounting to 62% of seizures over 2011-'13 reflecting the growing importance of online commerce and international trade in the ease of evading detection when using small packages.

Now this issue was first brought to my attention two years ago by families and businesses in New Jersey hurt by counterfeit prom and bridal dresses that they were tricked into purchasing online. They looked at one and thought it was the same quality but for far less price and they purchased them.

Now, I understand that online search engines, like Google, bear some responsibility as they seem to aid and abet these counterfeiters by failing to police the use of copyrighted produced imagery and online ads. But CBP also has a duty to prevent fake products from entering our market and now the OECD has confirmed the counterfeit shipments are one of the biggest issues confronting our customs and border enforcement system today.

That's why I'm pleased that the customs bill that we passed included report language that I authored with you Mr. Chairman to raise the enforcement priority for counterfeit products, especially those that are marked as gifts to evade custom duties and detections.

Now I have two samples here of packages which contain counterfeit dresses sent to U.S. Customs. Both of them were sent from a business address in Suzhou, China and are clearly marked as gifts.

MENENDEZ:

So, the question Commissioner that I have for you is does a package marked as a gift that originates from a business address in a country like China, which is documented by CBP, the OECD and other sources as being a major source of counterfeits trigger any red flags for our agents? What's the typical screening process that these packages go through? And can you share with us what specific steps that CBP is taking to deal with this in compliance with the report language issued by the committee?

KERLIKOWSKE:

Senator Menendez, I think you've clearly hit on one of the most difficult challenges we face right now with the absolute explosion of e-commerce. We have personnel at DHL and personnel in our international mail rooms et cetera. But the volume and the flow is significant.

Unlike manifests on the containers coming into the United States, we don't get manifests on the shipping, on the court. I would tell you that the expertise and more of an art in fact than anything. But the expertise of the people that we have assigned to these locations, plus the cooperation we get from the private sector and from the United States Postal Service has been very helpful.

So I could not tell you definitively that a package coming from China will automatically be taken out and then looked at or searched. But we do look at these things very carefully. Every single day we detect everything from club drugs, to not only the intellectual property rights as you just mentioned, but a variety of other things, including counterfeit identification.

MENENDEZ (?):

Let me ask you...

KERLIKOWSKE:

More needs to be done though.

MENENDEZ (?):

I appreciate that.

KERLIKOWSKE:

OK.

MENENDEZ (?):

I assume we use algorithms in shipping to decide which containers we're going to look at. We look at places and or companies that we know consistently are producing counterfeited products and sell -- sending them as gifts. There must be some technological ability to at least begin to narrow the window and help us, you know, our agents' time focused in a way that's more important.

I would like to work with you on this cause I think it's incredibly important. We can't be affording to be losing 20 percent of half \$1 trillion.

KERLIKOWSKE:

Senator, I couldn't agree more. Thank you, and an algorithms' country of origin, addresses of the shipper who was the forwarder, if there's a broker involved and maybe with a de minimis (ph) it'll be -- we will see less of that. I look forward to working with your staff on this.

MENENDEZ (?):

One final thing Mr. Chairman. I'm glad to see that by unanimous consent the MTBs were passed, but one of the things that wasn't included in there and I'd like the commissioner to explain to members of the committee, is that the CBP is statutorily barred from refunding erroneous collected duties from companies.

So these are in fact companies that are told, you have to pay this duty. They pay it, you know, dutifully. And then they appeal. And then, their appeals are upheld. And they say, yes. We charged

you the wrong tariff, or the wrong duties. Does CBP have any authority to write these wrongs without the congressional action?

KERLIKOWSKE:

I think you caught me there. When senator -- when the chairman mentioned that certain amount of subject matter expertise exists far within CBP and not with me on this issue. I'm going to ask you...

MENENDEZ (?):

I see that you have a subject matter authority sitting behind you. That suggests that maybe my question is on point.

KERLIKOWSKE:

OK.

MENENDEZ (?):

If that is the case Mr. Chairman, I know that we collectively, as Republicans and Democrats alike, certainly want people to pay their fair taxes, but we don't want them to pay that which they are not responsible for. And when they do and they are upheld that they have paid more than they should, then we should have the wherewithal to find the means.

And I hope to work with the chairman to get these people reimbursed. I have companies in New Jersey tell me they paid as they were told, but they know that it was wrong. They appealed, they won. But they can't get reimbursed because they are statutorily barred from doing so.

KERLIKOWSKE:

We've got to work on that.

MENENDEZ (?):

Thank you Mr. Chairman.

HATCH:

OK. Senator Carper, you're next.

CARPER:

Thanks so much.

Commissioner, I want to thank you for your service.

HATCH:

Senator, excuse me.

CARPER:

Yes?

HATCH:

I'm going to have to go vote. Senator Brown will be next, except, Senator Portman may come back and replace him. He would be...

(UNKNOWN)

Just four minutes after him.

HATCH:

Yes, he would be, I think he's after Senator Brown. So, Senator Brown will be next and then Senator Thornton (ph).

CARPER:

All right. Thanks. Thank you Mr. Chairman.

Mr. Kerlikowske, it's great to see you. Thank you for your service in so many different ways. And it's a pleasure to work with you and I will -- my -- not just here but also on the Homeland Security Committee, which I serve as a senior Democrat.

I'm -- I want to be helpful. I want us to be helpful to you. You've got a tough job and we want to make sure that we're being helpful to you and the folks that you lead. I have some concern about what seems to be some serious understaffing issues at CBP.

The only workforce staffing model shows the agency's down by, I think about 2,000 agents from what I understand you need. And while Congress has provided funding in the past to hire a number of new officers, I understand you've not been able to fill all these slots or keep pace with retirements.

Could you just take a minute and please discuss the challenges you face with respect to hiring? I'm just going to ask that you keep your answers very short and crisp.

KERLIKOWSKA:

Every law enforcement agency I know, including customs and border protection is having some variety of difficulty hiring at the state and local level. We have done a better job.

You appropriated -- Congress appropriated for 2,000 people. We are about 750 below that final. We've been working with members of Congress to include looking at the ages that we can hire people, either at an older age or letting them stay on longer.

And we have reduced the amount of time that it takes to process someone from well over 360 to 400 days, to about 160. And we're going to move as aggressively as we can to fill those positions.

CARPER:

Thank you. I understand that there's a statutory requirement to polygraph all applicants. And that maybe one source of significant delay. Is that the case? And if so, is there some adjustment called for?

KERLIKOWSKE:

So, we've been looking at that and have made some adjustments, not in the quality or in the -- in reducing our standards for hiring, but in fact not taking as long on the polygraph examination, which can be up to eight hours, when in fact it would be someone that we're not going to hire after the first 15 minutes of conversation during the polygraph and we can move on to someone else.

So the polygraph...

CARPER:

I don't mean to interrupt you. Let me just say, that's what my father would call good common sense.

KERLIKOWSKE:

Sure.

CARPER:

Reimbursement service agreements. I understand that CBP has a private program that allows private entities, such as airport authorities or others to reimburse CBP for the cost of additional hours of CBP inspections.

As I understand it, there is a growing demand for these agreements, more so than is allowed under current law. If you could just take a moment and discuss with us, how these programs work and whether, in your view, they should be expanded. Again, just very briefly.

KERLIKOWSKE:

They can pay for additional services at land borders. And as you know, in Philadelphia, they pay for additional agricultural inspectors overtime to cover produce coming in to make sure it's fresh.

But unfortunately we are capped when it comes to the number of airports that can be funded or apply for that or accepted once a year.

So, we actually would be very appreciative of moving forward to having more of these organizations and as long as we're transparent about how many people you get for how many hours and how much it will cost, it seems that private businesses have been very accepting of this and recognizing the need.

CARPER:

I'm going to ask my staff to follow-up with your folks on that please. Number -- question -- the third question I have relates to fees. And, in my view, things that are worth having are worth paying for. That includes inspection services by CBP, officers at ports of entry.

For a number of years I have supported the administration's proposal to raise somewhat the customs fees to help pay for CBP officers. I was upset when Congress last year redirected some of the fee money as an offset for the transportation bill. I thought that was shameful.

Do you agree that we should increase the fees somewhat that have traditionally been dedicated to CBP hiring to keep those fees reserved for that purpose -- or some other purpose? What impact would that have on staff?

KERLIKOWSKE:

Well the president's budget request even at the time the additional 2000 customs in border protection officers also included funding for an additional 2300 as our workload staffing model showed. Those 2300 would be paid for by fees, some of which have not been elevated in -- in many years. I think it would be helpful to have that funding source go to customs and border protection to essentially pay for the services that we render.

PORTMAN:

Just -- I have 20 minutes -- 20 second left. Just take those 20 seconds. What -- make this one other idea, something that we need to do, we could do on the legislative branch that will help make your folks more productive, more effective.

KERLIKOWSKE:

All right. I think that the support for -- we're looking for, example radios and vehicles, etc., many of these things aren't as well-funded as we are with personnel. We need to invest in technology and we need to support the equipment that they need to do the job.

PORTMAN:

Thank you again. Thanks for the leadership (ph).

BROWN:

Mr. Kerlikowske, thanks for joining us. Since the enactment of the -- of the custom reauthorization, how many additional full-time employees have you tasked with ensuring that our ban on the importation of goods made with forced labor to which the -- Senator Wyden referred how -- how many full-time employees have you tasked with making sure that it's fully enforced?

KERLIKOWSKE:

We added an additional 24 people to the task force to begin that targeting process, but we're also at our national targeting center making sure that -- that they are as wary about these types of violations that they have been about other types of things that could be harmful coming into the country. So we're starting out with the 24.

BROWN:

Is it your goal to block all imports made with forced labor from coming into the U.S.?

KERLIKOWSKE:

Yes.

BROWN:

How do you -- how you plan to achieve that other than the number of employees? Talk that through briefly please.

KERLIKOWSKE:

One, I think the history is, and certainly the outreach that -- that not only we have done, but the outreach that the nongovernmental organizations have made to me as, you know, and we very much appreciate you setting up a meeting here in the future with these organizations.

They have essentially the boots on the ground in these foreign countries where they are incredibly knowledgeable about things that could be made with forced labor. We need their information. We need to be able to get back to them that we've acted upon their information because that -- that exchange is going to be critical. I think that's going to be important.

The other part is that we just received authorization for nine additional foreign government attaches funded through the State Department. So the more people that we have overseas to learn about this information, the better we'll be able to target.

BROWN:

Does that suggest, Mr. Kerlikowske, that you will self- initiate investigations into whether imports are made with forced labor because CBP has never done that before? Does that -- do you plan to do that?

KERLIKOWSKE:

I do plan to do that. The response has always been that we want a petition that we will assist in the -- in the petition to make sure that it meets all of the requirements I want us to be leaning much more forward and where we get information we should be able to follow it up and we should be able to utilize other investigative resources within the Department of Homeland Security and within the -- within the federal government to move aggressively on these, not just waiting for the petition.

BROWN:

That is so important and this -- this -- this will not be done well without self-initiation. So thank you very much for -- for -- for your assertion there.

One other issue I want to talk about. In your estimation, what percentage of steel imports coming into the US.. are evading antidumping or countervailing duties?

KERLIKOWSKE:

I can't answer. I don't know the percentage, but I know that whether it is through live entry or single transaction bonds or a variety of other mechanisms that we're utilizing right now, steel is at the top of the priority. That was made clear to me last week in Salt Lake City, the American Iron and Steel Institute Conference Hall so by all of the members there.

BROWN:

Very important again. I mean, what -- what CBP can do to get that percentage down to zero. We know the number of jobs all over the -- particularly the industrial Midwest -- but throughout our economy because of illegal dumping of steel. So...

KERLIKOWSKE:

And it's one -- we're working with too on the United Kingdom and their issues with steel, the government of Mexico, the government of Canada and also the government of Australia.

BROWN:

Thank you. And thank you for your work in your previous job, too, in my state and elsewhere. So thank you so much, Mr. (ph) Kerlikowske.

KERLIKOWSKE:

Thank you.

PORTMAN:

Thank you, Senator Brown and Senator Brown, thanks for your work on the slave labor import issues that's part of this customs bill. But also, Senator Brown just talked about the steel side. Let me just make a specific point here.

Senator Brown and I have worked on some cases together, including one that has to do with tubular product called the OCTG, oil country tubular goods. Companies in Ohio like U.S. Steel were very happy when we won a case that Senator Brown and I both supported and we were able to put in place, you know, some relief and now they're seeing evidence of fraud, circumvention on numerous Chinese websites actively promoting their ability to evade this specific, specific (inaudible) in place by falsifying the country of origin of Chinese-made pipe product.

So it's happening right now as we talk and one of the things that we got into this legislation, as you know, and I know Senator Brown supports it strongly as well, is the Enforce Act and I've been a supporter of the Enforce Act because even when we're successful in these cases, if there's evasion it still doesn't help the workers we represent.

So Senator Brown and I got legislation through called Level the Playing Field Act. It changes the way you deal with antidumping and countervailing duty cases, as you know, and the Commerce Department ITA and ITC are now being asked to implement that and we're aggressively pursuing their implementation of that. That will help. It gets relief faster, it's more meaning (ph) for relief in (inaudible) shut down the business and fire people in order to get the relief that you need.

But it doesn't help if you don't have the Enforce Act enforced as well and the Enforce Act will keep people from evading that countervailing duty -- duty or antidumping duty by going to -- to another country.

PORTMAN:

So I'll give you another example. There are some folks at Pennex Aluminum in the Leetonia, Ohio. Again, we helped them to win a (inaudible) duty -- a counter (inaudible) duty case and an antidumping case against (inaudible) Chinese aluminum exports -- by the way, allowed them to create more jobs and to invest \$38 million in their plant.

So this is a relatively small aluminum plant in Ohio that was able to benefit directly. Now they have a new concern. The Chinese aluminum producers are evading customs duties by shipping their products through different countries under different names. American Spring Wire (ph) employees 250 people in Bedford Heights, Ohio can tell the same story.

American Spring Wire (ph) was a successful petitioner in a trade case against China, significant duties on imports of steel wire from China. Chinese traders circumvented orders by transshipping the wire through (ph) Malaysia. Imports from Malaysia, Mr. Commissioner, were non-existent in

2008 like none. They increased to 4.7 million pounds in 2009 and then surged to 32.8 million pounds in 2010. While imports from China, by the way, because of the borders that were in place declined.

So this is happening and these duty evaders are becoming more brazen everyday. Just yesterday I received an email from a group that specializes in duty evasion. Someone passed it on to my office and the email explains how the company -- this duty evasion company -- provides a professional trading solution to help Chinese exporters sneak their products past you, past the U.S. Customs Service by routing them through Malaysia.

So, you know, I am very concerned about this issue because we can have great successes on the law and yet they can evade. I guess one question I would ask for you, we've given you the tools now and specifically we've given CBP -- CBP has the tools now to strengthen their investigations to make it a de facto case rather than have to prove intent.

We've given you the tools you need, are you putting it in place? I'm told that last month some of your senior officials said that you don't expect to meet the deadline for implementing these regulations. I hope that's not true. Can you comment on that today? Are you guys going to meet the deadlines? And are we moving ahead with these regulations?

KERLIKOWSKE:

There are a number of deadlines that were included in the passage of the law. It's our intent although, there are several that are very challenging for quickly working and putting them together. But it's my intent that we will meet those deadlines, including a interim final rule on the issue that was discussed earlier.

So we would like to do that but regardless of right now on the importance of the rule making, our posture to do the enforcement and listen to whether it's the wire companies in Alabama or Ohio is very critical to us because of the transshipment issue.

We need to be more aggressive. We need to have better outreach and we need to be able to take those tips and that information and move forward on the transshipment which we see. And it's as frustrating to me, I know as it is to you and the people you represent.

PORTMAN:

I mean, again, we're facing a real crisis in Ohio right now in steel. We know that there is over capacity overseas that's being dumped in America. We've been winning cases. Foreign steel imports have now taken a record 29% of the U.S. market share. That was 2015 numbers. We believe it's higher in 2016. We've had 13,500 layoffs in the last year, over 1,000 layoffs in Ohio alone of steel workers.

And outside of these efforts to enforce the Enforce Act, which we've talked about today, what else have you been doing to help the administration to address this steel import crisis and is there coordination between what you're doing and what commerce at ITA and what the ITC is doing?

KERLIKOWSKE:

You know I've been, now attended a number of meetings with Secretary Pritzker and Secretary Lew and a number of others. I work closely with Ambassador Froman before he became the USTR. So the coordination and the fact that we've been vetted over at USTR, someone from customs and border protection all ensure, I think better coordination. Also very much that along with the President's economic advisor Mr. Zients we're very much on board with our role in the enforcement side of this and moving as aggressively as we can as an organization to do the enforcement.

And also as the ranking member had said, to send a message to those that would evade and also, of course, to send a message to the stakeholders, to the people that are most impacted and effected by this. That one, we're listening to them. Two, we're going to take their information and three, we're going to get back with them with what we found and what we're going to be doing to up the game when it comes to enforcement.

PORTMAN:

We do see some of those actions. We need to see as you say that message being sent by actual successes and blocking what we know is going on. And our office is going to provide you -- I will provide you with this email I received yesterday as just one example of what's happening in the real world. And you're an enforcement guy. We expect you to enforce it strongly. By the way, Senator Brown I missed you in Cleveland at our hearing which was very sobering about the prescription drug and heroin epidemic. Senator Casey?

CASEY:

Thanks very much. Commissioner thank you for your testimony and for your public service which didn't just start with this job. I know you've been in law enforcement a long time, we appreciate that.

I want to raise two basic issues with you, one that will focus on a question, the other is just a brief statement and I'll follow it up more in writing.

One of the biggest challenges we have specifically as it relates to ISIS but also counter terrorism generally is cutting off financing, shutting down their money. And we took a good step in the right direction recently where the President signed into law the bill that I introduced in the Senate the so called Protect and Preserve International Cultural Property Act. Basically the core of it is restricting the import of cultural artifacts that have been illicitly or illegally smuggled out of Syria.

When they do that they create a revenue stream, so that's a good step in the right direction. The administration as you know has taken a lot of steps to shut down financing but we've got to be dogged and vigilant on this because if we do that it's almost as important as any other part of our strategy.

Part of, part of your work will involve implementation of import restrictions as it relates to this. So I just urge you to do a couple things, number one, keep working on accelerating the training for your officers, number two make sure you're sharing information and best practices as appropriate in this area and then partnering with nations on the front lines. We've got a lot of work to do on this and what I'll do is maybe is follow up with a question for the record.

The second issue is one that you've heard about already from both Ohio senators and maybe others that I missed, but it's unfair illegal competition from countries like China.

CASEY:

In the case of China they've engaged in state-sponsored cyber enabled economic espionage so kind of a higher level or higher sophistication of unfair competition. In 2015 there were over 12,000 steel industry layoffs announced, in 14 steel imports to the U.S. increased by 36%, some of these numbers I know you've heard. And then there's this transshipment which was raised before, Chinese manufacturers and distributors engaging in this transshipment of steel to the U.S. through third parties, whether it's Malaysia or Vietnam.

I guess I'd ask you, in light of the existing authority, is there more that you need to be able to counteract that more by way of authority or more by way of tools or dollars?

KERLIKOWSKE:

I think at this point we're very engaged in making sure that we meet the deadlines of the -- authority that we have been given, but at the same time we want to make the changes within the organization to -- to look at that culture of being, frankly, much more aggressive or much more assertive on the investigative standpoint using the authority of essentially reasonable suspicion to make that withhold release order.

I've made it clear that I would rather err on the side of issuing that order and then in fact if it wasn't as a result of derived goods or antidumping or countervailing duty issues that they can very much appeal that and -- and that would be satisfied. But I think the message that we're going to be -- to use those authorities more assertively will send a powerful message to those that would violate our trade laws.

CASEY:

Well I think it's critical. We -- we know that in a state like Pennsylvania in strew (ph) of Ohio and a number of other states that are directly affected by this. You've got folks that have worked their whole lives to develop highly skilled workforce and in the case of an individual, skills they've developed to make steel to outproduce the world, to out innovate the world.

And they're often -- just when -- just when they're prepared to do that, that's when the unlevel (ph) playing field emerges and they get undercut in the most pernicious way imaginable. So just like I've -- continue to challenge folks like you on homeland security and shutting off financing, we

ask you as well to be determined and vigilant on this issue of -- just insisting that China and countries like it play by the rules and I think that's -- that simple.

We may have a follow-up question on that as well, but I'll make sure that we get the first issue to you in writing. Thanks very much.

(UNKNOWN)

Thank you, Senator.

PORTMAN:

Thank you, Senator Casey. Appreciate your raising the issue of Ohio and Pennsylvania and the fact we're looking for a level playing field. If we have that, we'll be OK. But that means that on the frontlines we've got to continue to -- not just enforce current law, but enforce this new law we'll be giving you the new tools.

Senator Cantwell.

CANTWELL:

(inaudible)

PORTMAN:

Oh, I'm sorry. Johnny, I didn't even see you there.

ISAKSON:

She's a lot prettier than I am.

PORTMAN:

Well maybe that's -- maybe that's why. Senator Isakson.

ISAKSON:

Thank you very much, Senator Portman. Commissioner, first of all, Georgia, my home state, has the largest busiest airport in the world, Hartsfield-Jackson, which just announced last week an expansion to a sixth runway which will increase the freight input coming into Hartsfield-Jackson alone at 15%.

We have the port of Brunswick and the port of Savannah. The port of Brunswick, where most of the automobiles exported into -- imported into the United States come through in the port of Savannah, which has gone up by 52% in capacity since 2007 and is getting ready to go up another 33% because of the deepening of the harbor and the channel to 47 feet.

While both boards give you high marks for the work that you've done, there's a serious question with regard to capacity. In Savannah since 2007, while we had an increase of 40 -- 52% of containers coming through, the level CBP employees has stayed the same, or actually dropped slightly, number one.

Number two, in comparison to other ports we have about the same number of personnel as the port of Charleston with 1.9 million containers rather than 3.47 in Savannah. Charleston with Jacksonville with 926,000 containers rather than our 3.7 million.

So my point is it appears the capacity of CBP is heavily limited because of the number of personnel vis-a-vis the work that's being done. Can you comment on that?

KERLIKOWSKE:

Sure. We do a workload staffing model when it comes to, particularly the airports and into the seaports. The workload staffing model is based upon what exists and although there are a number of ports, Charleston, Newark and others that are also doing the deepening, you know, there are certainly some questions about right now on capacity for shipping to -- to continue on at the level that it has been, given the -- given the widening of the Panama Canal.

So we will look and I will go back and talk with our staff about the numbers of people because I know Savannah and the U.S. attorney just recently had the -- one of the largest settlements of, I think, over \$15 million for furniture imported from China that was violating duties. So I know that it is an aggressive team down there, but if they don't meet the need to get that cargo in expeditiously and safely, then I will certainly get back to you.

ISAKSON:

But my question, sir (ph), is not quality of work. Because I (inaudible) with the Coast Guard, I've seen the (inaudible) shipment problem being worked, I've seen CBP people working. Our issue is only capacity, not the question of the quality of work.

Second question is this. We've heard testimony from the State Department that they revoked 9500 visas since 2001 for foreign nationals coming into the United States but we don't have a good exit strategy -- I mean exit visa (inaudible) biometric exit visa process. How are we -- we do -- U.S. visit program does a good job coming in. But on our exit from the country, what are we doing in biometric exit?

KERLIKOWSKE:

So the biometric exit right now, I think, in front of -- in front of the bill right now would be to move a section that does the technology on biometric exit, which exists in a different part of DHS to put it under my authority because I need those tools and I need that equipment in order to -- to move forward with biometric exit.

We very much appreciate what Hartsfield-Jackson Airport did being a test site for some of the new handheld detectors because, as you know, none of the airports are designed to have a facility or location where we can easily check people with some type of biometric iris scan, facial recognition, portable fingerprint reader. None of those are designed to hold people and we want to make sure they're getting moved through quickly.

But I think that technology is going to be the game changer in the experiments that Jackson-Hartsfield-Jackson will be a big help.

ISAKSON:

Well the people at Hartsfield-Jackson appreciated being focused on by your agency and we appreciate that and I can personally testify, watching the visit program work on those coming into the country that biometrically secure a visa or an (ph) entry is a perfect program and a great way for us to satisfy the American people. We're doing everything we can do to reduce the number bad actors getting into the United States of America. Thank you for your words today.

(UNKNOWN)

Thank you.

(UNKNOWN)

Thank you, Senator.

PORTMAN:

Senator Cantwell.

CANTWELL:

Mr. Kerlikowske, great to see you and I, too, want to echo and thank you for all your service in this administration and in the Northwest as well. So great to see you.

CANTWELL:

One of the things that you, I'm sure, understand is that Senator Collins and I gave U.S. Department of Homeland Security the authority expand preclearance overseas and one of the things that we're doing is obviously moving our borders to those overseas airports so that we can do the kind of checking on preclearance before people get to the United States, so places like Turkey, Belgium, the UK so I don't know if you have an update on how that process is going and what airports do you think we really need to target?

And I know you mentioned the need for more technology, so I wanted to give you a chance to talk about what those needs are.

KERLIKOWSKE:

So I would tell you that the expansion of pre-clearance is one that is very much appreciated and I know even with Senator Isakson during the time that pre-clearance was being considered in Abu Dhabi that for us to be able to go back and to make sure that if Congress and the law states there must be American flag carriers at these locations. That is tremendously from an economic viewpoint but also from the fact that we received great cooperation with these American flag carriers.

We are in negotiations with 10 airports and nine countries. Secretary Johnson could not have a higher priority than pre-clearance. I believe by the end of this year that we will have two if not three countries signed on to pre-clearance. They certainly won't implement until at least the following year.

But to sign those agreements, pushing our borders out is helpful not only for the issue of security but it's also helpful for the fact that those planes can then land as essentially a domestic flight. We're working very closely with Sea Tac Airport as they design their new international terminal and what will the international terminal look like. And this is the technology answer to your question.

Will all of this space be needed? Will there be booths needed? Or can more be done with mobile platforms? Can more be done with smaller amounts of equipment in order to clear people coming in through customs? And the design that we're doing with Sea Tac is probably going to be one of those international terminals of the future.

So, and I think the technology, mobile passport control, global entry, automated passport control kiosks those are the kinds of things that not only improve our safety and security but they also improve people moving through more expeditiously.

CANTWELL:

I'm sure you've seen the news that Sea Tac has record growth and so we've had lots of issues about moving people and we're (ph) all (ph) for technology and we all are for making sure that we're doing the better job at these overseas airports in making them more secure. So, any thoughts on how that technology helps us?

KERLIKOWSKE:

The facial comparison is one, as you know, customs officer now looks at a very small picture on the photograph on the passport and compares it to the person. That picture can be up to 10 years old, it's not always easy to make sure that the person in the picture is the person in front of you.

So at both Dulles Airport and also at JFK we're doing experiments with facial comparison. It looks at the biometric chip, the person standing in front of the camera is compared to that biometric chip

and it gives us a percentage of how accurate that is. I could tell you that the accuracy with the electronic system far exceeds the accuracy of the human system.

CANTWELL:

Do you think we can get standardization with other countries on a biometric that's a retinal and fingerprint for biometric standard?

KERLIKOWSKE:

I don't know. I'll be headed overseas in another week and a half and part of the discussions will be around information sharing. As you know the EU just looked or passed passenger name recognition. So working together to share that information will be helpful but I think the long term future for safety and security of not just our country but others will be in that recognition of using biometrics that are interoperable.

CANTWELL:

Well I put in the -- I think you were still in the Northwest when we had the Refom (ph) case, where somebody cooked up an identity and went to three different countries before he came loaded with explosives to our Port Angeles. So to me getting standardization on those biometrics that are certain technologies I think is very, very important. So thank you.

HATCH:

Thank you Senator Cantwell. Senator Stabenow?

STABENOW:

Thank you very much Mr. Chairman. And welcome Commissioner, I appreciate you being here today and of course representing Michigan what you do is very important to us in a variety of ways. And I wanted to speak specifically about things related to the auto industry.

And I hear more and more from auto parts manufacturers in Michigan about a rapidly growing trend in the importation of counterfeit auto parts. Counterfeit auto parts not only damage a brand's reputation, as you know, I've had very specific examples in Michigan where this has happened. But they pose serious safety risks to unsuspecting customers. So the Federal Trade Commission estimates that counterfeit auto parts cost the industry about \$12 billion a year in lost sales including \$3 billion in the U.S. alone.

The FTC officer (ph) estimates that the use of counterfeit parts has resulted in as many as 250,000 fewer manufacturing jobs. So this is very serious for us. And wonder if you could talk about what the CBP is doing to address the issue and what can we do in Congress that would be helpful?

KERLIKOWSKE:

Thank you Senator. As you know, Secretary Johnson, I think, has made three trips to the Detroit-Port Huron area. And I think I've been up there three or four times recently. Your staff was able to attend a town hall with the stake holders in Detroit as we talked about the work of CBP in the city and also working closely with them.

Because of the law that you have passed and the President signed our commercial advisory, our stake holders are now enshrined in that law and as a part of that. So we have several auto manufacturing organizations that are a part of that. They meet four times a year with me to talk about what are the critical and important issues. And I've also heard from Congressman Levin and others on this about saying that we want to see what enforcement action you're going to take.

And so given that information being able to make sure that brake pads and air bags and other things that could be incredibly dangerous and are counterfeit are not being allowed to be a part of this.

And that information comes from the people that our closest to the ground. So I'm sure I'll be back before the end of this year in Michigan. I think it's scheduled actually for another in September and I will make sure that I am reaching out to those manufacturers.

STABENOW:

Do you feel like you're getting information in a timely way are you getting specific information, actionable information that you can do something about?

KERLIKOWSKE:

So I think the the information that we get is helpful and it's often quite timely, then there becomes a definitional problem of actionable, almost like actionable intelligence. The problem for us is in that we weren't as good about getting back to who provided the information and telling them that, you know, this was helpful, it's a lead but right now it's not enough for us to move on.

When they don't hear anything back, I think they get frustrated like well it just went into a black hole and nobody did anything with it. So I've made a concerted effort to make sure that our folks are getting back to the people who have made those complaints and to let them know what we did with it. They deserve that.

STABENOW:

OK. Thank you. And then finally one other question. You mentioned that Port Huron, by any measure a border crossings to Detroit are some of the busiest in the country. They're the busiest one in Detroit, Detroit Windsor.

I am pleased that we got the work going on now at the Gordie Howe International Bridge and our partners with Canada. It's going to be very important. However, Port Huron is also the third busiest crossing in the northern border in terms of value and shipments. And despite the critical importance

of the bridge to the economy the U.S. customs path at the site is woefully inadequate to manage this high level traffic. This is something I've worked on for years.

We actually had dollars in the budget at one point to move forward and then dollars got redirected. So expansion of the process (ph) and plan for over a decade and unfortunately the community has also been left hanging because plans started, land was acquired (ph) and then everything stopped.

There are a number of planned customs projects, I know, across the country, but what's being done to address both the backlog and will you commit to working with me to make the Blue Otter Bridge Customs Plaza a priority?

KERLIKOWSKE:

And I know that when Secretary Johnson was up there for the visit to the Blue Otter Bridge he also was asked in committed into making this a priority. And as you know, whether it's the Peace Bridge in New York or a number of other locations some of our customs infrastructure is in need of upgrading and if we're going to be able to move people and cargo through expeditiously those locations need to be improved upon.

I don't know the exact status right now of the facility Port Huron but I'll be happy to get back to your staff on that and I would commit to you that I would be very engaged in trying to get this done. I was born in St. Joes so maybe that helps.

STABENOW:

OK, and just final, what can we do help? What should Congress be doing to be able to alleviate this backlog?

KERLIKOWSKE:

I think that looking that our infrastructure and also it was mentioned earlier in a question what are other things? We need to make sure we're not just investing in people or boots on the ground but that we're investing in technology. And we're investing in some of the equipment that just has a life cycle, or a life span that makes it difficult to utilize.

So infrastructure technology and frankly R&D in those areas are as important in the long run. Our wait times, by the way, in international airports are down for people coming into this country, people clearing customs. They would not be down if it wasn't for that infusion of technology.

STABENOW:

Thank you.

HATCH:

Thank you Senator Stabenow. Senator Carper.

CARPER:

Mr. Chairman, how are you?

HATCH:

I'm well thank you. Good to have you back with us. Senator Carper was here previously to hear testimony.

CARPER:

The ninth inning of a day/night double header. Hi there Mr. Chairman. I have, I'd like to make a unanimous consent request to record testimony -- testimony for the record the National Treasury Employees Union which raises some important concerns about CBP funding and staffing levels. And I just ask unanimous consent, if there is no objection, this made be part of the record.

HATCH:

Without objection.

CARPER:

Thanks very much. This couldn't be enough (ph). Couldn't figure out (ph). I just wanted to come back and have a couple of follow on questions and the last question going to be I want to come back to the thing I just touched on before everyone vote. And that is what can we be doing? What can we be doing to be better partners with CBP and the Department of Homeland Security? Folks that are part of your team.

But I want to talk a little bit with you about opioids and synthetic drugs, something that our chair house has more than a little bit of interest in, so do I, I think we all do. The Homeland Security Criminal Affairs Committee has had a number of hearings on the devastating impact of opioids and synthetic drugs on our communities.

Many of these drugs are entering the U.S. from other countries, including through the U.S. mail. Can you discuss with us the challenges that CBP faces in trying to identify and intercept these shipments?

KERILOWSKE:

The e-commerce issues coming through the United States Postal Service, international mail or through the express carrier, the explosion of e-commerce has made this a huge challenge. We don't see as much at all when it comes to the opioids because quite frankly they're manufactured here or they're shipped here quite legally because they are legal drugs.

And I think Senator Portman, others we could not be more familiar with the devastation that the opioids have caused. When I traveled with the Senator to the southern tier of Ohio, in Appalachia, it was pretty devastating in some very poor communities. And so, the e-commerce and the search for counterfeit goods for illegal drugs; we often see the club drugs that are attempted to come in through those locations, I think that has been the greatest challenge.

And I think we're going to have to do a lot more in the future. After the Yemen printer cartridge attempt, changes were made when it came to air commerce, packages coming in, but I think we're going to have to look at a variety of other mechanisms and work closely. And by the way, DHL, FedEx, UPS are incredibly great partners. Our people are located in their facilities et cetera.

I think we will have to do more with the United State Postal Service on these issues because the challenge and the explosion of e-commerce is going to also increase --

CARPER:

Thank you. As you know, one of the things I focus on and so does Senator Portman that you focus not on the symptoms of problems but root causes. And in my view is we need a national policy, whoever's our next President I think should lead it. Just like we have a moon shot with respect to cancer and trying to defeat cancer it needs something similar to that national leadership.

Why with would a lot of participation up and down the line, and not just state and federal governments but all kinds of non profits, medical communities and so forth. But just give us a thought on root cause, if we're, you and I choose (ph) to do something on the root cause side with respect to this epidemic of opioid and synthetic drugs, heroin abuse. What might be something we should be doing on the root cause side?

KERLIKOWSKE:

Well I think everything is moving in the right direction. I think the CDC looking at the mandating of training for doctors. We work with the hospitals to look at the accreditation process where the bar by saying a patient must leave and be able to say that their pain free is a bar that is a bit unreasonable, and in my opinion led to over prescribing opioids.

I think that that's spiral. I think that the national attention. I mean, I think this was -- your hearing was the fourth hearing from Phoenix to New Hampshire et cetera -- in Milwaukee. It is an epidemic on both heroin and opioid prescription drugs that is significant.

I think it will only be reversed, not through just -- not through interdiction and not through enforcement. It can only be reversed through prevention programs, including a very robust effort by the educational community.

CARPER:

All right. Thanks. I have five seconds left. Just give us one good take away in terms of something we can do. You can repeat something you've already said, something that we can do in the Congress to help enable you and your team.

KERLIKOWSKE:

Sure, Senator Carper (ph), we view to the -- to that question. But, I would say that our research and development, the technology issues and in supporting the infrastructure. All of the things that just aren't boots on the ground, but are the things that support the boots on the ground and make them better and more efficient.

CARPER:

I call those force multipliers.

KERLIKOWSKE:

Those are -- thank you.

CARPER:

OK. Good. Thanks again for joining us today.

KERLIKOWSKE:

Good. Thank you.

HATCH:

Thank you Senator Carper. And Senator Carper consistently talks about the root causes, regardless of the issue. And in regards to opioids, I would just say, you know, as we're having this hearing today, as you know, the House is considering legislation that is not as comprehensive as the legislation that passed United States Senate on March 10th.

And one of the issues that needs to be strengthened in my view is on the prevention side, as you said. And specifically, this issue of an awareness campaign as to the link between the prescription drugs and narcotic pain pills and the current heroin and prescription drug epidemic.

Four to five heroin addicts who will overdose today and one is dying every 12 minutes on average, will have started with prescription drugs, as you know from your previous experience. And I appreciate your coming to southern Ohio. And we were seeing the tip of the iceberg it turned out. It's only grown since then.

Although the pill mills have been largely shut down in that part of the country, thanks to some of the work that you helped me do to get the high-intensity drug trafficking area there in Adams

County and South (ph) County, but the heroin has come in as a less expensive, more accessible alternative and the results are devastating as you know.

We did have a hearing on this and we learned that one of the unfortunate realities is that no fentanyl, which is, you know, a synthetic heroin, sometimes 50 times stronger, is being laced with heroin and is causing increasing deaths.

Particularly in my state of Ohio, we may lead the nation in fentanyl overdoses, which is tragic. But it's coming in from China, primarily by the mail as you indicated, often to the United States and then being transshipped to Mexico and then brought back in, in combination with sometimes heroin made to look sometimes like a prescription drug.

And that's precisely what happening in my home state. And it is something we're -- we need to do more as you said. And I was wondering if you could elaborate a little more on that in terms of what you could do at Customs and Border Patrol to be able to stop this influx of heroin over the border.

We believe that the vast majority is coming over the southern border. And then specifically with regard to fentanyl, which is again, this synthetic. Which you say is often in the U.S. mail system. But what more could you do and what resources do you need to be able to do a better job on keeping this poison from coming into our country?

KERLIKOWSKE:

I think the fentanyl issue is one that is really -- we're only seeing and understand the tip of the iceberg. As you know, from state medical examiner information, oftentimes overdoses are not always tested for fentanyl.

So, I'm not -- you know, we don't always know whether it's an opioid prescription drug, whether it was heroin or whether it was fentanyl because of the testing. We don't have preliminary test kits for fentanyl like we do for heroin or cocaine. So that makes it a little bit difficult.

The other concern is -- the great concern is the incredible danger to somebody that actually comes across the fentanyl like one of our Customs and Border Protection officers, because of the absorption through the skin, which can lead to fatalities.

We also don't know about the legitimate fentanyl that is used as painkillers in hospitals and nursing homes et cetera. What, if -- how much is the diversion coming from them. But I think that it is very safe to say that the vast majority of the fentanyl is coming into the United States across our borders, not the diversion from hospitals, although that could be a source.

So, I think test kits, I think better information, but I also think the negotiation with the countries where it's being produced. We saw some success a couple years ago on the synthetic drugs that were coming in from China and then being made, sprayed on graft and other things to be able to use and smoke, that cause pretty significant devastation.

China did assist us in reducing that problem by doing a better job of export control. And I think we're going to need that, clearly, when it comes to fentanyl.

HATCH:

Are you doing currently with regard to your relationship with these countries? Whether it is China or other countries that are a source of some of these synthetic drugs that are being shipped across continents? Are you currently engage in that?

KERLIKOWSKE:

I am not and CBP is not as much the Department of State and INL, but are attaches in the other countries know that this is also a significant issue. So, that whole of government approach on dealing with this, which was somewhat successful on synthetics, may have some opportunities. I will be talking with the Department of State INL and be happy to share back with you exactly what is going on.

HATCH:

I would appreciate that. And I do think it is your background on the issue of substance abuse and your background in law enforcement, that you have a particular strike here and CBP has a particular expertise to be able to share with some of these countries, as compared to INL frankly.

And so I would hope you would get personally engaged. And if you could give me some indication of what they are doing currently and how you all could be more involved, I think that would be very helpful. And we have a crisis. It is an epidemic. It is something that requires all hands on deck.

And I think CBP has a huge role to play. Having said that, as you say, prevention, treatment recovery also needs to be strengthened, which is what this legislation that passed the Senate provides. And the legislation passing the House today, there will be several bills that will be helpful.

And we would appreciate your continued advocacy within the administration for getting something done on this issue so that Congress can be a better partner with state and local governments and the non-profits who are out there fighting this fight every single day.

Thank you Mr. Commissioner, for being here today. I appreciate everybody's participation in the hearing. As we all made clear today when talking about this Customs Bill, this was an important, bipartisan accomplishment.

I talked a lot about the Enforce Act today and the need for us to administer that well. We hope that the this committee will continue to work together on a bipartisan basis to make sure that the oversight is done properly and make sure the bill is implemented as intended.

I would ask any Senators many questions for the record by Wednesday, May 25th, 2016. And with that, this hearing is adjourned.