

Milton Magnus Testimony
House Committee on Small Business
May 22, 2014

Good Morning, my name is Milton Magnus, and I am President of M&B Metal Products Company, Inc. of Leeds, Alabama. We manufacture wire Garment Hangers in Alabama. I am also the President of the American Wire Producers Association, an association of U.S. companies that purchase steel wire rod and produce wire and wire products of all types. I am testifying today to explain the constant struggles that small and medium size manufacturers face with unfair trade.

In 2002, my company, M&B, along with two other U.S. hanger producers saw a flood of Chinese-made hangers entering the United States at prices below our cost. We decided to file a Section 421 Trade Case, which is one avenue for relief for US producers that are being harmed by imports from China. China agreed to this special procedure when they entered the WTO. We were successful in our case at the International Trade Commission (ITC); but – unlike an antidumping or countervailing duty case – a Section 421 case has to go to the President for approval. Unfortunately, no relief was granted to our industry.

Shortly after that, Cleaners Hangers – an American company, which was the largest Garment Hanger producer in the world – filed for Chapter 7 bankruptcy, and all of their assets were sold at auction. Then it seemed like dominoes – all of the remaining US wire hanger producers, with the exception of M&B, either went out of business or closed their US operations and imported all of their hangers from China. Over the next few years, we struggled, having to close one of our US plants in South Hill, Virginia and lay off 85 hardworking Americans. We continued our struggle for another year, but the Chinese were relentless, and eventually we either had to join the club and import 100% of our hanger sales or fight by filing an antidumping petition against China. We chose to fight.

On July 31, 2007, we filed an antidumping petition against unfairly traded Chinese hangers. When we filed, we were almost out of business, and we really didn't know how we were going to pay the substantial legal fees and other costs to file this case, but we proceeded anyway. At the end of a long and demanding process before the ITC and Department of

Commerce dumping duties between 16% and 187% were imposed on imported hangers from China.

Things improved almost immediately. We were able to pass along raw material increases. Our margins improved, and things were progressing as we had hoped. But, as we were hiring again and increasing our production, the same producers that were shipping hangers directly from China were working on illegal schemes to avoid dumping duties by shipping hangers through other countries, or simply just changing the country of origin, and they continued to dump hangers in the U.S. market. We filed over 30 e-allegations with US Customs and Border Protection (Customs) with specific information about these illegal schemes, and we met with Customs officials a number of times detailing what was happening, but we saw no progress.

We then hired an investigator at great cost to our small company and sent him to Taiwan and Vietnam to visit the so-called new factories that were shipping hundreds of millions of hangers to the US. Guess what, he didn't find any hanger factories. He even had detailed offers from Chinese producers to illegally transship Chinese hangers to the US through Taiwan and Vietnam, avoiding the dumping duties that should have been collected. When our investigator returned, we took him, his reports, and our attorneys and met with Customs as well as Immigration and Customs Enforcement, ICE, to detail the schemes. I felt really good when we left this meeting. Both Customs and ICE complimented us on the detailed reports and told us how much they appreciated the information. Days, weeks, and months went by, and except for a small importer in Mexico that was caught transshipping Chinese hangers across the border, we saw no other action being taken.

We then filed Anti-circumvention petitions against two so-called hanger producers in Vietnam. We won those cases also, but with the help of the Chinese producers, hanger imports from Vietnam and Taiwan continued to grow. We had no choice but to file another antidumping petition against Taiwan, and an antidumping petition and countervailing duty petition against Vietnam. We won those cases as well, but immediately hangers started appearing from Laos and Malaysia. We have been told that these hangers were made in Vietnam or China. We decided not to file more e-allegations or send investigators to these countries to bring back proof of duty evasion because we had tried that but saw no results from our previous efforts.

Customs continues to be a black hole when it comes to commercial enforcement to the detriment of US manufacturing and workers and at great cost to the US Treasury.

In addition, the costs associated with fighting for our dumping order continue to add up. Each year Chinese producers or exporters can ask Commerce to recalculate their dumping margins. We are in the midst of our fifth review. While each review involves additional costs to our company we have to participate in order to ensure the dumping margins remain accurate and effective. As the result of the first four reviews, all but two Chinese hanger producers will have a dumping margin of 187%. I should be very excited by these results and begin adding employees and equipment, but I am very cautious because I already have heard that Chinese hangers are now being transshipped through Cambodia and Sri Lanka. I fear that we will have to start this never-ending, expensive process all over again.

We also see no aggressive action on Customs to collect duties that are owed. In the US, we operate on a Retrospective System, which means the final dumping rate is determined after the products have been imported. The importer only pays an estimated dumping margin, or deposit, when they import the product. After the Administrative Review, the final dumping margin is set and Customs is required to either refund any excess deposit paid, with interest, or collect the additional duty, with interest. We have seen in the past that Customs is quick to return overpayment, but slow (many times never) collect the additional duty. This not only hurts the US Treasury, but it shows that Customs will NOT enforce our Dumping Orders.

M&B, along with other producers experiencing the same evasion schemes, formed a coalition to try to get meaningful legislative and policy changes passed to address these illegal activities. The Enforcing Orders and Reducing Customs Evasion (ENFORCE) Act creates a procedure at Customs to investigate claims of evasion, including timelines for Customs to make determinations and apply the appropriate duties as well as regular, timely reports that will not only deter future evasion but add transparency, accountability and oversight where there currently is none. The provisions of ENFORCE passed through the Senate Finance Committee by voice vote and have been included in the Senate Customs Reauthorization bill. The complimentary bill in the House, introduced by Representatives Long and Sanchez, has a bipartisan group of 46 co-sponsors.

As I said at the beginning, there are many other industries besides the garment hanger industry that face the same struggles with cheating, illegal transshipment, and evasion under

their trade orders. They include the Nail Industry, the innerspring industry, the threaded rod industry, the PC Strand industry, the wire shelving industry, and many more.

I see manufacturing in the US as a privilege. We all produce with a high degree of Integrity, which includes paying our workers a fair wage with good benefits, being environmentally responsible, paying income taxes, and providing a return on investments to our owners. Without meaningful relief to ongoing duty evasion schemes, it will continue to be difficult to maintain our production in the US.

Thank you for your time. I welcome your questions.



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**Enforcing Orders and Reducing Circumvention and Evasion (ENFORCE) Act
HR 1440
White Paper
September 2013**

I. Summary

The **Enforcing Orders and Reducing Circumvention and Evasion (ENFORCE) Act of 2013**, HR 1440 was designed to improve enforcement of US trade laws by increasing transparency and timely action when allegations of evasion of antidumping and countervailing duty (AD/CVD) orders are investigated.

This trade enforcement legislation does not alter the existing powers and authority of US Customs and Border Protection (CBP), or impose new responsibilities. Instead, it provides defined structures and reasonable timelines for critical determinations, and it increases transparency in the processes used to investigate duty evasion. The law would require that CBP determine whether there is a reasonable basis to believe an importer is evading an AD/CVD order within 90 days after the submission of a properly supportable allegation. If an affirmative preliminary determination is made, the ENFORCE Act would require that AD/CVD penalties be collected in cash until the investigation is concluded.

II. Background

Domestic producers and industries may petition the US Commerce Department (Commerce) and the US International Trade Commission (ITC) to investigate imports that are believed to be sold at less than fair value or "dumped" in antidumping duty (AD) investigations or which benefit from unlawful government subsidies in countervailing duty (CVD) investigations. If Commerce finds that the imports are dumped or unfairly subsidized, and the ITC finds that these imports are a cause of material injury (or threaten material injury) to the US industry, Commerce will issue an order imposing remedial duties on imports of these products, to offset the amount of dumping or improper subsidies.

AD/CVD investigations and the resulting orders are the primary means by which US industries combat unfairly-traded imports. However, these remedies are only effective to the extent the orders are enforced and attempts to illegally evade the orders are stopped. Foreign exporters and US importers are increasingly using various schemes to evade payment of AD/CVD duties when importing products under order. These often involve transshipping products through a third country, sometimes repackaging or relabeling the product, and then using false documentation to declare that the third country is the country of origin. Importers also may deliberately misclassify imports,

claiming that they are a different product or that they are excluded from the scope of the order.

Other common tactics to avoid AD/CVD duties include subjecting the products to minor alterations, or sending parts to a third country where minor or insignificant completion or assembly operations are performed. Such products are then improperly identified as a product of the third country in blatant circumvention of the order.

These actions violate US law and deprive American companies of the relief which the AD/CVD laws are intended to provide. Evasion of existing trade orders causes continued financial harm to domestic industries and results in the loss of good-paying jobs for American workers. In addition, **the US Treasury loses hundreds of millions of dollars in uncollected duties annually** because products enter the US without paying the applicable, legally-required duties.

III. Status of Legislation

House: On April 9, 2013, the **Enforcing Orders and Reducing Customs Evasion Act of 2013** (HR 1440) was introduced by Representatives Billy Long (R-MO) and Linda Sánchez (D-CA). The bill was referred to the Trade Subcommittee of the House Committee on Ways & Means and has 43 bipartisan co-sponsors.

Senate: During the 112th Congress, the ENFORCE Act was referred to the Senate Finance Committee, where it was passed by voice vote on July 17, 2012. In the 113th Congress, the legislation, as passed by the Senate Finance Committee, has been incorporated into the **Trade Facilitation and Trade Enforcement Reauthorization Act of 2013** (S 662), introduced by Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) on March 22, 2013.

IV. AWPA's Position

A number of AWPA member companies have invested considerable time, resources and funds to stop the illegal dumping and subsidizing of wire and wire products by foreign competitors. Our members successfully have obtained multiple AD and CVD orders against imported wire products that were found to be sold at dumped prices or unfairly subsidized by foreign governments. These companies have also experienced firsthand the effects of the illegal schemes used by foreign producers and US importers to evade the payment of lawfully-owed AD and CVD duties. These illegal schemes have caused further injury to these companies and have resulted in the loss of more American jobs.

AWPA member companies and their respective orders:

- M&B Metal Products, Inc.*—AD orders against steel wire garment hangers from China, Taiwan and Vietnam and a CVD order against Vietnam
- Leggett & Platt, Incorporated*—AD orders against innerspring units from China, Vietnam, and South Africa
- Mid-Continent Nail*—AD orders against steel nails from China and the United Arab Emirates

Vulcan Threaded Products—AD order against steel threaded rod from China
Insteel Industries—AD orders against prestressed concrete (PC) strand from China, Brazil, India, Korea, Mexico, Thailand, and a CVD order against India
American Spring Wire—AD orders against PC strand from China, Brazil, India, Korea, Mexico, Thailand, and a CVD order against India
Sumiden Wire Products—AD orders against PC strand from China, Brazil, India, Korea, Mexico, Thailand, and a CVD order against India
SSW Holding Company—AD/CVD orders against kitchen appliance shelving and racks from China
Nashville Wire Products—AD/CVD orders against kitchen appliance shelving and racks from China

The multiple AD and CVD orders identified above represent just a small sample of the orders that are affected by illegal duty evasion. Scores of other industries across the country have AD and CVD orders that are being undermined by illegal evasion. These include US producers of glycine, honey, diamond saw blades, and tissue paper products, to name just a few.

The enforcement tools embodied in the ENFORCE Act and similar measures will help these AWPA members obtain effective, timely enforcement of their orders against dumped and subsidized imports. They will also help protect and promote American jobs and revenue owed to the US Treasury.

V. ACTION

AWPA member company representatives ask Representatives to co-sponsor ENFORCE – HR 1440.

House Members of the Wire and Wire Products Caucus are asked to sign the Caucus Letter of Support, which is being circulated by the Co-Chairs.

All Representatives are asked to ensure that HR 1440 becomes enacted into law either as a stand-alone bill; or as part of another piece of legislation, like the Customs Reauthorization bill.

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**Trade Facilitation and Trade Enforcement Reauthorization Act of 2013 (S 662)
Customs Reauthorization
White Paper
September 2013**

I. Summary

On May 22, 2013, Senators Max Baucus (D-MT), Chairman of the Senate Finance Committee and Orrin Hatch (R-UT), Ranking Member of the Committee, introduced the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013 (S 662). This bill establishes and fully authorizes the Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agencies which currently exist only as a function of discretionary authority under the Homeland Security Act enacted in 2002.

S 662 (Customs Reauthorization) includes the language of the **Enforcing Orders and Reducing Circumvention and Evasion (ENFORCE) Act of 2011 (S1133)** that was introduced during the 112th Congress. The purpose of ENFORCE language is to stop the problem of transshipment which is having such an adverse effect on wire and wire products manufacturers, as well as scores of other industries, in the United States.

A Senate Finance Committee hearing was held on the Customs Reauthorization bill, but it awaits further action. While the House does have a companion bill to the ENFORCE Act (HR 1440), it has not yet introduced a companion Customs Reauthorization bill. It remains uncertain whether the House bill will include the ENFORCE Act language or other related enforcement provisions.

II. ENFORCE

The ENFORCE Act addresses duty evasion by incorporating the following provisions:

Full use of all existing tools. The government agencies responsible for enforcing trade orders should be required to use all existing tools and authority to combat evasion, including risk-based targeting, issuing CF-28 requests for information, conducting audits and focused assessments, and using information Customs already collects for other applications. Prompt and aggressive use of these tools will show those who evade the trade laws that our agencies are paying attention and will use every means at their disposal to enforce these lawful orders.

Prompt action. Every day that duty evasion continues is a day that US industries and employees are not receiving the benefit of the remedy that Congress intended them to receive when they brought and won their trade cases. Evasion must be addressed quickly. Setting reasonable timelines and deadlines for action by the agencies that enforce these orders would ensure that evasion is promptly addressed.

Process: This legislation establishes a process for CBP to investigate claims that AD/CVD orders are being evaded:

- Domestic producers can formally petition CBP to investigate possible evasion.
- Once an investigation is initiated, CBP must make both a preliminary and a final determination as to whether an importer is engaged in evasion.
 - 1) To make a determination of evasion, CBP is directed to focus on whether the correct amount of duty is being collected on the merchandise, rather than on an importer's intent to engage in evasion.
 - 2) CBP is authorized, however, to use its full authority and enforcement tools, including collaboration with ICE to pursue criminal charges when an importer's intent is involved.
- CBP is required to act and publicly report on its findings within set timeframes.
- The bill prescribes enforcement and remedial measures for each determination.
- The legislation does NOT give CBP the authority to expand the existing scope of covered merchandise or expand CBP's existing authority to investigate goods subject to AD/CVD orders.

Publicized results. Publishing regular and timely public reports with meaningful details will promote a number of important policy goals, including:

- Deterring companies and individuals who are tempted to try to evade duties
- Adding transparency to the process
- Adding oversight and accountability of the agencies handling allegations of evasion
- Promoting recognition of the efforts and success of the enforcement agencies which stop evasion schemes

III. PROTECT

An alternative trade law enforcement bill known as the **PROTECT Act (HR 166)** has been introduced in the House.

The PROTECT Act contains many good provisions, but overall it would not fully or satisfactorily address the very real enforcement issues that undermine the effectiveness of AD/CVD orders. Among other things, the PROTECT Act does not implement any type of transparent process associated with allegations of evasion; it does not establish deadlines for CBP to act on such allegations; and it provides only a limited remedy in cases where evasion is found. Without such provisions, the PROTECT Act's utility is extremely limited.

Domestic industries agree that the more robust and structured approach proposed by the ENFORCE Act is preferable and offers a greater set of tools to address evasion than the approach proposed in the PROTECT Act. However, the two pieces of legislation are not mutually exclusive. Marrying both approaches would result in a comprehensive piece of legislation that enhances enforcement, provides appropriate deadlines and transparency, and ultimately promotes the purposes of our trade laws.

IV. ACTION

AWPA member company representatives ask their Senators to support a Customs Reauthorization bill that includes the language contained in the ENFORCE Act of 2011 (S 1133).

We ask legislators to vote on this bill, as soon as possible, so that the illegal transshipment of products can be stopped and wire and wire products manufacturers will have a level playing field on which to compete.

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American Jobs and International Trade: An Approach to Combat Transshipment
February 2014

I. Summary

Domestic producers and industries may petition the US Commerce Department (Commerce) and the US International Trade Commission (ITC) to investigate imports that are believed to be sold at less than fair value – antidumping (AD) – or which unfairly benefit from government subsidies – countervailing duty (CVD). If Commerce finds that the imports are “dumped” or unfairly subsidized, and the ITC finds that these imports are a cause of material injury (or threaten material injury) to the US industry, Commerce will issue an AD and/or a CVD order imposing special duties on imports of these products to offset the amount of dumping and/or subsidies.

AD/CVD orders are the primary means by which US industries combat unfairly-traded imports. These trade remedies are only effective to the extent the AD and CVD orders are enforced. Foreign exporters and US importers are increasingly devising ways to evade payment of AD/CVD duties. This often involves transshipping products through a third country, sometimes repackaging or relabeling the product, and then using false documentation to declare that the third country is the country of origin. Importers also may deliberately misclassify imports, claiming that they are a different product or that they are excluded from the scope of the case.

Another common tactic involves subjecting the products to minor alterations, or minor or insignificant completion or assembly operations in third countries. Such products are then falsely identified as a product of the third country, in blatant circumvention of the order.

These actions violate US law and deprive American companies of the relief which the AD/CVD laws are intended to provide. Evasion of existing AD/CVD orders causes continued financial harm to domestic industries and results in the loss of good-paying jobs for American workers. In addition, **the US Treasury is losing hundreds of millions of dollars in uncollected duties annually**, because products enter the US without paying the applicable, legally-required AD/CVD duties.

The US Department of Commerce is well suited to investigate allegations of transshipment, both in the context of administrative reviews and anti-circumvention inquiries. It clearly has the legal authority to do both. Commerce has expert knowledge of the products and manufacturing processes of the imports under order, having been required to educate itself in order to conduct the original investigation and subsequent reviews. Commerce also has long-standing, highly developed procedures to investigate foreign companies and verify the accuracy of the information they submit. A finding of transshipment would extend the existing order to companies in a third country, which have illegally exported the products to the US, for the purpose of evading the duties.

II. AWPA Position

AWPA asks the Administration to direct the Secretary of Commerce to **use the agency's existing tools and authority**, during the annual review and in anti-circumvention inquiries of AD and CVD orders, to investigate allegations and impose duties on companies in third countries that are found to be transshipping merchandise subject to existing AD/CVD orders.