BORDER WALL HISTORY
May 2019
Why Border Infrastructure?

• Impedance and Denial
  • Ability to slow and/or stop illegal entry
  • Walls combined with personnel, roads, and technology to create an enforcement zone
  • Goal is to deny entry or “reduce vanishing times” in an urban environment

• Allows USBP to concentrate resources on the border

A) Approach Barrier; B) All Weather Road; C) Light tower; D) Bollard Barrier; E) Maintenance Road; F) Vehicle Gate; G) Pedestrian Gate
Legacy Fence Construction
- Varied funding sources
- ~139 miles constructed
- Used excess DoD materials (e.g., Vietnam-era landing mat)
- USBP Agent & National Guard Labor

Secure Fence Act Program
- $2.3B invested
- ~515 miles constructed for a total of 654 miles
  (354 miles 18’ steel bollard and 300 miles of far less expensive vehicle barrier)

Replacement Projects Only
- $112M invested
- ~23 miles constructed (18’ steel bollard)
- Constructed by the Corps of Engineers

Border Wall System Construction
- ~$3.7B funding in FY17 – FY19
- ~205 miles of new and replacement border wall system
- ~40 replacement miles (FY17) - 99% complete
- ~80 new and replacement miles (FY18) – construction started February 2019
- ~85 new border wall and levee wall system (FY18 & FY19) – acquisition process has started
The Secretary of Homeland Security is authorized to construct border infrastructure pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 8 U.S.C. § 1103 note, as amended.

- (a) authorizes the Secretary of Homeland Security to install physical barriers and roads in the vicinity of the border to deter illegal entry in areas of high illegal entry.
- (b) provides additional direction and directs the Secretary to “provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.”
- (c) authorizes the Secretary to waive “all legal requirements” the Secretary deems necessary “to ensure the expeditious construction of the barriers and roads” authorized by Section 102.
• These waivers have often been used to waive certain environmental laws such as NEPA.

• CBP consults with stakeholders regarding the potential impacts to environment, culture, commerce, and quality of life due to the proposed a barrier project.

• Even when a waiver is issued, CBP integrates input from the public/stakeholders into an Environmental Stewardship Plan.
Authority for Land Acquisition: 8 U.S.C. §1103(b)

• Can “contract for or buy any interest in land, including temporary use rights, adjacent to or in the vicinity of an international border” when the Secretary “deems the land essential to control and guard the boundaries and borders of the United States…”

• When the Government “and the landowner are unable to agree upon a reasonable price” the Government can file a condemnation action pursuant to 8 U.S.C. § 1103(b)(3)

• Under 5th Amendment, landowners entitled to just compensation for the taking
30’ Bollard Wall (Calexico, CA)
Pedestrian Wall – Tucson Sector
Vehicle Fencing – Normandy and Post/Rail
Complex Designs

Rio Grande Valley Sector Levee Wall

San Diego Sector Surf Fence
San Diego Sector Prototypes

• Scope: Construct, test and evaluate four concrete and four “other material” border wall prototypes to identify key attributes for potential wall designs
• Several design features are incorporated into USBP’s “toolkit” for future infrastructure
• Subsequently have been removed to allow construction of new San Diego Secondary
Current Projects

• **FY17**
  - Approximately $242M to replace approximately 40 miles of existing primary pedestrian and vehicle border fencing; 99% completed
  - CBP also received $49 million for construction of 35 border wall gates, which are currently under construction.
  - Also provided funds for technology and roads
  - CBP used the funds for areas including San Diego, El Centro, El Paso, and RGV Gates

• **FY18**
  - Approximately $1.375B but specified locations and mileage
    - 14 miles of secondary fencing in San Diego Sector
    - 25 miles of primary pedestrian levee fencing in RGV Sector
    - Primary pedestrian fencing in the Rio Grande Valley Sector
    - Replacement of existing primary pedestrian fencing
    - Planning and design for future years
    - Technology
Current Projects

**FY19**

- Provided $1.375B for primary pedestrian and levee fencing in RGV
- Prohibits fence construction within:
  - Santa Ana Wildlife Refuge
  - Bentsen State Park
  - La Lomita Park
  - National Butterfly Center
  - Vista del Mar Ranch
- Requires consultation with local officials on design and alignment before use of barrier funds
  - Roma
  - Rio Grande City
  - Escobares
  - La Grulla
  - Salineno
National Emergency and Other Funding Sources

• CBP is working with DoD on funding barrier projects using DoD authorities, 10 U.S.C. § 284 & § 2808.
  • Under § 284 DOD is authorized by Congress to construct roads and fences and install lighting to block “drug smuggling corridors”
    • Does not require the declaration of a national emergency
  • 10 U.S.C. § 2808, authorizes the Secretary of Defense to direct military construction in the case of a “national emergency... that requires use of the armed forces.”
    • President declared national emergency on February 15
• Treasury Forfeiture Fund
  • Must be used for law enforcement purposes
  • Multi-year funds
Backup Slides
Border Wall Real Estate Acquisition

Real Estate Planning

- Order of Possession (40 USC 3114(d))
- Initial Landowner Identification
- Right of Entry for Survey & Exploration
- Negotiation of Offer to Sell (8 USC 1103(b))
- Appraisal/Valuation (5th Amendment)
- Title Commitment (40 USC 3111, 2016 DOJ Title Standards)
- Survey

Schedule Impacting Factors

- Availability of funds (all activities) (31 USC 1341)
- Landowner cooperation (Right of Entry/Offer to Sell)
- Relocation of homes, businesses and/or utilities (Public Law 91646 – 90 day notice to owner)
- Interpretation of consultation requirement (Order of Possession) (IIRIRA Section 102(b), 8 USC 1103(b))
- Judicial Docket (Order of Possession)
- Rights of Entry – Survey & Exploration (survey)

Processes Governed by the Uniform Relocation Act (Public Law 91646)
Customs & Cross-Border Issues

Fatema Merchant
May 31, 2019
Agenda

1. The Tariffs
2. Prior Disclosures to CBP
3. The Huawei Question
Section 301 Tariffs - Chinese Origin Products

- **List 1:** 818 HTS numbers - 25% additional duty effective July 6, 2018
- **List 2:** 279 HTS numbers - 25% additional duty effective August 23, 2018
- **List 3:** 5,745 HTS numbers
  - 10% Additional Duty effective Sept 24 – Dec 31, 2018
  - 25% Additional Duty effective January 1, 2019 and forward
- **List 4:** In 2017, the U.S. accepted $505.5 billion worth of Chinese imports
  - No exclusion requests for List 4
List 4

• List 4 Timeline

  – June 10, 2019: Due date for filing requests to appear, summary of expected testimony at public hearing.

  – June 17, 2019

    o Section 301 Committee public hearing at U.S. International Trade Commission

    o Due date to submit written comments.

  – June 24, 2019 (tentative): Due date for hearing rebuttal comments
Strategies for Impact Mitigation

- Conduct risk assessment and quantify impact
- **Business**: consider supply chain
  - Non-China alternatives
- **Legal**:  
  - HTSUS classification review  
  - Country of origin analysis
HTSUS Classification

• Harmonized Tariff of the United States – HTSUS

• Duty rates determined by HTSUS classification

• Importer must provide correct classification

• Duty of reasonable care
Importance & Strategies

• Why is classification important?
  – Tariff lists by HTSUS numbers
  – Correct classification may take item out of scope (or lower other duty rate)

• Strategies
  – Update classification database
  – Get help (complicated and technical – easy to get wrong, over 3,000 pages of HTSUS codes)
  – Consider components, lower level subassemblies
Country of Origin

- Goods must be marked with country of origin

- Standard rules
  1. Country where grown or manufactured
  2. Last country of “substantial transformation”

- Markings must be legible for consumer
Importance and Strategies

• Why is country of origin important?
  – If non-China alternative, could take item out of scope
  – Other Free Trade Agreements, Special Trade Programs implicated

• Strategies
  – Consider production/manufacturing alternatives (substantial transformation)
  – Consider obtaining ruling
Prior Disclosures

• Mistakes happen – review may identify errors
• Prior Disclosure can limit penalties
• Voluntary
• Time period: 5 years from date of disclosure
• Address historical errors at once
• Enhance compliance
Penalties Under 19 U.S.C. § 1592

• **Negligence** – Loss of Duties – civil penalty up to (the lesser of):
  - domestic value of the merchandise, or
  - two times the loss of duties.
  - No Loss of Duties – twenty percent (20%) of the dutiable value of the merchandise.

• **Gross Negligence** – Loss of Duties – civil penalty up to (the lesser of):
  - domestic value of the merchandise, or
  - four times the loss of duties.
  - No Loss of Duties – forty percent (40%) of the dutiable (entered) value of the merchandise.

• **Fraud** – Up to the domestic value of the merchandise.
• Two methods of review
  o 100% review
  o Statistical Sample

• Statistical sampling authorized by CBP in Prior Disclosure, 19 CFR 162.74 (j)
  o Can limit scope of work
  o Can offset overpayments with underpayments of duties.
PD Trends

• Sample size
  – Requests for larger sample sizes

• Approval of methodology
Huawei

• Executive Order

• Entity List Order

• Temporary General License
Huawei: EO and Entity List Order

- **Executive Order**
  - Issued on May 15
  - Very broad but requires other action

- **Entity List Order**
  - Issued May 16, Effective May 21
  - Prohibits exports, reexports, retransfer of all U.S.-origin items subject to the EAR
    - including EAR99 items, all items shipped from U.S.
Foreign Made Products

• Direct product rule:
  – Foreign made product is “direct product” of U.S. technology / controlled for National Security

• De minimis rule:
  – Non U.S. origin products incorporating more than de minimis (25%)
  – “Controlled” content if export of that content would require a license
Huawei: Temporary General License

• Temporary general license (until Aug 19)
  – Continued operation of existing networks / equipment subject to existing contracts
  – Support to existing handsets
  – Cybersecurity research and vulnerability disclosure
  – Engagement as necessary for development of 5G standards by a duly recognized standards body
Thank You!

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