



## Southern Shrimp Alliance

P.O. Box 1577 Tarpon Springs, FL 34688  
955 E. MLK Dr. Suite D Tarpon Springs, FL 34689  
727-934-5090 Fax 727-934-5362

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*Department of Homeland Security  
Docket No. USCBP-2012-0001*

**SOUTHERN SHRIMP ALLIANCE'S WRITTEN COMMENTS  
TO THE ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF CUSTOMS  
AND BORDER PROTECTION (COAC)**

*Re: Report by the AD/CVD Subcommittee*

In the fifteen years between 1989 and 2003, Cambodia exported less than 35 thousand pounds of shrimp to the United States; an annual average of about 2.3 thousand pounds a year. After trade relief petitions were filed in December of 2003, Cambodia exported nearly 22 million pounds of shrimp to the United States in the three years between 2004 through 2006; an annual average of nearly 7.3 million pounds – or a 317,291% increase over the annual average of the previous fifteen years. The explosion of Cambodian shrimp exports was so unbelievable that everyone in the industry – shrimp importers, shrimp distributors, shrimpers, everyone – knew that massive fraud was occurring. The import trends (coupled with phenomenal growth in Malaysian shrimp exports) led even the Thai shrimp industry to cry foul:

*Countries that are relative newcomers to the export market - most remarkably Malaysia and Cambodia - have recently posted spectacular increases in shrimp shipments to the United States, raising suspicion among Thais as to the actual origins of the goods.*

*Thai exporters believe that Chinese producers have begun exporting shrimp to America via third countries to evade punitive duties - far higher (up to 113%) than those imposed by the US on Thailand, India and several other countries accused of dumping shrimp on the US market.<sup>1</sup>*

For years, the Southern Shrimp Alliance met with federal government officials requesting that action be taken to address this open and obvious fraud. By the time shrimp imports from

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<sup>1</sup> Quick Frozen Foods International, "Are Chinese Exporters Using Third Parties to Evade Anti-Dumping Duties on Shrimp?," *QFFI's Global Seafood Magazine* (July 2005) available at: [http://www.qffintl.com/pdf/july\\_2005/50.cfm](http://www.qffintl.com/pdf/july_2005/50.cfm).

Cambodia suddenly stopped, \$67 million worth of shrimp had entered the U.S. market purportedly produced in that country.

We note the sudden jump in shrimp exports from Cambodia following petitions for trade relief to the members of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) AD/CVD Subcommittee as a concrete example of the enforcement expectations of domestic industries harmed by unfair trade. Because the public record now allows a more complete telling of the story, we rely on this example to underscore the severity and audacity of the fraudulent schemes that are being employed to circumvent trade remedies. Specifically, in a formal submission by the Assistant U.S. Attorney to a federal district court judge last month, the government described the circumvention scheme leading to the astronomical increase in Cambodian shrimp exports:

*As to shrimp from countries subject to anti-dumping duties, particularly Vietnam, Ocean Duke transhipped the shrimp through Cambodia and labeled it, falsely, as product of Cambodia (thus not subject to anti-dumping duties). After the imposition of the anti-dumping duties on shrimp in 2004, between May 2004 and July 2005 Ocean Duke imported as product of Cambodia over 15 million pounds of aquacultured, or farmed shrimp, with a declared value of over \$42 million. However, during all of 2004 and 2005, Cambodia produced only an estimated 385,000 pounds of aquacultured shrimp. Internal emails and statements of former employees confirm the transshipment of shrimp from Vietnam through Cambodia, thus making possible the export of 15 million pounds.<sup>2</sup>*

In the course of the federal investigation, the Director General of the Cambodian Fisheries Administration told U.S. government officials that total farmed shrimp production in Cambodia was less than 400,000 pounds for all of 2004 and 2005. Yet just one U.S. importer formally declared that 15 million pounds of shrimp shipped between May 2004 and July 2005 were obtained from shrimp farms in Cambodia.

The extent of the evasion was not limited to shrimp. Immigration and Customs Enforcement (ICE) investigation reports indicate that in 1999 the same importer was found to have been falsely declaring the exporter of Chinese crawfish tails to receive a lower dumping duty deposit rate *and* was fraudulently undervaluing the merchandise to lower duty liability.<sup>3</sup> ICE investigation reports in 2006 indicate that the same U.S. importer was involved in transshipping *pangasius* fillets from Vietnam and mislabeling the fillets as other fish species to evade antidumping duties.<sup>4</sup> This latter circumvention scheme would lead to a series of criminal prosecutions and plea agreements.

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<sup>2</sup> Government's Position with Respect to Sentencing, Court No. CR-11-00297(B)-PA (Jan. 23, 2012) at 5.

<sup>3</sup> *Id.* at Attachment 23 (Department of Homeland Security ICE, "Report of Investigation: Ocean Duke Corporation" Case No. LF08HM99LF0002 (Sept. 30, 1999); Department of Homeland Security ICE, "Report of Investigation: Ocean Duke Corporation" Case No. LF08HM99LF0002 (Nov. 30, 1999)).

<sup>4</sup> *Id.* at Attachments 24 and 26 (Department of Homeland Security ICE, "Report of Investigation: Operation Fish Hook" Case No. HV08HM05LA0010 (Mar. 13, 2006); Department of Homeland Security ICE, "Report of Investigation: Operation Fish Hook" Case No. HV08HM05LA0010 (Apr. 24, 2006)).

As we previously observed in our December 2<sup>nd</sup> comments to the COAC, the fraud confronted by domestic producers regarding the antidumping duties on crawfish tails from China, fish fillets from Vietnam, and frozen warmwater shrimp from various countries has been intentional, varied, and widespread. The frequent and repeated publication of discoveries of illegal schemes to evade the payment of antidumping duties by U.S. government officials is a testament to the pervasiveness of fraud in the seafood industry.

For our own part, the Southern Shrimp Alliance has spent the last seven years uncovering massive circumvention schemes involving transshipment of shrimp through third countries, misidentification of exporters, false declarations of imports as “dusted” shrimp, misclassification of imports as not subject to duties, and abuse of in-bond shipment provisions. Our work belies the claims of importers that the real problem with duty collection is uncertainty inherent in retrospective duty assessment systems.

Nevertheless, the AD/CVD Subcommittee’s efforts continue to eschew addressing the adverse impact of massive, intentional fraud on U.S. Customs and Border Protection’s collection of antidumping and countervailing duties. Instead, the Subcommittee has elected to pursue effectuating an ambitious change in the manner in which antidumping duties are assessed that, even if successful, *will be subject to the same intentional fraud that currently characterizes CBP’s enforcement of our trade remedy laws.*

At the December 7<sup>th</sup>, 2011 COAC meeting, former Commissioner Bersin inquired as to the nature of the difference of opinion regarding preferences for either a retrospective or prospective system of assessment of antidumping and countervailing duties. The answer is that importers generally prefer a prospective system and trade-affected domestic industries prefer a retrospective system. But a particular preference for one assessment system over another is immaterial to whether trade remedy orders will continue to be unlawfully evaded by unscrupulous importers.

The AD/CVD Subcommittee’s current initiative presents the worst of all possible options to domestic industries that, like the shrimp industry, have faced substantial, concerted circumvention in response to lawful trade orders. Perversely, the massive, open, and brazen evasion of trade relief is now being used as the basis for promoting a legislative change championed by importers and opposed by domestic industries. We believe that the Subcommittee could and should play a vital role in identifying and recommending implementation of meaningful strategies to address fraudulent circumvention, in much the same manner as the Intellectual Property Rights (IPR) Enforcement Subcommittee has provided useful assistance in CBP’s enforcement of intellectual property rights. We submit that the Subcommittee’s current activities do not advance that cause.