

Testimony of
John Williams
Executive Director of the Southern Shrimp Alliance

before the

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Mr. Chairman and Members of the Committee on Ways and Means Subcommittee on Trade, my name is John Williams and I am the Executive Director of the Southern Shrimp Alliance (“SSA”). I appreciate the opportunity to testify in support of legislation and other congressional action that would preserve the integrity of our nation’s trade remedy laws. While the U.S. shrimp industry produces the highest quality shrimp at competitive prices, our way of life is currently under attack by unfairly traded imports from China and other countries. The hearing today is focused on the trade laws and China. Our concerns and recommendations relate to unfair trade from China and other countries that abuse the U.S. open market policy.

Unfortunately, attacks do not come just from foreign producers. The U.S. shrimp industry -- and I believe all domestic industries -- are being undermined by recent decisions issued by the WTO Appellate Body, the U.S. Department of Commerce (“Commerce”) and U.S. courts.

Most recently, we have been hit the hardest by the Department of Commerce. Just last week, Commerce issued a determination in our case on shrimp imports from Ecuador that so heavily skews in favor of unfair trade that the entire antidumping order may well be terminated.¹ Without any change in their behavior, Ecuadorian shrimp exporters were given a free pass by Commerce to continue dumping in our market. The Commerce Department refused to consider alternative calculation methodologies that are fully consistent with the WTO decisions but that would have retained the dumping order on Ecuador. Let me be clear, by adopting the least desirable method of implementing the WTO decision, rather than the most desirable method as is required by the law, the Department of Commerce proposes to terminate the order on Ecuadorian shrimp.

We have tried to resolve the problem of unfair trade ourselves by appealing to Commerce with facts and reason, but it has fallen on deaf ears. It is time for Congress to step in and reestablish the effectiveness of our nation’s fair trade laws. What is

¹ The SSA, through a subcommittee, the Ad Hoc Shrimp Trade Action Committee, filed six antidumping petitions in 2003 resulting in antidumping duty orders against shrimp imported from China, Brazil, India, Thailand, Vietnam, and Ecuador.

particularly troubling is that this outcome, in the face of viable alternatives, strongly suggests that reports of an agreement between Ecuador and the United States that the order would be terminated are in fact accurate, notwithstanding denials by U.S. officials.

I understand the Committee is currently considering trade legislation that would hold non-market economy (“NME”) countries, especially China, to the same level of accountability as the rest of our nation’s trading partners. I strongly support that bill as introduced by Representatives Artur Davis and Phil English, H.R. 1229, the “Nonmarket Economy Trade Remedy Act of 2007.”

But fair and effective trade laws do not stop with just NME countries. As part of a domestic industry that has been devastated by unfair imports from both NME countries, including China and Vietnam, and market economy countries, including Brazil, Ecuador, India and Thailand, I have first-hand knowledge of the need for comprehensive trade reform legislation.

That is why I believe H.R. 1229 would benefit from the inclusion of two other vital provisions that would apply to all unfairly traded imports, whether from China, other NME countries or market-economy countries. Those provisions, as introduced by Representatives Barrett, Neal, Spratt and Regula in H.R. 2714, would correct the flawed decisions of the WTO Appellate Body, Commerce and U.S. judges regarding offsets and the appropriate method for determining injury to a domestic industry. I thank these Representatives for standing up for fair trade and domestic producers. They truly understand that our trade system lives and dies by the letter of the law, as enacted by Congress and as the United States has agreed to with its trading partners. We cannot allow WTO panels and activist judges to rewrite our nation’s fair trade laws.

In addition, I strongly urge the Committee to reign in Commerce’s illegitimate actions through your role in consultations with the U.S. Trade Representative (“USTR”) on whether or not to implement Commerce’s flawed decision to terminate the antidumping order on Ecuadorian shrimp imports. We are all aware of the United States’ strong opposition to the decisions regarding offsets and it is not appropriate for Commerce to implement these decisions in a way that is most forgiving of proven unfair traders.

I share my concerns with you today as a proud member of the domestic shrimp industry. I have been a shrimp fishermen for over 40 years and, together with my wife Kathleen, own three shrimp boats in Tarpon Springs, Florida. Like the rest of my industry, shrimping is more than a business to me, it is a way of life. Shrimping is a proud tradition that has defined and sustained entire seaside communities throughout the Gulf Coast and Southeastern Seaboard.

But our way of life is threatened by unfair trade. U.S. shrimpers and processors are no longer able to make ends meet because the U.S. market has been flooded by unfairly traded imports. As a result, our families, local businesses and the communities that depend on shrimping are also facing serious financial difficulties.

Confronted by unfair trade, our industry chose to unite to stop the injury caused by dumped imports. The Southern Shrimp Alliance, founded in 2002, is a non-profit alliance of the hard-working men and women of the U.S. shrimp industry. As the national voice for shrimp fishermen and processors in eight states -- Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas -- we are committed to preventing the continued deterioration of America's domestic shrimp industry. The SSA is developing marketing plans for domestic shrimp, lobbying for more stringent controls and testing of banned chemicals, fighting to continue the antidumping duties imposed on shrimp, and working with our government on issues that affect the U.S. shrimp industry.

Shrimp is the top-selling seafood in the United States. Wild-caught American shrimp is premium-quality seafood caught by American shrimpers and delivered fresh to local docks. People who eat wild-caught American shrimp can be assured that their shrimp meets the standards for U.S. quality and consistency. Wild-caught American shrimp mature at a natural pace, flourishing in nutrient-rich marshes and estuaries before naturally migrating to the Atlantic Ocean or Gulf of Mexico.

With imported shrimp, Americans cannot be sure what it is they are eating. Farm-raised in crowded and dirty ponds, with almost no quality control, imported shrimp often contains pesticides, filth and banned antibiotics.

The quality of American shrimp is unbeatable, but before we were able to obtain trade relief, the U.S. shrimp industry was driven to the edge of collapse by unfairly traded shrimp imports. We are talking about thousands of jobs, life-time investments, and entire fishing communities being wiped out by unfair trade. Average hard-working shrimp fishermen in our communities throughout the entire Gulf Coast and Southeastern Seaboard saw their livelihood destroyed by foreign producers who are just not playing by the rules.

By the time the domestic shrimp industry filed for trade relief, aggregate shrimp imports had increased significantly from 2000 to 2002, while import prices plunged. Shrimp imports from large exporting countries exploded during this time: Vietnamese imports increased 169 percent, Chinese imports increased 73 percent, Indian imports went up 74 percent, and imports from Brazil increased 210 percent. As a result, the market share held by U.S. producers fell significantly.

The effect of this import surge was devastating. The International Trade Commission ("ITC") found that vast majority of shrimp fishermen incurred net losses in 2004, while a minority of fishermen had posted losses in 2001. Not surprisingly, employment in the industry declined sharply from 2001 to 2004. I was lucky enough to have made it through this time, but we all made sacrifices. I had to dock two of my boats even though there was plenty of shrimp to catch because it was just too expensive to maintain and operate them. Many of my fellow shrimpers had their boats tied up too, waiting for prices to increase to pre-dumped levels.

Trade relief came not a moment too soon in 2005 when the ITC found that the domestic shrimp industry was materially injured by dumped imports and Commerce issued final antidumping duty orders.

The antidumping duties have provided some measure of trade relief for our industry, enough for us to begin the recovery process. In 2006, the SSA secured the distribution of over \$102 million of Byrd Amendment funds to aid in their recovery efforts. More than anything else, fair trade relief has given us hope, and hope is a good thing. It has allowed the domestic industry to look forward to the future and plan for better things.

We do not want to stop free trade nor do we want special treatment, we just want a fair deal. In a level playing field, there is no stopping the hard-work and dedication of U.S. shrimp fishermen. What we cannot effectively compete against is the blatant disregard of fair trade principles. American shrimpers are being consistently undermined by foreign producers who have targeted the United States as a literal dumping ground for shrimp imports. A number of countries that export shrimp to the United States have national policies that encourage and subsidize production, far in excess of local or international demand. This overestimated production further encourages dumping on the United States. By strong-arming their way into the U.S. market, foreign shrimp producers have sacrificed the environment, workers' rights and the food safety of imported shrimp for artificially low prices.

The recovery efforts of the U.S. shrimp industry are just one example of how fair and effective trade laws are an essential last line of defense against the harm caused by unfair trade. H.R. 2714 would ensure that these laws are not weakened by the erroneous opinions of the WTO Appellate Body, Commerce, and U.S. judges. Two provisions of the bill are vitally important to domestic industries, especially the U.S. shrimp industry: (1) H.R. 2714 would delay the implementation of the WTO offset rulings until the United States has reached a negotiated solution and would require Commerce to reverse its decision to adopt offsets; and (2) H.R. 2714 would correct the Federal Circuit's flawed ruling in *Bratsk Aluminum Smelter v. United States*. I strongly urge the inclusion of these provisions in trade legislation currently being considered by the Committee.

First, H.R. 2714 would delay the United States' implementation of WTO decisions that have found the United States' long-standing practice of not offsetting dumped sales with non-dumped sales to be inconsistent with the WTO Antidumping Agreement. The United States and many other WTO Members do not use offsets because it provides the most accurate measure of the margin of dumping. To require offsets would be like a death knell for domestic industries injured by unfair trade -- especially the U.S. shrimp industry -- as dumping margins would no longer accurately reflect the true measure of dumping.

This is exactly what has happened in the current antidumping case on shrimp imports from Ecuador. Just last week, Commerce determined that it is abandoning the long-standing practice of not offsetting dumped sales with non-dumped sales in the Ecuador proceeding. This rash and unreasoned decision may result in the complete

revocation of the antidumping order on Ecuadorian shrimp imports unless the USTR decides not to implement Commerce's decision.

I want to make clear to the Committee that revocation of the Ecuador order is not based on any change in the behavior of Ecuadorian exporters, but because Commerce decided to not defend the trade relief. Commerce's tunnel-vision response to the WTO offset rulings is completely unwarranted and irresponsible. U.S. law has not mandated the termination of the Ecuador order; Commerce is not even required to use a particular method to calculate dumping margins.

We provided Commerce with several alternative calculation methodologies that are WTO-compliant and would have kept the Ecuador order in place, including suspension of the case until the issue of offsets has been resolved by the United States. Commerce, however, dismissed our arguments without consideration of its obligation to use "the most desirable method of implementing the findings" of the WTO and to "determine dumping margins as accurately as possible." While many options have been presented to Commerce, there is no denying that Commerce chose the least desirable method to implement the WTO offset rulings: termination of the existing antidumping order on Ecuadorian shrimp imports in response to an action by the WTO that the USTR has called illegitimate.

There is little doubt that Ecuadorian shrimp producers are still dumping. Commerce issued preliminary results in the first administrative review six months ago, confirming that Ecuadorian exporters continue to dump shrimp into our country. The volume of imports from Ecuador has nearly doubled since 2003 while the average unit sales values of these imports have declined significantly.

Not only is Commerce's knee-jerk reaction devastating to the domestic industry, it completely defies the United States' stance that not offsetting is a legitimate and lawful practice.

The USTR has maintained that the WTO offset rulings "did not result from the negotiated text of the agreement." During the Uruguay Round negotiations, a proposal to expressly require offsets was defeated. The current WTO Antidumping Agreement closely adheres to the language of prior agreements on the calculation of dumping margins and again makes no mention of a requirement to offset.

The WTO offset rulings simply have no legal basis. When domestic industries like mine depend on the fair and accurate provision of trade relief, it is wrong for the WTO to prohibit long-standing trade remedy practices that are allowed under both the text of the WTO Antidumping Agreement and the common understanding of the WTO Members. As the USTR stated, a "prohibition of zeroing, or a requirement to provide offsets for non-dumped transactions, simply cannot be found in the text of the AD Agreement."

Just a few weeks ago, the United States again emphasized the illegitimacy of the WTO's offset rulings. The USTR stressed to the other WTO Members that the United

States would not agree to the WTO Doha Round negotiations unless the issue of offsets was addressed. Given the U.S. position that the WTO offset rulings should be overturned by the WTO Members, the USTR would be making an inconsistent and irresponsible decision to direct Commerce to revoke the antidumping order on Ecuadorian shrimp. In your consultations with the USTR regarding this case, I urge the Committee to make clear to the USTR that such inconsistencies will not be allowed.

Until and unless the United States reaches a negotiated solution to offsets, H.R. 2714 will ensure that Commerce will not be able to implement the WTO's erroneous offset rulings. In the meantime, if the USTR tries to speed up the implementation of Commerce's flawed decision or tries to dodge its statutory obligation to consult meaningfully with Congress, the Committee should strongly oppose the termination of the Ecuador order. I urge Congress to provide the trade relief due to domestic shrimp fishermen that Commerce has wrongfully refused to grant.

Second, H.R. 2714 will ensure that the requirements imposed by the *Bratsk* decision will never be put in place. In *Bratsk*, the Federal Circuit held that the ITC must determine whether non-subject imports would replace the investigated imports and whether a potential order would actually provide relief for the domestic industry. Essentially, the *Bratsk* decision asks the ITC to channel its psychic abilities to see into the future of the U.S. market and the future performance of foreign producers not even subject to the investigation. The ITC would have no data on which they could base their decision.

The Federal Circuit's requirements create an impossible hurdle for the ITC to determine injury. The court has so confused the purpose and language of our nation's trade remedy laws that only the intervention of Congress will be able to rectify this wrong. The purpose of our nation's fair trade laws is to ensure a level playing field, not to drive out imports. The antidumping duties imposed on certain shrimp imports have not caused those foreign producers to exit the U.S. market. In fact, in the Ecuador case, Ecuadorian shrimp imports have increased significantly since antidumping duties were levied. The Federal Circuit was just plain wrong to force the ITC to determine whether there would be a void to fill when duties are levied on subject imports.

Congress has never required the ITC to consider any of the factors identified by the Federal Circuit. The court strayed from the letter of the law and inserted new requirements that would be devastating for domestic industries trying to prove that they have been injured by unfairly traded imports. The standard of the law is clear and the ITC does not -- and should not -- play in the hypothetical. H.R. 2714 would ensure that the additional requirements imposed by the Federal Circuit are disregarded.

Finally, I would like to point your attention to S. 364, the "Strengthening America's Trade Laws Act of 2007," a bill that was introduced by Senator Rockefeller. I strongly support Senator Rockefeller's efforts to further strengthen our nation's fair trade laws and would especially like to discuss the provision of S. 364, which would require Congressional approval of regulatory action relating to adverse WTO rulings. The bill would require Congress to pre-approve any proposed changes to U.S. laws and long-

standing practices that are meant to comply with WTO decisions. I understand that the requirement is retroactive for cases such as the WTO offset rulings.

If our elected representatives had veto power over Commerce's decision to change its long-standing practice of not offsetting dumped sales with non-dumped sales, I believe that there is no way that the antidumping order on Ecuadorian shrimp imports would be revoked. Having respect for our nation's fair trade laws, Congress would ensure that prior practice be allowed to continue until a negotiated solution is reached and that domestic industries be provided with the trade relief they deserve.

The trade legislation currently being considered by the Committee would only benefit from the inclusion of the provisions of H.R. 2714 and S. 364.

Thank you for inviting me to testify today. I am happy to respond to any questions the Members of the Committee may have.