



Southern Shrimp Alliance

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Southern Shrimp Alliance's Comments on Negotiating Objectives with Respect to Malaysia's Participation in the Proposed Trans-Pacific Partnership Trade Agreement

In accordance with the Office of the United States Trade Representative's (USTR) request for comments on negotiating objectives with respect to Malaysia's participation in the proposed Trans-Pacific Partnership (TPP) Trade Agreement, the Southern Shrimp Alliance respectfully submits written comments in response to the USTR's invitation.

The USTR's request for comments invited parties to address any "matter relevant to the inclusion of Malaysia in the proposed TPP agreement," "[g]eneral and product-specific negotiating objectives for Malaysia in the context of this proposed regional agreement," the "[e]conomic costs and benefits to U.S. producers and consumers of removal of tariffs or reduction in non-tariff barriers on articles traded with Malaysia," and the "[a]dequacy of existing customs measures to ensure that qualifying imported goods from TPP countries, including Malaysia, receive preferential treatment, and appropriate rules of origin for goods entering the United States under the proposed regional agreement." See 75 Fed. Reg. 64,778 (Oct. 20, 2010). As discussed in more detail

below, the active participation of Malaysian parties in the transshipment of goods to circumvent regulatory restrictions and evade duties, coupled with the tolerance of the Malaysian government for the widespread practice, renders Malaysia an inappropriate candidate for inclusion in the proposed TPP agreement. As such, one of the principal negotiating objectives of the USTR with respect to Malaysia's participation in the proposed Trans-Pacific Partnership Trade Agreement should be to obtain the Malaysian government's meaningful cooperation in arresting the practice of transshipping merchandise through Malaysia to unlawfully and illegally conceal the true country of origin of imported goods. Unless and until the Malaysian government makes significant strides in preventing the transshipment of merchandise through Malaysian parties to evade regulatory controls and demonstrates a commitment to cooperating with U.S. authorities on the issue, the USTR should not support the inclusion of Malaysia in the proposed TPP agreement.

I. Senator Ron Wyden's Report on Duty Evasion

On November 8, 2010, the Office of United States Senator Ron Wyden (OR) issued a public version of the staff report "Duty Evasion: Harming U.S. Industry and American Workers." The report, available online at: <http://wyden.senate.gov/download/?id=ab312b37-d16b-495c-a103-c1887afb37af> and included in this submission as Attachment 1, contains the results of Senator Wyden's staff's investigation of widespread circumvention of antidumping and countervailing duty orders through various illegal schemes. In addition to cataloguing offers to sell merchandise in a manner that illegally circumvented antidumping duties, Senator

Wyden's staff contacted various Chinese manufacturers of goods subject to antidumping duties to gauge the extent to which circumvention schemes were employed. In conducting this exercise, 10 of the 47 companies that corresponded with staff – covering a wide range of products – expressed a willingness to participate in schemes that defrauded the U.S. government.

The staff report underscores the massive and growing problem that circumvention schemes pose to all efforts to regulate imports. Just as these unlawful schemes are employed to avoid the payment of duties, they are also used to circumvent safety and public welfare regulations. The problems presented by these practices are massive in scope and require the attention of all U.S. government officials involved with foreign trade.

Although the problem of circumvention is broadly based, impacting a number of commodity products and involving a number of countries, Senator Wyden's report highlights and emphasizes the central role that Malaysian parties have played in transshipment schemes routinely undertaken to defraud the U.S. government and U.S. consumers. In the majority of instances of transshipment discussed by Senator Wyden's report, Malaysia is a prominent participant in the scheme. Examples include:

- Company A, a Chinese exporter of concrete nails, writes that “we can arrange the container shipping [sic] from Xinpang to **Malaysia**, Bangladesh or Singapore. And the shipping [sic] agent can help us to issue the original certification, it will increase the cost but I think it must be lower than duties.” (Page 12, emphasis added).
- Company C, another Chinese exporter of concrete nails, wrote: “if you want to avoid paying the duties ,there is the way is send the goods to **Malaysia** and change a box ,then send to U.S” (Page 16, emphasis added). Senator Wyden's staff sought clarification, “So you can transship through Malaysia

and change the country of origin to avoid paying the anti-dumping duties?" (Page 17). Company C confirmed: "Yes .our company can do this . but in this way ,the cost will increase." (Id.).

- Company D, a Chinese exporter of lined paper products, sketched out a strategy to avoid payment of antidumping duties: "Solution is Shipping goods to **Malaysia**, transship to America to avoid paying the anti-dumping duties." (Page 22, emphasis added). Senator Wyden's staff sought clarification, "Can your company can transship through Malaysia and change the country of origin to evade the anti-dumping duties?" and Company D responded "yes, we can do that." (Id.).
- Company L, a Chinese exporter of steel wire garment hangers, sent out an offer to sell to hangers wherein the exporter stated: "We have two ways to ship containers to US. One is from Taiwan, the transport charge is \$4200.00 per container. Another is from **Malaysia**, transport charge is \$3200 per container, but the shipping date will be much longer than from Taiwan." (Page 50, emphasis added).
- Eversky International Forwarding Agency's offers for freight forwarding services "[a]dvertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Prepares false country of origin certificates for Indonesia and **Malaysia**. Principal transit ports are Singapore and Port Klang, Malaysia." (Page 57, emphasis added).
- H&T International Logistics Ningbo Ltd.'s, a subsidiary of Hualianton International Logistics Co., Ltd., offers for freight forwarding services "[a]dvertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Prepares and provides false country of origin certificates and re-exports products through Port Klang, **Malaysia**." (Page 57, emphasis added).
- Ningbo Star International Freight Forwarding Co., Ltd.'s web-site sets forth a transshipment scheme whereby the company's "Malaysian branch acts as consignee in Malaysia. Removes first leg transportation manifest from China. . . Malaysian branch in charge of procedures for changing containers and arranging booking for second leg transportation. . . Before departure, **Malaysia factories** apply for certificates of origin for use for shipment of Chinese origin." (Page 58, emphasis added).
- Pulinktrans China, Ltd.'s web-site listed transshipment hubs for products including fasteners, steel pipes, steel wire hangers, and clothing to include "**Malaysia** and Thailand." (Page 58, emphasis added).

- Shenzen Sunpower International Logistics, Ltd. is a company based in Shenzen, China, but headquartered in Ipoh, Malaysia that advertises illegal transshipment services that provide in-country certificates of origin from countries including "Taiwan, **Malaysia**, Indonesia, Bangladesh, Thailand, Vietnam, and Sri Lanka." (Page 59, emphasis added).
- Wintrans Logistics and Investment & Management Co., Ltd. "[a]dvertises illegal transshipment services to avoid paying AD/CV duties and other import restrictions. Claims to work with business partners in Indonesia, Myanmar, and **Malaysia** that provide certificates of origin issued by factories in those countries. Directs payment through Malaysia or Hong Kong." (Page 59, emphasis added).
- Global Success International Transportation (Shenzhen) Ltd. claims to employ transshipment hubs in "**Malaysia**, Singapore, Indonesia, Bangladesh, the Philippines, and India" to evade payment of AD/CV duties and other import restrictions. (Page 61, emphasis added).
- Dyna International Shipping Ltd. claims to be able to provide false third-country certificates of origin from transshipment hubs in "**Malaysia**, Singapore, Thailand, and Indonesia" to evade payment of AD/CV duties and other import restrictions. (Page 61, emphasis added).
- Hanhen Shipping (China) Co., Ltd. claims to be able to provide false third-country certificates of origin from "**Malaysia**, Vietnam, Indonesia, and Bangladesh" to evade payment of AD/CV duties and other import restrictions. (Page 62, emphasis added).
- L'Assurex International Logistic Ltd. similarly claims to be able to provide false third-country certificates of origin from "**Malaysia**, Indonesia, and India" to evade payment of AD/CV duties and other import restrictions. (Page 63, emphasis added).

Although Senator Wyden's report presents an exhaustive treatment of illegal circumvention schemes employed to flaunt regulatory control over imported goods, numerous additional examples exist. Indeed, the report could not possibly have covered every permutation of these circumvention schemes because the practice is so widespread as to be an almost pedestrian, though illegal, feature of international trade.

The prevalence of public and open offers to provide these illegal services reflects the pervasive nature of the practice.

For example, in addition to the schemes discussed in Senator Wyden's report, a company called Highway Freight Consulting Ltd. advertises logistics solutions designed to address issues with trade in textiles and merchandise subject to antidumping duties.

A copy of the web page, available at:

<http://www.highwayfreightconsulting.com/cn/logistics.asp>, is included in this submission

as Attachment 2. Under the heading "Anti-dumping Logistics," Highway Freight

Consulting notes:

China has become the world's factory acting as the biggest exportation country around the world. As a result many countries set up some Anti-dumping policy to restrict import from China, which deeply hurt trading cooperation between importers and exporters with highly cost. In this regards, doing third country documents and transfer shipment may save you great cost for your business.

Similarly, under the heading "Textile Logistics," the company observes:

We know Europe canceled China quota in 2008 and US government in 2009, But since there are still trade barriers in some countries which makes shippers and consignees unhappy. Luckily we now have had our personal solution through the past experience.

While Highway Freight Consulting does not specify the countries from which third-country documentation is obtained, Eastern Start Logistics Ltd., a Shenzhen based freight forwarder, appears to offer assistance in obtaining false certificates of origin from Malaysia and Thailand in its online profile (available at:

http://worldcargo.en.ec21.com/company_info.jsp and included in this submission as

Attachment 3), stating:

CHINESE/TAILAND[sic]/**MALAYSIA**..ETC FORM-A C/O FOR SHOES, ENERGY SAVING LAMP..ETC IMPLEMENTED BY ANTI-DUMPING TAX EXPORT TO COUNTRIES UNFRIENDLY TO CHINA.

(emphasis added).

II. Malaysian Parties Have Facilitated the Circumvention of the FDA's Import Alert on Chinese Shrimp and Antidumping Duties on Chinese Shrimp

In December of 2003, the domestic shrimp industry petitioned the U.S. International Trade Commission (ITC) and the U.S. Department of Commerce (Commerce) for relief from dumped imports of shrimp from Brazil, China, Ecuador, India, Vietnam, and Thailand. Following investigations by both agencies that resulted in affirmative findings that frozen shrimp imported from these countries were being sold at less than fair value and the domestic shrimp industry was materially injured by reason of these imports, Commerce published antidumping duty orders on February 1, 2005.

In August of 2007, the U.S. Food and Drug Administration (FDA) issued Import Alert 16-131 (http://www.accessdata.fda.gov/cms_ia/importalert_33.html). The Import Alert imposed relatively strict controls on imports of Chinese aquacultured seafood, including shrimp, based on the agency's finding of banned antibiotics and/or fungicides in 25% of catfish, Basa, shrimp, dace, and eel sampled for testing by the FDA between October 1, 2006 and May 31, 2007.

Prior to the filing of the antidumping duty petitions at the end of 2003, frozen non-breaded shrimp imports from China had grown substantially in the U.S. marketplace. As shown in the table below, in the five-year period ranging from 1999 to 2003, the

SSA Comments on Negotiating Objectives with Respect to Malaysia's Participation in the Proposed TPP Trade Agreement

November 22, 2010

Page 8

volume of shrimp imports from China nearly decupled, from 18 million pounds to 169 million pounds:

U.S. Imports of Frozen, Non-Breaded Shrimp from China (1999-2003)					
	1999	2000	2001	2002	2003
Volume (lbs.)	18,137,975	38,653,503	59,386,821	105,369,895	169,061,805

Source: U.S. International Trade Commission DataWeb

After the submission of the petitions for trade relief, imports of non-breaded frozen shrimp from China fell substantially in 2005, recovered in 2006, and then declined again in 2007 in conjunction with the issuance of Import Alert 16-131:

U.S. Imports of Frozen, Non-Breaded Shrimp from China (2004-2009)						
	2004	2005	2006	2007	2008	2009
Volume (lbs.)	124,758,075	23,964,447	60,354,881	47,578,568	56,402,515	49,600,420

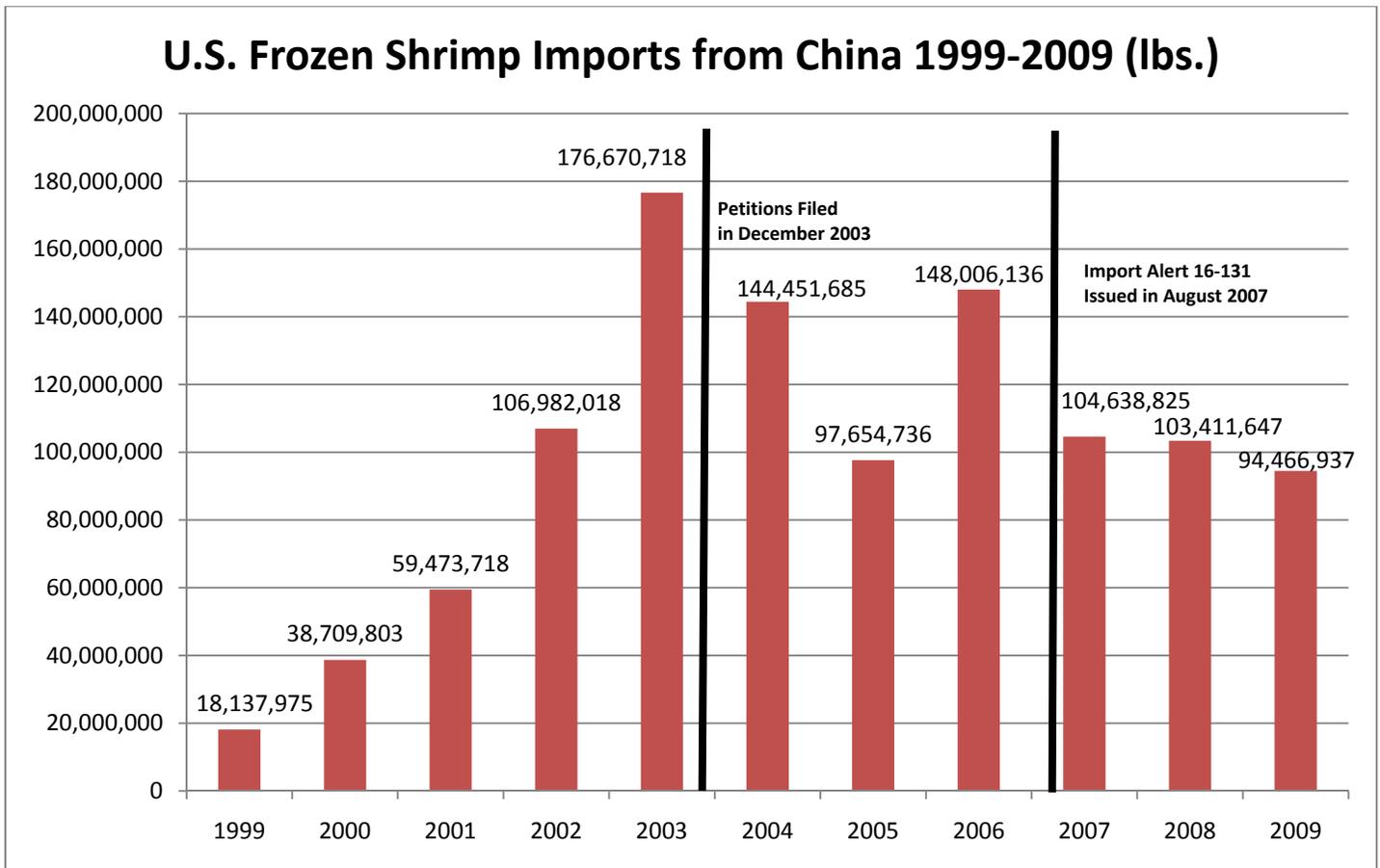
Source: U.S. International Trade Commission DataWeb

Initially, the decline in Chinese exports of non-breaded, frozen shrimp was compensated for, in part, by a substantial increase in the volume of frozen breaded shrimp exported to the United States from China. Through 2002, Chinese breaded shrimp exports were minimal, but increased massively between 2004 and 2006. The increase in volume of breaded shrimp exports from China was arrested at the same time as Import Alert 16-131 was issued in 2007:

U.S. Imports of Frozen, Breaded Shrimp from China (2004-2009)						
	2004	2005	2006	2007	2008	2009
Volume (lbs.)	19,693,610	73,690,290	87,651,256	57,060,257	47,009,132	44,866,517

Source: U.S. International Trade Commission DataWeb

Combining the trends in imports of both breaded and non-breaded frozen shrimp from China, these data indicate that although Chinese exports of frozen shrimp to the U.S. have remained significant, both the antidumping duty order and the FDA's Import Alert appear to have impacted the overall volume of frozen shrimp exported from China to the United States, as shown in the chart below:



As official exports of frozen shrimp from China declined after 2003, frozen shrimp exports from Malaysia exploded. Between 1996 and 2003, Malaysian frozen shrimp exports to the United States averaged around 1.9 million pounds, never accounting for an annual volume of more than 3.2 million pounds during the eight year period. By

SSA Comments on Negotiating Objectives with Respect to Malaysia's Participation in the Proposed TPP Trade Agreement

November 22, 2010

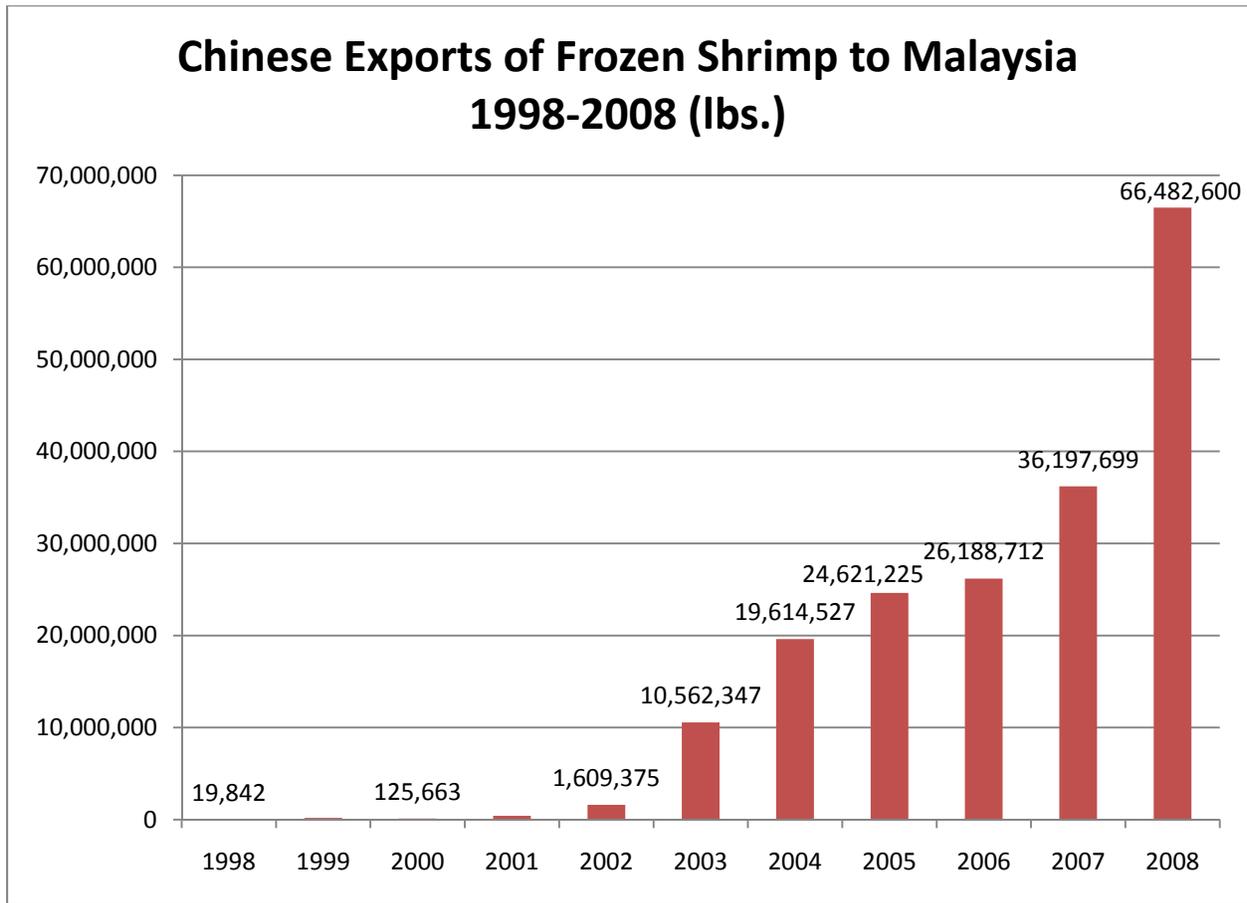
Page 10

2008, 66.2 million pounds of frozen shrimp was being exported from Malaysia to the United States:

U.S. Imports of Frozen Shrimp from Malaysia (2003-2008)						
	2003	2004	2005	2006	2007	2008
Volume (lbs.)	2,645,182	27,326,865	37,543,323	44,689,332	50,123,938	66,179,725

Source: U.S. International Trade Commission DataWeb

Not surprisingly, Chinese exports of shrimp to Malaysia over the same time period had also exploded. According to Chinese export data available through Global Trade Information Services, between 1998 and 2001, Chinese exports of frozen shrimp to Malaysia were extremely limited. However, following a ban imposed on exports of Chinese shrimp (as well as number of other food products) to the European Union in January 2002 (see "EU Standing Veterinary Committee agrees on suspension of imports of products of animal origin from China," Press Release, European Commission, IP/02/143 (Jan. 28, 2002)), China's shrimp exports to Malaysia began to increase. In 2003, Chinese exporters shipped over ten million pounds of shrimp to Malaysia – more than four times the total amount of shrimp exported from China to Malaysia in the five years between 1998 and 2002 (2.3 million pounds). Chinese exports of frozen shrimp to Malaysia grew even more substantially following the filing of the antidumping petition against Chinese shrimp in December 2003. By 2008, China was exporting over 66 million pounds of frozen shrimp to Malaysia. Thus, as shown in the chart below, at the same time as Malaysia's exports of shrimp to the United States were growing substantially, exports of Chinese shrimp to Malaysia reached unprecedented heights with each successive year.



On July 11, 2006, the following article appeared on the Malaysian News

Agency's website Bernama.com seemingly confirming concerns that Malaysia was being used as a vehicle to circumvent antidumping duties imposed on Chinese shrimp:

Local Link Used To Evade Prawn Anti Dumping Tariff, Says Muhyiddin
July 11, 2006 23:08 PM

SHAH ALAM, July 11 (Bernama) -- Prawn producers from nations subjected to anti dumping tariff are said to be using Malaysian parties to evade the tariff, said Agriculture and Agro-based Industries Minister Tan Sri Muhyiddin Yassin.

He said the ministry was informed by major prawn importing nations like the United States on such practice but the parties involved were yet to be identified.

SSA Comments on Negotiating Objectives with Respect to Malaysia's Participation in the Proposed TPP Trade Agreement

November 22, 2010

Page 12

"Its quite difficult to identify them. However we are taking steps to overcome the problem [if] not it will bring repercussions for the nation's prawn industry," he told a press conference after officiating a one day seminar on "Malaysia's Marine Prawn Industry" here Tuesday.

The Malaysian parties are believed to be involved in the repackaging of prawn products from nations subjected to the tariff and tranship them to the same nation that imposed the tariff on prawns.

He said this puts Malaysia at risk where it too could be subjected to the tariff.

"Therefore, I advise them to stop cooperating with those who want to take advantage. We will identify those involved and blacklist them for the sake of the industry," he said.

Muhyiddin said the ministry was cooperating with the International Trade and Industry Ministry (MITI) to keep in check the seafood Original Product Certificate issued by trade councils.

"This was pertinent in ensuring the originality of our product and reduce the chances of getting involved in such activities," he said.

He said the comprehensive traceability programme being planned to enable the certificate to be confirmed by the Fisheries Department before exported. . . .

Nevertheless, despite Minister Muhyiddin's expressed concern, Chinese exports of shrimp to Malaysia continued to grow massively, while Malaysian exporters sent more and more shrimp to the United States claimed to be a product of Malaysia.

In response, the Southern Shrimp Alliance approached the USTR, Commerce, and U.S. Customs and Border Protection (CBP) with evidence demonstrating the obvious nature of the transshipment schemes employed. In addition to the circumstantial evidence demonstrating that massive quantities of Chinese shrimp were being exported to Malaysia at the same time as Malaysia was exporting growing quantities of shrimp to the United States, commercial data indicated that shrimp

imported from Malaysia was predominantly entered by importing companies that were newly created, with import patterns that raised numerous red flags. Many of these importers would import seafood products that lay just outside the scope of existing antidumping orders. Thus, an importer of Malaysian shrimp would also be an importer of whole cooked crawfish from China (exempt from antidumping duties) but never of crawfish tails from China (subject to antidumping duties). With respect to shrimp, many of these companies were importers of dusted and breaded shrimp from China (exempt from antidumping duties) but obtained all of their non-dusted, non-breaded shrimp not from China (which would be subject to antidumping duties) but from Malaysia. Matching up these U.S. importers with their Malaysian suppliers allowed for the easy identification of problematic exporters.

CBP, along with U.S. Immigration and Customs Enforcement (ICE), had already successfully stopped circumvention schemes following extensive investigations involving the mislabeling of Chinese shrimp imports as "dusted" shrimp and the transshipment of Chinese shrimp exports through Indonesia to falsify the country of origin. However, in contrast to the cooperation that ICE officials received from the government of Indonesia in investigating circumvention schemes involving Indonesian parties, CBP and ICE officials reported that the Malaysian government was uncooperative and would only permit an investigation of a company that appeared to be engaging in transshipment of shrimp if the company consented to being investigated. The refusal of the Malaysian government to cooperate in addressing circumvention and

the lack of interest from federal agencies outside of CBP and ICE to address the widespread fraud have severely impeded efforts to stop the practice.

Nevertheless, CBP and ICE officials continued to work with the Southern Shrimp Alliance to try and address the transshipment of substantial quantities of shrimp through Malaysia. By the end of the summer of 2007, transshipment of Chinese shrimp through Malaysia allowed U.S. importers to evade not only the antidumping duties imposed on Chinese shrimp, but also the Import Alert measure designed to keep unsafe shrimp imports away from U.S consumers. A 2009 report from the U.S. Government Accountability Office described CBP's and ICE's response:

On the basis of industry information and CBP and ICE investigations, CBP determined that Chinese shrimp was being transshipped to the United States through Malaysia. Due to this illegal transshipment, importers of Chinese shrimp were able to circumvent not only the 2005 antidumping duty but also FDA's recent import alert. In September 2007, CBP tested shipments of suspected Chinese shrimp illegally transshipped through Malaysia for the presence of unapproved drugs and found some contaminated shrimp. On the basis of CBP's information, in March 2008, FDA issued a new import alert requiring importers of shrimp from one Malaysian manufacturer to prove the absence of unapproved drugs prior to entering future shipments of shrimp into U.S. commerce.

U.S. Government Accountability Office, "Seafood Fraud: FDA Program Changes and Better Collaboration among Key Federal Agencies Could Improve Detection and Prevention" GAO-09-258 (Feb. 2009) at p. 15 (excerpt included in this submission as Attachment 4). The report (at p. 20) noted the significance of CBP's and ICE's operation:

CBP and ICE's shrimp transshipping investigation also highlights the connection between economic fraud and food safety. CBP and ICE's investigation found that foreign manufacturers and importers were not only attempting to circumvent antidumping duties by sending Chinese shrimp

SSA Comments on Negotiating Objectives with Respect to Malaysia's Participation in the Proposed TPP Trade Agreement

November 22, 2010

Page 15

to the United States through Malaysia, but these companies were also evading an FDA import alert aimed at stopping adulterated Chinese shrimp from entering the United States.

As the GAO report on seafood fraud indicated, Malaysian exporters and their U.S. importers were avoiding both antidumping duties and an import alert on Chinese shrimp, appearing to intentionally introduce contaminated shrimp into the U.S. market place. Three Malaysian exporters that the Southern Shrimp Alliance identified early on as having trade patterns that evinced transshipment – Seiko Marine Products Sdn. Bhd., Ting Seng Brothers Sdn. Bhd., and Super Grade Resources – were made subject to import alerts.

The inclusion of the three Malaysian exporters on the FDA's import alerts appears to have had a significant effect on these shippers. The FDA added Seiko Marine Products to Import Alerts #16-124 and #16-129 on March 17, 2008 for the presence of chloramphenicol and nitrofurans in the company's shrimp. See Import Alert #16-124, "Detention Without Physical Examination of Aquaculture Seafood Products Due to Unapproved Drugs" (Sept. 15, 2010); and Import Alert #16-129, "Detention Without Physical Examination of Seafood Products Due to Nitrofurans" (Oct. 28, 2010). Super Grade Resources was added to Import Alert #16-129 on May 5, 2009 for nitrofurans and Ting Seng Brothers was added on October 20, 2009 for nitrofurans in its shrimp products and on March 5, 2010 for nitrofurans in its breaded shrimp products. Commercial data indicate that the additions of these companies to the FDA's import alerts ended the companies' exports to the United States. Seiko Marine Products' shrimp exports appear to have stopped in June of 2008; Super Grade Resources has

no reported exports after June of 2009; and Ting Seng's reported exports end in March 2010. However, the three companies – which had not shipped shrimp to the United States prior to the domestic industry's filing of a petition for trade relief – shipped over 30 million pounds of frozen shrimp to the United States before exiting the marketplace.

The cessation of exports from these three companies does not, unfortunately, indicate that the problem has gone away. Each of these three exporters appears to have been vehicles of convenience for circumventing trade remedy and food safety laws. Seiko Marine's exports began in September 2004, after initiation of the antidumping case on shrimp from the People's Republic of China. Super Grade Resources' exports only began in August of 2008 (the company shipped a reported 6.6 million pounds of shrimp in less than a year). And Ting Seng's exports began in October of 2007. Just as these companies appeared suddenly and exported substantial quantities of shrimp, once the three shut down, other exporters popped into existence to fill the void.

For the purposes of identifying these new players, the activities of importers of shrimp from Seiko Marine, Super Grade Resources, and Ting Seng help to identify exporters that are likely to be participating in circumvention schemes. For example, one California-based importer imported over 1.5 million pounds of shrimp from Super Grade Resources. The company imports food only from Malaysia and only two types of products: canned mushrooms and frozen warmwater shrimp (both canned mushrooms and shrimp from China, perhaps coincidentally, are subject to antidumping duty orders). Following the cessation of shrimp exports from Super Grade, the importer imported over

350,000 pounds of shrimp from a new Malaysian shipper – Megah Awana Resources – in five months.

Ship manifest data indicates that Megah Awana Resources began exporting shrimp to the United States in April 2009. In just eight months, Megah Awana shipped 5 million pounds of shrimp to the U.S. However, Megah Awana's exports of shrimp to the U.S. appear to have stopped entirely in November 2009; in its place, another new Malaysian shipper – Value Pack Resources – began to export "Malaysian" shrimp to Megah Awana's former importers, shipping over 6 million pounds of shrimp to the United States since November 2009.

In just the last two years (2009 and 2010), six new Malaysian exporters of shrimp have shipped roughly 35 million pounds of shrimp to the United States. These exporters had no previous history of exporting food products to the United States and their shrimp products are imported by many of the same U.S. importers who formerly received shrimp from Seiko Marine, Super Grade Resources, and Ting Seng. As these exporters' operations are shut down when their unsafe and adulterated shrimp exports are finally analyzed and discovered, new shippers will undoubtedly continue to fill the void and continue transshipment practices until the Malaysian government – and other agencies of our federal government – begin, in earnest, to address the problem.

Circumvention intended to conceal the true origins of food products consumed by the American public is not unique to the shrimp industry. The Southern Shrimp Alliance's efforts to address circumvention – particularly illegal transshipment – have led to cooperation amongst various domestic food producers regarding issues of common

SSA Comments on Negotiating Objectives with Respect to Malaysia's Participation in the Proposed TPP Trade Agreement

November 22, 2010

Page 18

concern. For instance, like the domestic shrimp industry, the domestic honey industry has faced competition in the U.S. marketplace from imported products that have been found to have been sold at less than fair value and some that have been found tainted by the use of illegal antibiotics. In December 2001, an antidumping duty order was published regarding imports of honey from China. Separately, multiple Chinese exporters of honey are currently on the FDA's import alert for the presence of fluoroquinolones (Import Alert 36-04) and chloramphenicol (Import Alert 36-03).

The domestic honey industry has identified Malaysian parties as playing an important role in facilitating the transshipment of Chinese honey to evade antidumping duties and restrictions on unsafe imports (see, for example, the press release at http://www.truesourcehoney.com/newsroom/release_071510.asp). Import statistics appear to support these concerns. Specifically, in the four year period between 2006 and 2009, the volume of natural honey imported from China under the four digit tariff code 0409 of the Harmonized Tariff Schedule of the United States (HTSUS) has plummeted. At the same time, natural honey imports from Malaysia have exploded:

U.S. Natural Honey Imports (0409) from China and Malaysia (2006-2010)					
	2006	2007	2008	2009	2010 (Through Sept.)
China (lbs.)	70,876,996	38,610,423	24,767,742	147,657	1,372,420
Malaysia (lbs.)	310,640	4,168,634	9,149,742	19,991,977	29,205,624

Source: U.S. International Trade Commission DataWeb

This trend – an increase in Malaysian natural honey exports following a decline in Chinese natural honey exports – is not unprecedented. Following the imposition of antidumping duties on Chinese honey imports, total natural honey imports from China fell from 58.7 million pounds in 2000 to 16.7 million pounds in 2002. Malaysia, which

had not exported any natural honey to the United States from 1996 to 2001, suddenly exported 2.3 million pounds of goods under HTSUS 0409 in 2002 and another 7.8 million pounds in 2003. At the same time, at least three Malaysian exporters of honey (Cosmic Quality Sdn. Bhd.; Falcon Products Malaysia Sdn. Bhd.; and Sea Empress Logistics (M) Sdn. Bhd.) were placed on a FDA import alert for the presence of the banned antibiotic chloramphenicol in their exports (Import Alert 36-03). Following the placement of Malaysian honey exporters on Import Alert 36-03, Malaysian natural honey imports tapered off after 2003 and did not reach a million pounds per annum until the sudden explosion of Malaysian natural honey imports in 2007.

Again, not surprisingly, Chinese exports of natural honey to Malaysia have grown simultaneously to the growth of Malaysia's exports of natural honey to the United States. At the same time that U.S. imports of Malaysian natural honey more than doubled (from 9.1 million pounds to 20.0 million pounds) and U.S. imports of Chinese natural honey withered from 24.8 million pounds to 0.1 million pounds between 2008 and 2009, China's exports of natural honey to Malaysia grew from 3.5 million pounds to 6.3 million pounds according to data obtained from Global Trade Information Services. The 6.3 million pounds of natural honey exported from China to Malaysia in 2009 was more than the total amount of natural honey exported from China to Malaysia in the seven-year period spanning from 1995 to 2001 (6.2 million pounds).

Nevertheless, although both historical and current import patterns evince, or at least raise serious questions regarding, the unlawful transshipment of Chinese honey through Malaysia, Malaysian natural honey exports to the United States have doubled in

volume each year since 2007 (and have more than doubled in 2010 through September compared to the same time period in 2009). This substantial growth, coming on the heels of the substantial growth of Malaysian shrimp exports to the United States, appears to indicate that circumvention schemes involving potentially unsafe food illegally transshipped through Malaysia are proliferating.

III. Malaysian Authorities Have Historically Cooperated with European Authorities to Address Circumvention and Transshipment Schemes

The problem of unlawful circumvention and illegal transshipment of goods is not unique to the United States' market. However, the experience of the European Union in addressing the unlawful transshipment of goods through Malaysia appears to be markedly different from that of the United States. In particular, although we have been repeatedly informed that the Malaysian government has declined to allow U.S. authorities to investigate Malaysian exporters suspected of illegally transshipping merchandise, OLAF, the European Anti-Fraud Office, has received far more cooperation.

In January 2007, for example, OLAF announced the results of a widespread investigation of cigarette lighters illegally transshipped from China through Indonesia and Malaysia that was estimated to have resulted in the evasion of payment of at least 20 million Euros in antidumping duties imposed on lighters from China. OLAF's press release (available at: http://ec.europa.eu/anti_fraud/press_room/pr/2007/1_en.html and included in this submission as Attachment 5) provided the following brief summary of its work in Malaysia:

The investigation of the imports of lighters falsely declared as of Malaysian origin has been the most spectacular so far: The joint verification conducted by OLAF in Malaysia, together with the customs authorities of Germany, UK, Italy and the Czech Republic and with the support of the competent national Malaysian authorities, revealed that in the past four years more than 300 million flint-operated lighters from China have passed through Malaysia. They were solely transhipped in order to disguise the true Chinese origin of the goods.

It has been established that the Malaysian company which claimed to have produced the lighters merely provided cover for the transhipped goods. Hundreds of container loads of Chinese lighters were switched in the commercial free-zones in Port Klang, Penang and Johor Bahru. By providing false information to the local authorities the parties involved succeeded in obtaining certificates of Malaysian origin in order to bypass the anti-dumping measures.

For this case alone OLAF and its partners investigated more than 300 containers which had been transhipped in this way. One container carries around one million lighters resulting in a revenue loss of 65,000 Euros per container.

In addition to cigarette lighters, OLAF has apparently also successfully investigated and identified exports of purportedly Malaysian bicycles that were accompanied by false certificates of origin. See, e.g., <http://www.cust.lt/en/article?articleID=899> ("In summer 2008, the representative of the Customs Department participated in the meeting organised by OLAF on the import of Malaysian bicycles. The purpose of the said meeting was to collect information necessary for the mission in Malaysia on finding out the falsification of bicycle origin documents. The Post-clearance Control Division of the Customs Department performed 8 audits of companies according to the mission report submitted by OLAF in 2009. In October 2009, a special meeting on this case took place at OLAF. 4 pre-trial investigations were instituted regarding possible violations.

Customs duties and taxes are assessed after every piece of information presented by OLAF.”).

At present, OLAF is reported to be working to address a wide variety of circumvention schemes involving the illegal transshipment of Chinese goods through Malaysia to the European Union. In February of this year, the Malaysian Insider published an article, set out in full below (and available online at:

<http://www.themalaysianinsider.com/business/article/Chinese-firms-use-Malaysia-to-evade-anti-dumping-laws/>), indicating that Malaysian government authorities were fully cooperating with OLAF's investigation:

Chinese firms use Malaysia to evade anti-dumping laws

February 08, 2010

By Lee Wei Lian

KUALA LUMPUR, Feb 8 — Malaysian firms could be at risk of being penalised for a surge of China-made products that are being exported to the European Union (EU) as Malaysian goods to evade anti-dumping laws and duties.

The European Anti-Fraud Office (Olaf) said millions of euros worth of China-made goods are being fraudulently passed off as Malaysian by using the Port Klang Free Zone trans-shipment hub, where imported Chinese goods are transferred to another container and re-exported using the invoice of a Malaysian company.

Some firms also use false documents to obtain what is known as a certificate of origin, which declares that the goods are of Malaysian origin.

Olaf said that they are working closely with the Ministry of International Trade and Industry (Miti) to tackle the problem that also exists at other major trans-shipment hubs such as the Jebel Ali free zone in Dubai and Singapore where “it is easy to be lost in the volume.”

"We're working closely with Miti, the Malaysian customs department and the port authorities," David Murphy, head of the customs unit at Olaf told *The Malaysian Insider*.

"They will use fictitious companies or forged documents to show that the goods are coming from Malaysia. To make it look more bona fide, they get a certificate of origin," said Murphy.

Murphy said that the real risk to the country is that the China-made products would flood into the EU via Malaysia resulting in commercial action being taken by the EU against Malaysian companies.

"It would affect legitimate Malaysian manufacturers," he said.

Murphy stressed however that he is happy with the cooperation from Miti.

Among the products identified by Olaf as being involved in country of origin fraud cases include rope wire, energy saving lamps, bicycles, shoes and pipe fittings.

According to Miti, other products that were prone to trans-shipment from China to the EU via Malaysia include stainless steel fasteners.

"Miti persistently cooperates with local authorities such as Customs, Port Authorities and others to ensure such activity is being monitored and prevented accordingly," said Miti when contacted by *The Malaysian Insider*.

"In addition, Miti and these relevant agencies will always work hand in hand and cooperate with its European Commission counterparts including Olaf to prevent fraud activities related to trade in Malaysia."

China, dubbed the factory of the world in recent decades, is one of Malaysia's top trading partners. It has recently set up another bank and is lending money for infrastructural projects in Malaysia.

(emphasis added).

As the result of OLAF's investigation, Malaysia's Ministry of International Trade and Industry (MITI) has repeatedly emphasized its cooperation with EU officials. In a March 15, 2010 article published in Malaysia's The Star Online (available at:

<http://biz.thestar.com.my/news/story.asp?file=/2010/3/15/business/5836383&sec=business> and included in this submission as Attachment 6), MITI officials outlined their efforts to scrutinize the export of mild-steel fasteners to the European Union. In MITI's written statement to the newspaper, the agency underscored OLAF's complimentary characterization of MITI's cooperation.

In June of this year, an industry publication reported that Malaysian government authorities had investigated 14 companies identified by OLAF as involved in the unlawful transshipment of fasteners to the European Union (available at http://www.fastenerandfixing.com/fastenerandfixing/News/Entries/2010/6/3_Malaysia_takes_action_on_circumvention.html and included in this submission as Attachment 7).

The short article noted that the Malaysian government was expected to deny export approval or force the closure of companies investigated that provide little or no evidence of manufacturing capability. Nevertheless, despite the apparent cooperation of MITI officials in stopping the unlawful transshipment of Chinese fasteners through Malaysia, it has been recently reported that the European Union will launch a formal circumvention investigation of Malaysian fastener exports which may result in the imposition of substantial duties on these products. See Juliane von Reppert-Bismarck, "EU Investigates Chinese Screw Exports via Malaysia," Reuters (Oct. 28, 2010).

In sum, the experience of the European Union in addressing transshipment of Chinese goods through Malaysia appears to be starkly contrasted by the experience of the United States. Indeed, the OLAF/ASEAN Anti-Fraud Partnership has scheduled a conference for January 18th through the 20th of 2011 entitled "Working Together to Fight

Fraud" in Kuala Lumpur. Nevertheless, for the purposes of negotiating objectives with respect to Malaysia's participation in the proposed TPP agreement, the cooperation that the European Union has received in addressing the evasion of its trade laws through unlawful transshipment of third-country goods through Malaysia demonstrates what is possible. To the extent that the USTR can obtain a similar commitment from Malaysian authorities with respect to goods unlawfully exported to the United States, CBP's and ICE's efforts to police illegal trade will be substantially augmented.

IV. Conclusion

As long as there are regulations, bad actors will endeavor to circumvent or evade them. Moreover, the unlawful falsification of the true country of origin of goods traded internationally is not a new phenomenon. However, the fact that transshipment has occurred before and will occur again cannot justify passive tolerance of widespread circumvention of our laws through the transshipment of goods via Malaysia. These circumvention schemes, now widespread, not only evade the payment of duties to the U.S. Treasury but also result in unsafe food products reaching the American consumer.

For all of these reasons, the USTR should prioritize addressing the continued use of Malaysia as a vehicle for transshipped goods and not support the country's participation in the proposed TPP agreement until substantial progress has been made to end the practice. Unless and until the Malaysian government demonstrates a commitment to cooperating with U.S. authorities to prevent transshipment of goods to the United States, Malaysia is an unfit candidate for involvement in the proposed TPP agreement.