

Testimony of
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before the

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Chairmen Levin and Lewis and Members of the Committee on Ways and Means, Trade and Oversight Subcommittees, my name is John Williams and I am the Executive Director of the Southern Shrimp Alliance (“SSA”). I appreciate the opportunity to testify on the need to significantly improve this country’s safety program for imported seafood.

The SSA, founded in 2002, is a non-profit alliance of the hard-working men and women of the U.S. shrimp industry. We are the national voice for shrimp fishermen and processors in eight states: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. In addition to defending and advancing the interests of the domestic industry, the SSA is committed to preserving the safety and integrity of the nation’s shrimp supply.

The American public is gravely concerned that the imported seafood products they consume may not be safe and that the federal government is not taking necessary steps to safeguard the health and safety of its people. An examination of the food safety regimes of major food importing countries including the European Union (“EU”), Japan, and Canada make clear that stringent import systems can be effective in protecting food supplies while facilitating trade in safe products.¹ In stark contrast, the U.S. Food and Drug Administration (“FDA”) relies solely on point-of-entry inspection of one percent of imported seafood products as the first and last line of defense.² As a result of the FDA’s lax enforcement, there is a direct cause and effect between market closures or restrictions on imports into other major importing countries and the diversion of contaminated products to the United States.

In short, the imported food safety program administered by the FDA is lax, ineffective and dangerous. Particularly with seafood imports, the FDA has largely abdicated its responsibility to ensure the safety of such imports.

A comparison of the FDA’s regulatory oversight over imported seafood with the oversight of imported seafood in the EU, Japan, and Canada and even the U.S. Department of Agriculture’s (“USDA”) oversight of imported meat, poultry, and egg products makes clear the deficiencies in the FDA’s program. Because the FDA inspects only approximately 1 percent of all seafood imports,³ imports contaminated with harmful

drug residues, pesticides, salmonella, and common filth enter the United States virtually undetected. The FDA does not require that seafood be imported from countries that administer food safety laws that are at least equivalent to our own and instead relies heavily on seafood importers to guarantee the safety of the products that they bring into this market.

There is a stark contrast between the FDA's model and the regulatory models employed in the EU, Japan, and Canada: The EU guarantees equivalence by conducting on-site inspections and certifying exporting countries and individual exporters prior to importation of a product. Stringent follow-up inspections are conducted both at the EU's border (currently 20 percent of seafood products are inspected) and regularly at the foreign exporters' facilities.⁴ Japan has a strict risk-based system that is reinforced by high inspection rates (currently 25 percent for shrimp imports), as well as certification requirements and significant penalties for noncompliance.⁵ Canada imposes a minimum standard inspection rate of 15 percent for all imported seafood products and strict licensing requirements for importers.⁶

For USDA-regulated food imports, equivalence of food safety laws is a prerequisite for import into the United States. The USDA verifies the equivalence of laws through foreign on-site inspections and the USDA inspects every import at the port of entry.⁷

On Monday of this week, the SSA submitted comments and presented testimony at a public hearing before the President's Interagency Working Group on Import Safety ("Interagency Working Group") that were highly critical of the FDA's regulation of seafood imports. I note with particular interest that the opening comments to that public meeting made by the Acting Secretary of Agriculture, Chuck Conner, underscored the immense gulf between the USDA's approach to ensuring the safety of imported food products and that of the FDA's. Secretary Conner noted that the USDA's approach to imported food safety relied on three keystones: prevention, early intervention, and rapid response to problems.⁸ He explained that the USDA begins its implementation of these keystone principles "with a thorough analysis of each country's food laws and inspection systems to determine initial equivalents with our own safety procedures."⁹ Secretary Conner added that the USDA continues with "on-site audits of each country's food safety system to ensure equivalence is maintained as well."¹⁰ Secretary Conner further observed that a USDA Food Safety and Inspection Service ("FSIS") inspector conducts a port-of-entry investigation on imports of all meat, poultry, and egg products coming into the United States and that "[a]bout 10 percent of our imports of meat, poultry, and egg products as well are subjected to more intense inspection that includes microbiological analysis for pathogens."¹¹

In fact, in its own publications, the USDA contrasts the rigors of its imported food safety program with the comparative laxity of the FDA's. In one passage of a recent USDA publication, the agency stresses that the:

FDA relies solely on point-of-entry inspection. FSIS, on the other hand, works collaboratively with the importing establishment's government and

uses a three-part process to verify that other countries' regulatory systems for meat, poultry and egg products are equivalent to that of the U.S. and that products entering the U.S. are safe and wholesome.¹²

The September 10, 2007 report issued by the Interagency Working Group further underscored the fundamental disparities of our food safety laws. Specifically, the report noted that:

[I]n 2006, [Customs] intercepted 45 containers with chicken, chicken parts, pork and meat products being smuggled into the U.S. as frozen seafood. These meat products were prohibited entry into the U.S. because they were from a country that was not approved by USDA to export them to the U.S.¹³

This example is important for three reasons. First, seafood products routinely enter the United States from countries that the USDA does not permit to export meat, poultry, or egg products because the agency has determined that those countries do not maintain food safety laws equivalent to our own.¹⁴ Second, even where seafood imports enter the United States from countries that do not administer U.S.-equivalent food safety laws, the chances that the FDA will inspect a shipment of imported seafood are so low that importers believe that they can bring in containers filled with meat products, label it as seafood, and enter the product into the United States with no one the wiser. Third, the FDA did not discover that these 45 containers were mislabeled as seafood. The federal agency that uncovered an importer's blatant attempt to circumvent our food safety laws was U.S. Customs and Border Protection ("Customs").

One consequence of the FDA's failure to implement an equivalence-based safety program for imported seafood is that it makes it extremely difficult for Customs to assist in ensuring the safety of seafood imports. In a system based on verified equivalence, only food imports from approved producers in approved countries can enter the United States. Evaluating whether both the country and producer are accurately disclosed in import entry documentation is exactly the type of activity that Customs officials are trained to undertake.

The U.S. shrimp industry has witnessed first hand the aggressive nature with which Customs works to address unlawful activities of U.S. importers and the agency does so with extremely limited resources. Three examples of Customs' actions with respect to the antidumping orders on shrimp demonstrate the agency's initiative.

First, after the imposition of the antidumping orders on shrimp, Customs' National Targeting and Analysis Group noted substantial shifts in import patterns that suggested transshipment of shrimp to circumvent high tariffs imposed on shrimp from China and Customs worked quickly to counteract the circumvention. Officials with Immigration and Customs Enforcement in Singapore visited plants in Indonesia identified by the National Targeting and Analysis Group and confirmed that three Indonesian exporters were labeling Chinese shrimp as Indonesian shrimp to circumvent the antidumping orders. Customs found that 54 different importers were responsible for

bringing in over \$58 million in mislabeled shrimp product to avoid payment of \$65 million in antidumping duties.¹⁵ Last Friday, the agency announced that it has already successfully recovered over \$2.2 million of the \$65 million in antidumping duties owed on these entries.¹⁶

Second, the domestic industry quickly became aware that many U.S. importers were abusing an ill-conceived exclusion to the antidumping orders granted by the U.S. Department of Commerce (“Commerce”). In the first of many baffling decisions that the agency has taken to weaken the trade relief that the U.S. shrimp industry is entitled to under our trade laws, Commerce carved so-called “dusted” shrimp out of the scope of the orders.¹⁷ Shortly after the exclusion was granted, massive volumes of purportedly “dusted” shrimp from China flooded the U.S. market. The SSA challenged Commerce’s decision in federal court and that appeal is ongoing. At the same time, we approached Customs with evidence that Chinese shrimp entering our market duty-free as “dusted” shrimp was not, in fact, “dusted” shrimp. Customs listened to the domestic industry’s concerns, developed an enforcement plan, and then went about stopping importers from abusing the system. Public information indicates that Chinese “dusted” shrimp imports significantly declined once Customs began inspecting these shipments.¹⁸

Third, after problems collecting duties on previous antidumping orders on food imports, Customs learned from the experience and implemented an enhanced continuous bonding requirement to ensure that the full amount of antidumping duties owed on shrimp imports were collected. After complaints from importers, Customs adjusted the enhanced continuous bond to allow for an individualized review of an importer’s condition and the agency ably balanced concerns about preserving the integrity of the antidumping orders with the impact on importers.

The SSA understands that Customs is the primary agency responsible for U.S. border enforcement and that the agency’s first priority is to detect and prevent terrorists and terrorist weapons from entering our country. Nevertheless, despite this overwhelming priority and limited resources, Customs officials at the ports, in headquarters, and in specialized field offices have expended significant effort to ensure that the U.S. shrimp industry receives the full benefit of the trade relief it fought hard to achieve. And as importers have developed new schemes to circumvent the antidumping duties, like transshipping Chinese shrimp through other countries besides Indonesia, we are confident that the agency will listen to our concerns.

For this reason, the SSA believes that Customs can and should play a critical role in ensuring the safety of imported food over which the FDA has jurisdiction. As an initial matter, Customs’ import database, the Automated Commercial Environment, maintains real-time data of import shipments, which has been used by the USDA to (1) determine whether shipments arrive from ineligible sources, (2) monitor ports of entry and importers of rejected shipments, and (3) track rejected or suspect shipments from the time of entry until Customs determines whether to detain or redeliver the shipment. The FDA, however, does not use this database in the same manner as the USDA. Moreover, the FDA’s lax enforcement efforts have hindered Customs’ ability to properly safeguard the nation from contaminated food imports. For example, in reviewing the FDA’s

administration of its food safety program, the U.S. Government Accountability Office (“GAO”) found that it takes an average of 348 days for the FDA to notify port-of-entry Customs officials of a rejected import shipment.¹⁹

Further, an equivalence-based food safety program would allow Customs to evaluate whether a particular product was, in fact, shipped from an approved exporter. In addition, Customs should be given the authority to quarantine imports of high-risk products, or products from high-risk countries or high-risk producers. Once quarantined, import shipments that are found to violate U.S. food safety standards should be destroyed by Customs unless the importer can meet the following requirements within 45 days of notification of destruction: (1) if the adulterated shipment is bound for a third country, the third-country food safety agency must first notify the FDA of its acceptance before the rejected shipment is released; and (2) rejected shipments should be conspicuously marked by Customs as “United States Refused Entry.”

In any event, the FDA’s failure to employ the significant resources of Customs – resources that include an office that deals specifically with agricultural products as one of Customs’ priority trade issues – is indicative of the agency’s seeming unwillingness to take advantage of available resources that would allow U.S. agencies to focus resources where the risks are greatest. For example, on a weekly basis the EU publishes lists of imported food products that have been found to be violative of EU food safety standards. Japan and Canada go a step further and publish lists of food products refused entry into the country, the reasons for the refusal, and the name of the exporter.²⁰ These resources help identify where problems may be concentrated. A review of the EU’s lists indicates that there have been continued disconcerting findings of banned antibiotics in shrimp and prawn exports from India to the EU. A review of Japan and Canada’s refusal lists provides information on the specific exporters of shrimp from Vietnam that have had continued problems with the nitrofurans and chloramphenicol in their shrimp. In addition, both the EU and the USDA publish the results and findings of their on-site verifications of the food safety systems employed in foreign countries.

Taken together, these resources provide a useful warning system for existing food safety problems and an early warning system for food safety problems that are just beginning to appear over the horizon. There is little indication, however, that the FDA pays much attention to any of this material. Seafood exports from Vietnam, for instance, present a significant food safety risk. With the exception of the United States, every major export market for Vietnamese seafood products has acted to address food safety problems with Vietnamese seafood exports.

Canada: From 2003 to 2005, Canada imposed a country-wide alert and implemented a 100 percent inspection policy on seafood exports from Vietnam after Vietnamese seafood products repeatedly tested positive for chloramphenicol.²¹ In July 2006, the governments of Vietnam and Canada reached a bilateral agreement whereby the government of Vietnam committed to inspecting and certifying that seafood exports to Canada were free of antibiotics.²² Vietnamese exports not accompanied by a certification are subject to 100% testing by Canadian officials; and, to insure compliance,

Canadian officials continue to test even some of those exports that are accompanied by certificates.²³

Japan: Beginning in December 2006, Japan began testing 100 percent of all Vietnamese shrimp exports because of repeated positive tests for chloramphenicol.²⁴ Vietnam agreed to certify 100 percent of their shrimp exports to Japan.²⁵ However, even with the certification system established, Japan continued to find banned antibiotics in Vietnamese shrimp imports and has threatened a complete ban of Vietnamese shrimp products unless the problem is resolved.²⁶

Russia: Press reports indicate that Russia banned the import of Vietnamese seafood after conducting an on-site inspection in March 2007, citing problems with food safety standards.²⁷ Russia requires exporters to meet Russian food safety standards and provide quality assurance from the exporting country's government.²⁸ Russian officials conducted follow-up inspections of twenty seafood processing facilities in July 2007 and mid-September 2007 and, recently, announced that thirteen of these facilities -- and only these thirteen -- would be approved to export seafood to Russia.²⁹ These exporters were selected from nearly two hundred companies that applied for inspections from the visiting Russian authorities.³⁰

European Union: In 2007, the EU conducted an on-site inspection of Vietnamese seafood processors and the food safety system administered by the Vietnamese government.³¹ The findings of the EU officials conducting the inspection help to explain why every major seafood importing market, besides the United States, is taking action to address Vietnamese seafood exports. Specifically, the EU's final report observed:

The ongoing detections of veterinary drug residues in exported consignments tested at EU border inspection posts raise concerns on the effectiveness of residues controls which are weakened by the general availability of drugs without prescription, the limited scope of official testing, the capacity of the laboratory network, and, in some cases, insufficient follow-up.³²

Thus, the EU's report noted that valid concerns existed regarding the ability of the Vietnamese government and its seafood producers to prevent the export of seafood with harmful contaminants because drugs -- including antibiotics -- are widely available without the need for a prescription, and the limited scope of the government's ability to test and follow-up on problems.

EU officials also determined that shrimp found to contain antibiotics were not exported to the EU, but neither were the contaminated shrimp destroyed,³³ leaving open the possibility that it was exported to other markets with less stringent enforcement (like the United States). The EU's finding is all the more troubling given the recent comments of Huynh Thi Thanh Giang, the Deputy Director General of An Giang Seafood Import-Export Company, a large Vietnamese exporter of seafood, in the Vietnamese press. Mrs. Giang noted that products rejected from importing countries "cannot be consumed domestically" and that "[t]he only way for enterprises to minimise losses when products

are discovered as containing antibiotics, according to Mrs. Giang, is to look for easier-to-please markets.”³⁴ As between Canada, the EU, Japan, and the United States, the “easier-to-please market” is the United States.

Markets in the EU, Japan, Canada, and the United States account for roughly 90% of Vietnam’s average annual 268 million pounds of shrimp exports. At the same time that every other major market for Vietnamese shrimp has expressed concerns about the safety of the country’s seafood products and has taken action to rectify these problems, the United States, which receives approximately one-third of Vietnam’s shrimp exports, has taken no significant action.

In fact, while every other major market has found repeated shipments of Vietnamese shrimp tainted with banned antibiotics, a review of the FDA’s import refusals indicates that the agency did not refuse a single shipment of Vietnamese shrimp based on the presence of antibiotics in the past year.³⁵ At the same time, a comparison of the Vietnamese exporters that have had seafood products refused from the Canadian and Japanese markets with the lists of Vietnamese exporters of seafood to the United States (available through a subscription service) demonstrates that many of these exporters continue to ship to the United States unabated.³⁶

At least since 2003, the FDA has had active knowledge of Vietnam’s pervasive use of chloramphenicol in aquaculture. At that time the FDA recognized, in a letter sent in response to Citizens Petitions regarding chloramphenicol in crabmeat, that “there is abundant evidence that chloramphenicol is still in widespread use abroad, particularly in Southeast Asia.”³⁷ Specifically, the FDA detailed a meeting it had with its Vietnamese counterparts, where:

[D]uring a March 5, 2003 meeting with Vietnam [and the FDA], Vietnamese government officials reported that they continue to have problems with chloramphenicol being used in the production of shrimp in their country, and they have acknowledged the use of chloramphenicol in shrimp farming.³⁸

Despite this explicit knowledge and the continued, current findings of antibiotics in Vietnamese shrimp in other markets, the FDA has yet to issue a country-wide import alert on Vietnamese shrimp imports. As a result, Vietnam is now the third largest exporter of shrimp to the United States.³⁹

The significant amount of shrimp imports that the U.S. received from Cambodia between 2004 and 2006 provide another example of how the FDA has largely ignored or paid little attention to the food safety concerns voiced by equivalent agencies in other major seafood importing markets. Cambodia cannot export seafood to the EU. In a bid to obtain access to the EU market, Cambodia invited EU authorities to conduct an on-site investigation of seafood processing plants in the country in 2005. The EU officials found that (1) Cambodian regulatory officials did not have the legal authority to perform checks of facilities for food safety compliance; (2) processing facilities with “very poor hygiene

situation”; and (3) worse, Cambodia’s entire process of certifying the food safety of export shipments was a sham.⁴⁰

Specifically, EU officials reported that Cambodian officials providing certifications as to the safety and fitness of exported seafood “could not have the knowledge of, and could not have the possibility to ascertain and verify the matters they are certifying, which is against the international standards in the field of certification.”⁴¹ Based on these findings, the EU continued to prohibit Cambodian seafood exports from entering the EU market.

A review of Cambodia’s export statistics between 2002 and 2006 indicates that, at the same time as the EU found that Cambodia’s processing plants had very poor hygiene and were accompanied by false certifications to export markets, Cambodia exported over 22 million pounds of shrimp to the world.⁴² Ninety-nine percent of that shrimp was exported to the United States. U.S. import statistics show that between 2004 and 2006, the United States imported 21.7 million pounds of shrimp from Cambodia.⁴³ Thus, while the EU refused to accept any seafood products from Cambodia because of the dangers posed by these products to consumers in the EU, substantial quantities freely entered the United States.

Despite the very significant and real risks posed by this country’s lax seafood import safety rules, invariably, whenever anyone calls for significant improvement of our laws, certain parties argue that an improvement of U.S. food safety laws would be “protectionist” and potentially violative of this country’s international trade obligations. Such assertions are simply incorrect. The FDA’s regulatory oversight of imported seafood lags substantially behind those employed in other countries (and the oversight of the USDA). Accordingly, any improvement in the FDA’s regulatory authority would, at most, simply bring the U.S. in line with international best practices. Moreover, as the FDA has previously recognized,⁴⁴ Article XX of the General Agreement on Tariffs and Trade (“GATT”) explains that nothing in the GATT prevents a nation from adopting or enforcing any measure “necessary to protect human, animal, or plant life or health”⁴⁵ Accordingly, the improvement of FDA’s regulatory program related to the safety of imported seafood would not be inconsistent with our international trade obligations.

The bogus “international obligation” argument offered by importing interests masks the true trade effects of our weak imported seafood safety regulatory regime: the failure to effectively regulate seafood imports creates irresistible incentives for exporters to ship unsafe seafood products to the United States.

As trade statistics demonstrate, the incentives created by the FDA for foreign producers to export unsafe products is not simply a matter of conjecture. The consequence of stringent import regimes of other major shrimp importing countries coupled with the FDA’s lax enforcement of U.S. food safety standards puts U.S. consumers at grave risk, as the United States has become a magnet for unsafe and contaminated shrimp imports. When other major importing markets take action against unsafe seafood products, those products are diverted to the United States.

There is a direct cause and effect between market closures or restrictions on imports in major importing countries and the diversion of contaminated and likely contaminated products to the United States.

The fact that the United States' failure to implement a strong safety program with regard to imported seafood creates incentives for exporters to ship harmful product to this market is widely recognized. In an op-ed piece published this summer in the New York Times, author Taras Grescoe observed that "if you're a shady seafood dealer trying to unload a container of dodgy shrimp or tilapia, chances are 98 in 100 it will make it into the United States."⁴⁶ Indeed, even the organization representing U.S. seafood importing interests, the National Fisheries Institute, has argued that foreign seafood packers will ship to the market of least resistance.⁴⁷ In opposing provisions that would allow the FDA to destroy unsafe seafood imports, the National Fisheries Institute argued that any such "provision could cause significant restraint of international trade because suppliers in other countries may elect to avoid the U.S. marketplace rather than face possible destruction of their product."⁴⁸ It follows, therefore, that because other major seafood importing markets have the ability to destroy unsafe seafood imports while the National Fisheries Institute has successfully opposed the FDA adopting any such authority, suppliers in other countries elect to ship potentially unsafe product to the U.S. marketplace rather than face possible destruction of their product in other markets. Thus, the most disastrous consequence of the FDA's inability to administer a meaningful seafood import safety program is that the agency's regulatory failure acts as a magnet for attracting unsafe imports to this country.

Examples help to illustrate the trade effects of our weak imported seafood safety regime. In November 2001, a routine on-site inspection of Chinese production facilities by EU officials "revealed serious deficiencies of the Chinese residue control system and problems related to the use of banned substances in the veterinary field."⁴⁹ In addition, EU border inspection officials found repeated shipments of Chinese shrimp imports contaminated with chloramphenicol.⁵⁰ As a result, the EU banned all shrimp, honey, mollusks, rabbit and poultry meat, and pet food imports from China in January 2002.⁵¹ Following a 30-month ban of Chinese shrimp imports, in July 2004, the EU agreed to recertify Chinese shrimp imports only after the Chinese government guaranteed that it would test 100 percent of Chinese shrimp exports bound for the EU, and that it would ship only certified consignments that met the EU's food safety standards.⁵²

As a direct result of the EU's 30-month ban, shrimp exports from China were diverted from the EU market and flooded the U.S. market. As Chinese exports of shrimp to the EU fell, shrimp exports to the United States exploded, leading to a 30 percent increase of Chinese shrimp exports to the United States from 2002 to 2003.⁵³ The influx of Chinese shrimp imports began to abate only when the U.S. domestic shrimp industry filed an antidumping petition to seek relief from these dumped imports.

More recently, in early 2007, the EU completed an on-site review of seafood safety systems in Pakistan that revealed severe deficiencies in the country's food safety oversight and controls.⁵⁴ Based on these findings, the EU decertified all seafood producers from Pakistan in April 2007. In keeping with these actions, a review of export

statistics from Pakistan shows a substantial decline in monthly shrimp exports from Pakistan to the EU, resulting in no reported exports of shrimp to the EU in June 2007.⁵⁵

At the same time, predictably, Pakistan's shrimp exports to the United States skyrocketed in June 2007. The value of shrimp exports to the United States from Pakistan in June 2007 was larger than the monthly value of Pakistani shrimp exports to the United States in any previous month since 2005 and more than twice the monthly average value for Pakistani shrimp exports to the United States.⁵⁶ Again, while the EU has refused to accept shrimp products from Pakistan because of the dangers posed by these products to consumers in the EU, significant quantities have begun to enter the United States, apparently unhindered, and will likely continue to be shipped to this country.

We understand that certain parties oppose implementation of an effective and meaningful imported seafood safety program. We realize that importers will fight against any oversight of their activities, as they have for the last decade. Nevertheless, whatever empty promises seafood importing interests make now – similar to promises made years ago – and whatever political pressure they bring to bear to oppose meaningful reform, they cannot change the fact that their rabid pursuit of a greater profit has placed the consumer in unnecessary peril. Changes necessary to ensure the safety of our food supply cannot be derailed by importers' claims that their costs may increase under meaningful regulations. Indeed, in the wake of revelations regarding numerous imported food safety problems, U.S. consumers have made it clear that they are willing to pay a bit more if it means they can be assured of uncontaminated and safe food.⁵⁷

Our government must safeguard the quality and integrity of our nation's food supply. 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 develop in poor sanitary conditions, in ponds with high feces concentrations, banned antibiotics, and toxic chemicals.⁵⁸ As a result, imported shrimp often contain harmful antibiotics, pesticides, salmonella, and filth. Consumers rely on the FDA to ensure that the imported seafood products that reach U.S. shores are not so contaminated.⁵⁹ Under current circumstances, that reliance is misplaced. Extra profits for the few cannot and must not come at the risk of the safety of the many.

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

¹ A detailed explanation of the substantial differences between the FDA's regulatory program on seafood imports and the systems employed by other major seafood importing countries and the USDA are provided in the SSA's written submission to the President's Interagency Working Group on Import Safety. The SSA's submission can be obtained from our web-site, www.shrimpalliance.com.

2 FDA’s Imported Seafood Safety Program Shows Some Progress, But Further Improvements are
3 Needed, U.S. General Accounting Office, Report to Congressional Requesters, GAO-04-246, p. 3
4 (2004) (“2004 GAO FDA Report”); Diminished Capacity: Can the FDA Assure the Safety and
5 Security of the Nation’s Food Supply - Part 2, Hearing before the Subcomm. on Oversight and
6 Investigations of the H. Comm. on Energy and Commerce, 110th Cong., p. 2 (July 17, 2007)
7 (Statement of David Nelson, Senior Investigator) (“David Nelson Testimony”).

8 Id.

9 See EU Import Conditions for Seafood and Other Fishery Products, Directorate-General of Health
10 and Consumer Protection, European Commission (“EU Import Conditions”).

11 See Handbook for Agricultural and Fishery Products Import Regulations, Japan External Trade
12 Organization (Dec. 2005) (“JETRO Handbook for Import of Fishery Products”).

13 See Guide to Canadian Regulatory Requirements and Examination Procedures for Imported Fish,
14 Canadian Food Inspection Agency; L. Ababouch, G. Gandini & J. Ryder, Causes of Detentions
15 and Rejections in International Fish Trade, Food and Agriculture Organization of the United
16 Nations, FAO Fisheries Technical Paper 473, pp. 21-22 (2005) (“2005 FAO Fisheries Paper”).

17 In addition, Canada conducts “specialized testing” at a rate of “5 to 15 percent, depending on the
18 product history and nature of the product.” 2005 FAO Fisheries Paper at p. 22.

19 See Process for Evaluating the Equivalence of Foreign Meat and Poultry Food Regulatory
20 Systems, Food Safety Inspection Service, United States Department of Agriculture, p. 2 (Oct.
21 2003) (“USDA Equivalence Guide”).

22 Hearing before the Interagency Working Group on Import Safety (Oct. 1, 2007) (Statement of
23 Chuck Connor, Acting Secretary of Agriculture).

24 Id.

25 Id.

26 Id.

27 Importing Meat, Poultry & Egg Products into the United States, USDA Food Safety and
28 Inspection Service, (Dec. 2003) (“USDA Import Guidelines”) (emphasis added).

29 Protecting American Consumers Every Step of Way: A strategic framework for continued
30 improvement in import safety, A Report to the President, Interagency Working Group on Import
31 Safety at p. 9 (Sept. 10, 2007) (“Import Safety Report”) (emphasis added).

32 Large seafood exporting countries to the United States, such as Thailand, Ecuador, and Vietnam,
33 are not certified to export USDA-regulated products. See Eligible Foreign Establishments, USDA
34 Food Safety and Inspection Service.

35 Declaration of Bruce W. Ingalls, Chief of the Debt Management Branch in the Revenue Division
36 of the Office of Finance, National Fisheries Institute, Inc. v. United States, Court No. 05-00683
37 (Mar. 9, 2006). According to CBP officials, importer members of the National Fisheries Institute
38 were responsible for “approximately 50%” of the volume of this transshipped shrimp. Id. at p. 4.

39 “U.S. Customs and Border Protection Collects More Than \$2.2 Million in Underpaid
40 Antidumping Duty on Chinese Shrimp” Press Release. U.S. Customs and Border Protection (Sep.
41 28, 2007)

42 See, e.g., Certain Frozen and Canned Warmwater Shrimp from India, 70 Fed. Reg. 5147, 5148
43 (Feb. 1, 2005) (Amended Final Determination of Sales at Less Than Fair Value and Antidumping
44 Duty Order).

45 See Uerner Barry’s Foreign Trade Data (Seafood Import Data Online) available at
46 <http://ftd.urnerbarry.com/>.

19 2004 GAO FDA Report at p. 5.

20 The EU’s RASFF system refusals are also available online but do not disclose the name of the
exporter responsible for the refused product.

21 “Removal of the Country Import Alert for Chloramphenicol in Aquacultured Fish Products from
Vietnam,” Press Release, Canadian Food Inspection Agency (Sept. 30, 2005).

22 Arrangement Concerning the Inspection and Certification of Aquaculture Fish and Fish Products
Exported from Vietnam to Canada for Drug Residues, Canadian Food Inspection Agency and the
Vietnamese National Fisheries Quality Assurance and Veterinary Directorate of the Vietnam
Ministry of Fisheries (Jul. 17, 2006).

23 Id.

24 “NAFIQAVED declares three reasons for unsafe seafood,” VIETNAM ECONOMY (Dec. 15, 2006).

25 Id.

26 “VASEP asks Minister to declare emergency as Japan threatens to halt Vietnamese shrimp
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27 “Russia names 11 qualified Vietnamese seafood exporters,” THANHNIEN NEWS (Aug. 20, 2007).

28 “Fisheries face tough export rules,” VIET NAM NEWS (Jan. 27, 2007) (“Fisheries Face Tough
export rules”).

29 “More seafood processors win Russian import license,” VIETNAM ECONOMY (Sep. 18, 2007).

30 Fisheries face tough export rules.

31 Final Report of a Mission Carried Out to Vietnam from 24 January to 1 February 2007 in order to
Evaluate the Control of Residues and Contaminants in Live Animals and Animal Products,
Including Controls on Veterinary Medicinal Products, European Commission, Health & Consumer
Protection Directorate - General, Directorate Food and Veterinary Office,
DG(SANCO)/2007/7322 - MR Final, p. 5 (Feb. 2007).

32 Id. at p. 14.

33 Id. at p. 9.

34 “Unsafe Seafood Exports: No Solutions?,” VIETNAM ECONOMY (source: Sài Gòn Tiếp thị) (July
27, 2007).

35 Import Refusal Reports for OASIS By Industry, U.S. Food and Drug Administration (Jan. 2007 -
Aug. 2007).

36 See Uner Barry’s Foreign Trade Data (Seafood Import Data Online) available at
<http://ftd.urnerbarry.com/>.

37 Letter from the U.S. Food and Drug Administration to Olsson, Frank, and Weeda, P.C., Re: 02P-
0321, p. 22 (Jul. 29, 2003) (“FDA Chloramphenicol Decision”).

38 Id. at p. 11 (emphasis added).

39 U.S. Census Bureau, IM-145, U.S. General Imports (July 2007).

40 See Final Report of a Mission Carried Out in Cambodia from 19 to 30 September 2005: For the
Assessment of the Conditions of Production of Fishery Products Intended to be Exported to the
European Union, European Commission, Health & Consumer Protection Directorate-General,
Directorate F - Food and Veterinary Office, DG(SANCO)/7765-2005-MR (Oct. 2005) (“EU
Report on Cambodian Fishery Products”).

41 Id. at p. 8.

42 “Cambodian Exports to the United States: January 2002 to July 2007,” DIALOG TRADSTAT (2007).

43 Id.

44 FDA Chloramphenicol Decision at p. 22.

45 General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 STAT. A-11, 55 U.N.T.S. 194. User fees for import inspection are also specifically allowed in our WTO commitments. Article VIII of the GATT specifically contemplates and allows for fees to be charged for the “analysis and inspection” of imported goods so long as the fees are “limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.”

46 T. Grescoe, “Catfish With a Side of Scombroid,” NEW YORK TIMES (July 15, 2007).

47 Letter from National Fisheries Institute to the U.S. Food and Drug Administration, FDA Docket No. 2000N-1633 (May 14, 2001), p. 4 (claiming that “U.S. food safety standards are, in many cases, more restrictive than those of other countries.”) (“2001 National Fisheries Institute Letter”).

48 Id.

49 “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).

50 Id.

51 Id.

52 “EU eases food imports from China after significant improvements in veterinary standards,” Press Release, European Commission, IP/04/943 (July. 16, 2004).

53 “Chinese Exports to the United States: January 1999 to January 2005,” DIALOG TRADSTAT (2007).

54 See Final Report of a Follow-Up Mission Carried Out in Pakistan from 22 to 26 January 2007: In Order to Evaluate the Control Systems in Place Governing the Production of Fishery Products Intended for Export to the European Union, European Commission, Health & Consumer Protection Directorate - General, Directorate Food and Veterinary Office, DG(SANCO)/2007-7298 - MR Final (Jan. 2007) (“EU Report on Pakistan”).

55 “Pakistani Exports to the United States: July 2006 to July 2007,” DIALOG TRADSTAT (2007).

56 Id.

57 “You Are What They Eat,” CONSUMER REPORTS (July 2007) (“American consumers are willing to pay more for greater safety guarantees . . .”).

58 See “Shrimp’s Success Hurts Asian Environment, Group Says,” NATIONAL GEOGRAPHIC NEWS (Dec. 20, 2004) (discussing the Environmental Justice Foundation’s “concerns over the levels of antibiotics, disinfectants, fertilizers, pesticides, and other chemicals used by shrimp farmers to maximize profits and combat disease.”); Global and Local: Food Safety Around the World, Center for Science in the Public Interest, pp. 14-16 (June 2005); “Chicken from China?,” BOSTON.COM (May 9, 2007) (“In China, some farmers try to maximize the output from their small plots by flooding produce with unapproved pesticides, pumping livestock with antibiotics banned in the United States, and using human feces as fertilizer to boost soil productivity. But the questionable practices don’t end there: Chicken pens are frequently suspended over ponds where seafood is raised, recycling chicken waste as a food source for seafood, according to a leading food safety expert who served as a federal adviser to the Food and Drug Administration.”) (emphasis added).

59 “Fish Farming: Is it Safe for Humans and the Environment,” 17 CQ RESEARCHER 27, p. 630 (July 27, 2007).