



## **SOUTHERN SHRIMP ALLIANCE**

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TESTIMONY OF  
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BEFORE THE  
SUBCOMMITTEE ON TRADE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES

HEARING ON  
SUPPORTING ECONOMIC GROWTH AND JOB CREATION  
THROUGH CUSTOMS TRADE MODERNIZATION,  
FACILITATION, AND ENFORCEMENT

May 17, 2012

Mister Chairman and Members of the Subcommittee, thank you for inviting me to participate in this hearing. I am John Williams, the Executive Director of the Southern Shrimp Alliance.

For over forty years, I have worked in the shrimp industry, first as a teenage deckhand in Sneads Ferry, North Carolina, then as captain of a boat, then as a vessel owner and operator, and then as owner of multiple shrimp trawlers out of Tarpon Springs, Florida. In four decades, I have learned a lot about shrimping and I have also learned quite a bit about things that are not directly related to catching shrimp but are a necessary part of working in this industry.

After our fishery was on the verge of a total shutdown, I, like many other shrimpers, had to learn our system of fisheries management. In the last decade, the shrimp industry has gone from a position of constant confrontation and friction with federal regulators to one where the industry now fully participates in the regulatory process and often partners with federal agencies in addressing difficult scientific and management issues. I am convinced that that this cooperative approach has produced far better outcomes for the resource and everyone involved.

After our prices collapsed following the explosion of shrimp aquaculture throughout poor parts of the world with lax environmental regulations and minimal labor protections, I, like many other shrimpers, learned painful lessons about international trade. We have learned to distinguish the myths from the realities in the conventional wisdom that aquaculture is simply a more efficient way for producing seafood. We have learned that the positive story of aquaculture development told as part of a public relations strategy sits on top of uncomfortable facts like continued government subsidies, weak regulatory authority, crass exploitation of vulnerable sources of labor, and irreversible environmental harm.

And as we have worked to insure a place for commercial shrimp fishermen in the future, I, like many other shrimpers, am also learning about marketing niche products. Shrimpers are always lectured that the survival of our industry depends not on a level playing field with imports but the development of a premium market for wild-caught product. However, the prevalence of fraud in the seafood market, as evidenced by the enforcement challenges seafood imports have posed to U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”), has undermined any faith the industry can have in the ability to maintain such a market once it has been fully developed. Nevertheless, the industry is undertaking any and all efforts to assure its survival. More and more shrimpers are learning not just how to become more efficient fishermen but how to get the best price for their catch once they have returned to port.

Participating in the shrimp industry has led to a lot of strange turns. I have enjoyed the challenges of becoming familiar with fisheries management, international trade, and marketing theory and practice. But when we started working closely with Customs, I would not have believed someone if they told me that I would end up testifying to Congress about issues related to Customs enforcement. However, in seven years, after countless meetings and briefings on circumvention of the antidumping duty orders on shrimp and, more disturbingly, the regulatory actions of the U.S. Food and Drug Administration, I have become acutely aware of the limits on the government’s ability to insure compliance with our trade laws even by well-intentioned government officials.

#### **I. The Substantial Cost of Petitioning for, Winning, and Enforcing a Trade Remedy**

My involvement with customs enforcement began a decade ago, when the Southern Shrimp Alliance was organized to deal with a flood of cheap farmed shrimp imports. Prices for landed shrimp at the docks were plummeting for everyone in the industry; from the fleets of trawlers down in the valley of Texas to the day shrimpers working in the Pamlico Sound in North Carolina.

On any given topic, the thousands of shrimpers in the industry have thousands of different opinions. But in the face of the import flood, we were all pretty much agreed that action had to be taken. The industry organized to address the threat to its existence. I remember sitting in a hotel conference room in one of the earliest meetings, literally passing a hat around to be able to pay for the room. We quickly became aware that bringing a trade case was a substantial undertaking, particularly because so many different countries were dumping shrimp in our market.

Everyone who had come together got to work finding the money necessary to have a shot at obtaining relief. In light of the amounts required, it was a huge undertaking. The fact that we were able to raise the money to bring a case is, on its own, one of the great collective achievements of this industry. Even more so because the lion's share of the support came from fishermen, who opened up their own wallets to contribute to the cause and worked collectively with several state governments to effectively tax themselves to fund the litigation.

But getting the money together was only the first step. After we filed petitions for relief from dumped imports from Brazil, China, Ecuador, India, Thailand, and Vietnam in December of 2003, the industry had to prosecute the case. With their survival hanging in the balance and in the face of tremendous commercial pressure, shrimpers and processors gave detailed accounts of how unfairly-traded imports were harming their respective businesses. Officials from the U.S. International Trade Commission, in fact, came down to Tarpon Springs to see my business first hand. In the end, we proved to the satisfaction of the Commission that shrimpers were suffering material injury by reason of unfairly-traded imports and antidumping duty orders were issued by the U.S. Department of Commerce on shrimp from the six countries in February of 2005.

Getting antidumping duties imposed was only the second step. Just as soon as we had fully demonstrated that the industry was materially injured, we were forced to disprove what turned out to be inaccurate predictions about how much a devastating tsunami had hobbled the shrimp farming industries of India and Thailand. Again, shrimpers and processors were asked to provide substantial amounts of information to the U.S. International Trade Commission in the wake of Hurricane Katrina in order to justify maintaining the trade relief that had just been won.

This changed circumstances review before the Commission was unexpected, but even without that review, the industry has to participate in the annual administrative reviews conducted by Commerce to insure the effectiveness of the trade relief. In addition, we have also had to track and consult with the United States Trade Representative and Commerce regarding all of the challenges brought against the antidumping duties on shrimp at the World Trade Organization. The industry has also participated directly in numerous appeals of dumping duty determinations at the Court of International Trade and the Court of Appeals for the Federal Circuit.

In short, the investment needed to bring and maintain relief against unfairly-traded imports is substantial. The costs are required because our laws, appropriately, allow input from many different affected parties before trade relief is imposed. Just as we have to demonstrate material injury by reason of unfairly-traded imports, exporters and importers are given multiple opportunities to show that no unfair trade is occurring. And just as we are able to respond to claims by exporters and importers that imports are fairly traded, exporters and importers were given the chance to disprove that the shrimp industry was injured, that the injury resulted because of dumped imports, and that antidumping duties were required to prevent further injury.

We understand the process and we understand why the system invites broad participation before action is taken. Circumvention, however, changes the calculus. We can accept the high costs of a trade remedy if everyone is playing by the rules, but when the response to a trade remedy is widespread illegal circumvention there is a gross imbalance in how our system is

structured. Where circumvention is rampant, our industry must bear the burdens of due process while foreign exporters and U.S. importers become laws unto themselves.

Shortly after the petitions were filed, we saw huge changes in the sourcing of imported shrimp. The following are just a few examples. Shrimp imports from Indonesia, previously a small supplier of farmed shrimp, exploded. Countries like Cambodia, which did not have a functional commercial shrimp industry, began to export large quantities of shrimp. Shortly after the antidumping duty orders were imposed and the “dusted” shrimp exclusion was granted, we saw, for the first time, massive quantities of peeled shrimp from China entering the U.S. market as “dusted” shrimp. Similarly, according to ship manifest data, the one Chinese exporter excluded from the antidumping duty order saw its shipments outstrip anything from its past historical experience. We saw inexplicable growth in exports of frozen shrimp from China to Malaysia and, at the same time, similar increases in the exports of shrimp from Malaysia to the United States. We also saw large increases in imports of farmed shrimp from Mexico and in Chinese shrimp shipped “in-bond” to U.S. ports purportedly for consumption in other countries.

We have seen circumvention on a massive scale and have accordingly spent the last seven years working to bring these schemes under control. We did not expect that enforcement of the trade remedies would be an essential component of maintaining trade relief. But, every year, tens of millions – if not hundreds of millions – of pounds of shrimp enter the U.S. market at absurdly low prices in a fraudulent manner to avoid the discipline of our trade remedy laws. These evasion schemes have significantly weakened the trade relief we worked hard to win. As a practical matter, circumvention has meant that fishermen already facing tight margins and increasing costs received less at the dock than what the market price would have been with a fully-effective trade remedy. After paying for the initiation and litigation of the case, we should not also have to be responsible for policing the trade remedy as well.

As shrimp boats continue to be tied up and shrimpers exit the industry, what sticks with me the most is that this continuing harm occurs because of the *illegal* actions of foreign exporters and U.S. importers. We are not talking about some theoretical argument about the validity of the antidumping laws. We are talking about the intentional, knowing, and premeditated violation of our government’s laws and regulations.

Frankly, many in our industry resent the fact that we have had to spend so much time addressing circumvention. As we have learned more about the prevalence of circumvention, we are astonished at how far things have gotten out of control. Over the last several years, we have been stunned to learn how the schemes we face are used, to lesser or greater degrees, to circumvent nearly every trade remedy in place. We have found common cause with domestic industries across a wide spectrum that are confronted with the same illegal activity that has gutted our trade relief. We have moved past attempting to convince people that circumvention is widespread to, instead, trying to get a handle on how to rein in a practice that threatens the fundamental utility of trade relief for many different industries.

In sum, the Southern Shrimp Alliance has become knowledgeable about Customs enforcement because we have been left with no other choice. Unchecked, the circumvention experienced in the market after trade relief would have entirely undermined the effectiveness of the trade remedies. And although we have worked successfully to address some of the unlawful

evasion with various federal agencies, unless we maintain vigilance these same tactics will once again threaten the basic efficacy of the trade relief we worked very hard to obtain.

## **II. Two Agencies, Two Very Different Approaches**

From a practical standpoint, the first question the shrimp industry confronted was how to address circumvention. As the scope of circumvention schemes became evident, we first consulted with the United States Trade Representative and Commerce. Our experience with Commerce has been, to date, frustrating.

In response to mounting, irrefutable evidence of widespread circumvention impacting a large number of antidumping duty orders, Commerce has responded by narrowly defining its obligations in addressing circumvention and identifying Customs as the agency virtually exclusively responsible for policing the collection of antidumping duties. Commerce administers and vigorously enforces anti-circumvention provisions that address *legal* circumvention of trade remedies, but has exercised its discretion to avoid directly addressing *illegal* circumvention even when evidence of such schemes is discovered in the course of Commerce's administrative reviews.

One example of this is how Commerce has chosen to address potential problems with the way in which importers identify entries of shrimp imports from China as either subject to antidumping duties or not subject to antidumping duties. Large quantities of shrimp from China continue to enter the United States, with very little of it identified as subject to antidumping duties. The public record in administrative reviews does not allow us to determine how much, exactly, is being claimed as subject to duties, but other information that has been made public gives an indication that it is not very much.

With the antidumping duty order on Chinese shrimp, the China-wide duty deposit rate is 112.81%, with some individual exporters receiving lower rates. And yet, in a report to Congress on collections of antidumping and countervailing duties, Customs noted that for the \$38,518,126 in shrimp imported from China during fiscal year 2008, a grand total of \$56 in antidumping duties was deposited with the agency.<sup>1</sup> If those numbers are right, they imply that nearly all of the shrimp entered into the United States from China was claimed to have been exempt from any antidumping duty deposits.

The public records of Commerce's conduct of administrative reviews of the antidumping duty order on shrimp from China confirm that the agency has found incidents of shrimp incorrectly imported as not subject to antidumping duties.<sup>2</sup> Nevertheless, despite the agency's

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<sup>1</sup> U.S. Customs and Border Protection, AD/CV Duty Enforcement Actions and Compliance Initiatives, Fiscal Year 2009 Report to Congress at Appendix D, p.49 (March 13, 2009).

<sup>2</sup> Issues and Decision Memorandum (comment 7) accompanying Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China, 74 Fed. Reg. 46,565 (Sept. 10, 2009) (Final Results and Partial Rescission of Antidumping Duty Administrative Review) ("The Petitioners correctly note that at verification the

experience and the overwhelming evidence regarding circumvention of the antidumping duty order on shrimp from China generally, Commerce has elected to not look behind importers' self-identification of what entries of shrimp are or are not subject to antidumping duties.

Commerce's see no evil, hear no evil, speak no evil approach to circumvention is of particular concern now, as the agency considers whether to revoke the antidumping duty order with respect to a Chinese exporter. Specifically, the agency must determine how to deal with evidence recently made public regarding substantial alleged evasion of the shrimp antidumping duty orders by one U.S. importer with exporter affiliates in foreign countries, including China. Summarizing the evidence amassed from investigations conducted by ICE and NOAA Law Enforcement agents, the Assistant U.S. Attorney alleged that the importer had engaged in significant unlawful circumvention of antidumping duties:

As to shrimp from countries subject to anti-dumping duties, particularly Vietnam, Ocean Duke transhipped the shrimp through Cambodia and labeled it, falsely, as product of Cambodia (thus not subject to anti-dumping duties). After the imposition of the anti-dumping duties on shrimp in 2004, between May 2004 and July 2005 Ocean Duke imported as product of Cambodia over 15 million pounds of aquacultured, or farmed shrimp, with a declared value of over \$42 million. However, during all of 2004 and 2005, Cambodia produced only an estimated 385,000 pounds of aquacultured shrimp. Internal emails and statements of former employees confirm the transhipment of shrimp from Vietnam through Cambodia, thus making possible the export of 15 million pounds.<sup>3</sup>

This appears to be a case of first impression for Commerce. The domestic industry feels strongly that the evidence relating to alleged circumvention is compelling enough to preclude revocation, while the U.S. importer and its exporter affiliate strenuously disagree, arguing that no convictions have been made based on these allegations as the defendants were convicted of crimes regarding seafood mislabeling in the same proceeding. In the past, Commerce has avoided meaningfully addressing evidence of circumvention. Doing so again here will affirmatively result in another substantial hole being opened in the scope of the antidumping duty order on shrimp from China.

Of late, Commerce has publicly expressed concern about widespread circumvention. I am hopeful that this concern will eventually win out over bureaucratic goals of limiting

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Department found certain importers improperly classified subject entries as non-dutiable.”).

<sup>3</sup> “Government’s Position with Respect to Sentencing,” United States v. Lin, CR-11-00297(B)-PA at 5 (Feb. 6, 2012).

Both in the criminal trial where the Government’s filing was made and in the current administrative proceeding before Commerce, respective counsel for the importer and the criminal defendants have contested the validity of the Government’s allegations, argued that no criminal convictions have resulted from the alleged unlawful activity, and observed that the presiding Judge did not account for the allegations in sentencing the defendants for crimes related to the mislabeling of fish products.

responsibility and preserving resources. Until that happens, however, the domestic shrimp industry will continue focusing its energies and resources on working with Customs and ICE to address circumvention.

Because of our work with other industries that are also seriously impacted by circumvention, I am aware that our experience with Customs has not necessarily been representative of what other industries have experienced working with the agency. From other industries, I have heard complaints that Customs' enforcement efforts seem like an impenetrable black box and that circumvention allegations submitted by these industries appear to go nowhere. Although the shrimp industry has had its own share of frustration in trying to get the agency to focus on particular circumvention schemes that are impacting the U.S. shrimp market, our experience has been on the whole positive.

My personal view is one of great appreciation for the time and effort expended by enforcement officials at Customs and ICE counteracting rampant circumvention. Customs and ICE enforcement personnel take their responsibilities very seriously. The men and women that I have met within that agency are, by and large, deeply offended by illegal circumvention. They are, in many instances, frustrated by their inability to do more and lament hurdles to enforcement. The Southern Shrimp Alliance has on several different occasions publicly expressed gratitude for Customs' enforcement actions. The response of some Customs officials to our statements has been to disclaim credit and protest that the agency has not been able to do nearly enough to deserve praise. We try to thank them and they tell us that we should be pressing harder on the agency for not being more aggressive.

There is no question that Customs could do more, but there is no denying that the agency's actions have helped our industry. In my direct experience with Customs, based, in part, on information that the Southern Shrimp Alliance has provided to the agency, the shrimp industry has benefited from:

- The Commercial Targeting Division's development of a guidance for differentiating between true "dusted" shrimp and non-"dusted" shrimp which facilitated an intensive examination and sampling program at the ports confirming widespread abuse of the exclusion;<sup>4</sup>
- The Office of Regulatory Audit's conduct of quick-response audits on importers suspected of fraudulently identifying country-of-origin to evade antidumping duties and other regulatory controls;<sup>5</sup>

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<sup>4</sup> HQ H034575, "Request for Internal Advice; Shrimp from China; Antidumping Duty" (May 10, 2010) and 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 at 15-16 (February 2009) ("GAO Seafood Fraud Report").

<sup>5</sup> GAO Seafood Fraud Report at 16.

- Innovative and creative efforts by Customs' laboratories to confirm illegal transshipment of shrimp;<sup>6</sup> and
- The closure of many fly-by-night importing operations following the opening of investigations by the agency.

Although there is a lot more that must be done before the problem of circumvention as experienced *just with shrimp imports* is brought under control, these efforts are greatly appreciated by our industry. Where seafood importers used to dismiss our analysis as unfounded speculation, Customs has confirmed shrimpers' fears regarding the prevalence of fraud within the U.S. seafood market.

Customs' (and ICE's) findings have made it impossible to claim that circumvention does not occur and, even if it does, occurs only in isolated instances. Published accounts of the agency's estimates of the extent of circumvention of the shrimp antidumping duty orders, coupled with the Southern Shrimp Alliance's own estimates regarding circumvention schemes, support the conclusion that illegal circumvention has resulted in the evasion of *hundreds of millions of dollars* in antidumping duties. Circumvention to this extent has significantly undermined the effectiveness of trade relief.

### **III. Preventing Circumvention**

While we have had some success in addressing some forms of circumvention of our antidumping duty orders, every time one avenue is shut down, another scheme takes its place. Just as one depressing example, we labored for well over a year to develop evidence demonstrating that three Malaysian companies were transshipping Chinese shrimp to the United States to evade antidumping duties and an FDA Import Alert. Once these three companies' exports were shut down, thanks, I believe, to Customs' enforcement efforts, six new Malaysian companies – with no prior history of exporting shrimp – began exporting similar quantities of shrimp to the United States.

Because of our well-publicized efforts in this area, the Southern Shrimp Alliance has now become something of a clearinghouse for information and allegations regarding evasion of the antidumping duty orders. Where once we struggled to find ways to marshal compelling evidence to prove what we believed to be happening, now we are alerted to schemes that we could not have imagined on our own. One whistleblower provided the Southern Shrimp Alliance with a treasure trove of documents setting out a circumvention scheme we are still trying to fully unravel.

In many ways, addressing circumvention is like fighting the mythological Hydra of Greek legends; cut off one head and two grow back. But I feel strongly that you do not back away from a job just because it is difficult. In this case, giving up in the face of seemingly intractable opposition would lead to a terrible result. The bad guys would win. People who violated the law would be rewarded and those who abided by the law would suffer.

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<sup>6</sup> Id. at 15.

I do not believe that the persistence and broad scope of circumvention is due to a lack of commitment on the part of those Customs officials responsible for enforcement. Policy makers in the agency may believe that resources are better allocated elsewhere, agency lawyers may see their jobs as reining in overzealous investigators, and other officials may protest that enforcement detracts from trade facilitation but the people who deal with fraud on a daily basis want to see the problem stamped out.

In working with Customs, I have heard numerous officials voice the same concerns on limitations about what they can do to meaningfully address circumvention. That is why the Southern Shrimp Alliance is deeply appreciative for the introduction of H.R. 5078, the “Preventing Recurring Trade Evasion and Circumvention Act,” by Congressmen Boustany and Richmond. The PROTECT Act directly addresses a number of issues that Customs officials have flagged for us over the years.

For example, I have been repeatedly informed that an inability to investigate facilities suspected of transshipment in Malaysia has been a major impediment to uncovering illegal circumvention originating from that country. Section 104 of the PROTECT Act goes directly to that problem by instructing Customs to seek to negotiate and enter into bilateral agreements with other countries to improve enforcement of trade remedy laws. If Customs attempts to do so and another country is not amenable to such an agreement, the PROTECT Act authorizes Customs to take that fact into consideration when addressing evasion alleged regarding that country’s exports. Just as importantly, if Customs declines to seek to negotiate and enter into bilateral agreements under this authority, it will have to defend its inaction in an annual report to Congress.

I have also been repeatedly informed that even where Customs can investigate a foreign facility and determines that it is not capable of producing the merchandise exported to the United States, Customs still must amass some evidence that the goods were actually produced by someone who would be subject to antidumping duties. Section 102 of the PROTECT Act directly addresses this concern by augmenting the agency’s ability to collect information and authorizing Customs to make adverse inferences wherever a party has failed to act to best of their ability to comply with requests for information.

In addition, the PROTECT Act closes down some of the ways in which the new shipper review process has been abused, removes limitations on invaluable data that was not previously available for commercial targeting, and facilitates the sharing of information between agencies responsible for administering our trade laws. The PROTECT Act also charges Customs with developing policies for the application of single entry and continuous bonds to facilitate the collection of antidumping and countervailing duties – tools that have been underutilized in ensuring compliance with trade remedy laws.

All of these features of the PROTECT Act are a substantial improvement over existing law. But even more important than the substantive changes proposed by the bill is the fact that the PROTECT Act raises the profile of circumvention. The bill establishes an enforcement division dedicated to enforcing trade remedies and responsible for interacting with domestic industries about their circumvention concerns. The bill also makes addressing circumvention one of the principal negotiating objectives for trade agreements. And the bill requires Customs

to provide an annual accounting of the specific steps the agency has taken to address circumvention. These are all welcome developments and I look forward to this bill becoming law.

I do not believe that the enactment of the PROTECT Act in and of itself will solve all problems related to circumvention. The success of the bill will depend upon what Customs does with the authority granted to the agency by this legislation. However, if Customs fails to take aggressive action and diverts resources elsewhere, it would fly in the face of what the PROTECT Act stands for. Congressional oversight will still be required to insure that Customs maintains focus, but such review will be substantially eased because of the reporting requirements imposed by the bill.

Other problems remain. As long as our law allows anyone, including foreign nationals, to act as importers of record, fly-by-night companies will continue to proliferate. These entities simply disappear whenever Customs or ICE begin to make tough inquiries, only to pop up elsewhere (or sometimes at the same address) under a different name. This is not a problem limited only to trade remedy law enforcement and I am hopeful that the agency will do a better job in the future of articulating the risks to revenue and public safety posed by an inability to limit who acts as an importer of record.

Similarly, our review of current trade patterns has shed light on the major deficiencies in the “in-bond” importation process. Abuse of “in-bond” importation extends well beyond circumvention of trade remedies and as Customs identifies specific examples of abuse, we would all benefit from the agency’s publication of those findings. Unless someone uses the “in-bond” system or has attempted to document abuse of that system, the vulnerabilities inherent in the current structure of “in-bond” importation are not obviously apparent.

Still, the PROTECT Act provides a framework for identifying and documenting these problems to the extent that they undermine trade remedies. This is a significant improvement over the status quo. We are extremely grateful for the serious consideration given circumvention by Congressmen Boustany’s and Richmond’s bill and for the Committee’s willingness to address enforcement in this hearing.

Thank you again for inviting me to share my experience on Customs enforcement with the Committee and I look forward to answering any questions you might have.