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

WRITTEN COMMENTS OF

THE SOUTHERN SHRIMP ALLIANCE

ON

EFFECTIVE ENFORCEMENT OF U.S. TRADE LAWS

BEFORE

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

HEARING DATE: SEPTEMBER 27, 2016

SUBMISSION DATE: OCTOBER 11, 2016

The Southern Shrimp Alliance (SSA) is submitting written comments to the Trade Subcommittee of the Committee on Ways and Means to emphasize the importance of effective enforcement of U.S. trade laws to small and medium-sized family owned businesses throughout the United States. SSA is a non-profit alliance of shrimpers, dockside facilities, processors, retailers, distributors, and other industry participants committed to preventing the continued deterioration of America's warmwater shrimp industry and to ensuring the industry's future viability. SSA's membership spans the coast of the South Atlantic and the Gulf of Mexico, from North Carolina to Texas.

Illegal schemes to evade the payment of antidumping and countervailing duties substantially undermine the effectiveness of our trade remedy laws. The U.S. shrimp industry has direct experience with the efforts of several federal agencies – U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), Enforcement and Compliance of the International Trade Administration of the U.S. Department of Commerce, the Office of Law Enforcement of the National Oceanic and

Atmospheric Administration (NOAA) Fisheries, and the Office of Criminal Investigations of the U.S. Food and Drug Administration – to address the criminal networks that facilitate the evasion of antidumping and countervailing duties and related trade fraud. Since the imposition of antidumping duty orders on certain frozen shrimp imports in 2005, these agencies have successfully countered evasion of payment of antidumping duties through transshipment of Chinese-origin shrimp through Indonesia, abuse of the "dusted" shrimp exclusion from trade relief by rampant misclassification, and, most recently, the transshipment of Chinese-origin shrimp through Malaysia. These agencies have also investigated and identified the participants in past evasion schemes, such as the transshipment of shrimp subject to antidumping duties through Cambodia. At the same time, the U.S. shrimp industry has worked with these agencies to address related evasion schemes used for other products, including widespread mislabeling of fish fillets from Vietnam in order to evade antidumping duties and multiple illegal strategies to import honey from China without payment of antidumping duties.

The *Trade Facilitation and Trade Enforcement Act of 2015* enacted a number of amendments to existing law that hold the promise of substantially augmenting the capacity of CBP, along with its partner government agencies (PGAs), to effectively address and prevent the illegal evasion of antidumping and countervailing duty orders. SSA is grateful for this Committee's continued focus on the effective enforcement of our trade laws. Criminal endeavors, such as the illegal evasion of antidumping and countervailing duty orders which endanger the livelihoods of thousands of Americans cannot be tolerated.

For the U.S. shrimp industry, what matters now is what CBP will do with the new authorities granted to the agency by the *Trade Facilitation and Trade Enforcement Act of 2015*. The regulations promulgated by CBP, along with other actions taken by the agency, in response to the new law will have a determinative effect upon whether evasion of trade remedies, and trade fraud generally, will be more effectively countered. Commissioner Kerlikowske's written testimony to this Committee touched upon several aspects of the *Trade Facilitation and Trade Enforcement Act of 2015* that will improve trade enforcement, including the development of administrative procedures for investigations under the *Enforce and Protect Act of 2015* and the elimination of the "consumptive demand" exemption for imports produced through forced or child labor. However, in addition to these provisions, there are several other portions of the *Trade Facilitation and Trade Enforcement Act of 2015* that should, if meaningfully implemented, substantially augment CBP's enforcement capacity. We set out a brief overview of these provisions below.

Use of Trade Data for Commercial Enforcement Purposes- Section 111(c) of the *Trade Facilitation and Trade Enforcement Act of 2015* amended Section 343(a)(3)(F) of the Trade Act of 2002 (19 U.S.C. § 2071 note) to expand the information available to CBP for use in its commercial risk targeting operations and analysis. The amendment maintained the prohibition on the use of such information for "commercial enforcement purposes," but nevertheless provided CBP with access to data that will substantially improve the agency's ability to target problematic shipments before their arrival at U.S. ports. This provision must be implemented by CBP in a manner consistent with the amendment's intent.

Establishment of Importer Risk Assessment Program- Section 115 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires CBP to establish a program "to adjust

bond amounts for importers, including new importers and nonresident importers, based on risk assessments of such importers conducted by U.S. Customs and Border Protection, in order to protect the revenue of the Federal Government." The U.S. Government Accountability Office (GAO) recently estimated that about US$2.3 billion in antidumping and countervailing duties owed to the U.S. government were uncollected as of mid-2015 and that CBP was only able to collect about 31% of the dollar amount owed on antidumping and countervailing duty bills the agency attempted to collect (GAO 16-542; July 2016). The GAO found that roughly half of the $2.3 billion in unpaid antidumping and countervailing duties could be traced to twenty importers. The GAO further identified a number of characteristics relevant to nonpayment risk, suggested a metric by which to develop risk scores, and specifically observed that the utilization of such risk scores could inform bond demand requirements. These recommendations should inform any risk assessment program developed by CBP.

Importer of Record Program- Section 114 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires CBP to establish an importer of record program to assign and maintain importer of record numbers. In developing the program, CBP is to ensure that sufficient information is collected to allow CBP "to identify linkages or other affiliations between importers that are requesting or have been assigned importer of record numbers . . . ." The importance of obtaining such information was further underscored in the recent GAO report, as that agency observed that an importer owing US$169 million in antidumping duties (the second highest of any importer) was believed by CBP to "have subsequently incorporated under a different name, enabling it to resume importing as a new entity." Accordingly, the program developed by CBP in response to Section 114 must significantly improve upon the information already collected by the agency regarding importers of record in order to prevent importers from simply closing down and reopening under a new name whenever faced with significant outstanding debt.

Customs Broker Identification of Importers- Section 116 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires CBP to promulgate regulations "setting forth the minimum standards for customs brokers and importers, including nonresident importers, regarding the identity of the importer that shall apply in connection with the importation of merchandise into the United States." Any such regulations should further bolster CBP's ability to identify linkages between entities acting as importers of record.

Report on Security and Revenue Measures With Respect to Merchandise Transported in Bond- Section 113 of the *Trade Facilitation and Trade Enforcement Act of 2015* requires the Secretary of Homeland Security and the Secretary of the Treasury, no later than December 31, 2016, to jointly submit a report to this Committee and the Committee on Finance of the Senate "on efforts undertaken by {CBP} to ensure the secure transaction of merchandise in bond through the United States and the collection of revenue owed upon the entry of such merchandise into the United States for consumption." SSA has repeatedly raised concerns with CBP regarding apparent abuse of "in bond" entries as a vehicle for evasion of antidumping duties on shrimp imports. CBP has been responsive to these concerns but the amount of information collected and evaluated by the agency with regard to such entries appears to be limited. In identifying entries that "remain unreconciled," a required element per Section 113(b)(7), any report should attempt to explain the reasons, as identified by CBP, for the lack of reconciliation for such entries.

As the trade community monitors and evaluates CBP's implementation of the various provisions of the *Trade Facilitation and Trade Enforcement Act of 2015*, the role of the U.S. Department of Treasury in effective enforcement of U.S. trade laws should be explored further. By regulation (19 C.F.R. § 0.1(a)) and agency order (Treasury Order 100-16 (May 15, 2003; reaffirmed Sept. 8, 2011)), the Department of Treasury has maintained "sole authority to approve any regulations concerning . . . the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto." Accordingly, in the promulgation of regulations, CBP's efforts to implement the *Trade Facilitation and Trade Enforcement Act of 2015* must ultimately be approved by Treasury. Oversight of CBP's implementation and administration of the new provisions necessarily includes the Department of Treasury.