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March 11, 2009

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: Comments Concerning Proposed Trans-Pacific Partnership Free Trade Agreement; Docket No. USTR-2009-0002

Dear Ms. Blue:

The Southern Shrimp Alliance (SSA) is filing these comments in response to the notice published in the Federal Register on January 26, 2009 concerning a proposed Trans-Pacific Partnership ("TPP") Free Trade Agreement with several countries, including Vietnam. SSA is a non-profit alliance that represents the interests of the U.S. shrimp industry. The organization is composed of hundreds of independent small businesses throughout North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

SSA supports efforts to expand trade between the United States and other countries. SSA also believes, however, that such initiatives must be accompanied by strong commitments to fair trade principles and effective enforcement of the U.S. trade laws. The proposed TPP Free Trade Agreement must include enforceable commitments that will ensure fair trade between the parties to the agreement.

In recent years, confidence in the U.S. commitment to fair trade has been severely challenged. In 2004, SSA successfully petitioned for relief from unfairly traded imports from Brazil, China, Ecuador, India, Thailand and Vietnam consistent with U.S. law only to see (1) the relief on Ecuador and Thailand eviscerated by the U.S. government's unnecessary and unwarranted capitulation to decisions by the World Trade Organization's Dispute Settlement Body (DSB) that created new obligations for the United States which were never agreed to in negotiations (the U.S. acceptance of these DSB decisions only further encourage additional specious challenges to U.S. trade law before the WTO from our trading partners); (2) many of these countries, including Vietnam, mitigating the effectiveness of the trade relief on dumped imports by subsidizing the production and export of shrimp; and (3) the relief on all other imports severely undermined by the U.S. government's inability to prevent circumvention of our

trade laws. Last year, for example, U.S. Customs and Border Protection (CBP) reported that it failed to collect substantially more in assessed antidumping duties on shrimp imports (\$42.5 million) than the agency was able to collect (\$32.7 million). Nevertheless, the DSB has held that measures taken by CBP to improve its collection practices are inconsistent with the country's WTO obligations – with CBP and the USTR apparently prepared to once again simply concede to this overreaching decision that does substantial violence to the efficacy of U.S. trade laws.

Expansion of free trade principles without enforcement of fair trade requirements merely abandons U.S. producers to the unfair trade practices of their foreign competitors. Dumped farmed shrimp imports – frequently laced with banned antibiotics and other contaminants – have decimated the U.S. shrimp market and threaten the very existence of an industry synonymous with this country's southern coastline. The U.S. shrimp industry reacted to the unfair trade as it was supposed to; SSA petitioned for and won trade relief by demonstrating that imports were dumped and were materially injuring the domestic industry. Since that demonstration, all objective evidence indicates that shrimp continues to be dumped into the U.S. market and that these unfair trade practices continue to harm the domestic shrimp industry. Nevertheless, a lack of commitment to defend U.S. trade laws has precluded the domestic shrimp industry from enjoying meaningful trade relief. Given these circumstances, the further expansion of free trade without a commitment to effective enforcement of the fair trade laws is antithetical to the welfare of everyone who makes a living based on the U.S. shrimp industry.

The USTR can go a long way to address criticisms of further expansion of free-trade pacts by making meaningful efforts to negotiate for measures that promote commitments to free trade. In particular, SSA urges you to address important concerns regarding compliance with our nation's food safety and fair trade laws as you enter into these negotiations. In particular, SSA is concerned that (1) shrimp producers in Vietnam and other countries use banned and hazardous substances in producing shrimp exported to the United States, (2) countries in the region are being used to transship shrimp from other countries to evade enforcement of U.S. antidumping orders, food safety alerts, and other U.S. laws, and (3) subsidies are artificially stimulating the production and export of shrimp beyond market demand.

Food Safety

First, the systemic use of banned substances to artificially increase production has been well documented in a number of countries. Nine out of every ten pounds of shrimp consumed in the United States is imported, and the vast majority of this shrimp is produced through aquaculture. Raised in crowded and dirty ponds, farmed shrimp are very susceptible to disease. Foreign shrimp farmers live under the constant threat that disease could ravage a shrimp crop. In this context, the incentive to take any and all available measures to guard against crop failure is extremely powerful. In many instances, this fear of economic failure leads to the utilization of harmful antibiotics and pesticides that pose serious threats to vulnerable U.S. seafood consumers.

The export of seafood from Vietnam, in particular, has reflected the problems inherent in aquacultured seafood. Because of continual problems with imports of farmed seafood from Vietnam, in July 2006, the government of Canada completed an unusual bilateral agreement with the government of Vietnam requiring the Vietnamese government to certify all exports of farmed

seafood to Canada as free of chloramphenicol, nitrofurans, malachite green, and leucomalachite green.¹ No other country exports seafood to Canada under these stringent conditions. In December 2006, Japan – experiencing problems similar to those experienced by Canada – instituted a requirement that 100 percent of shrimp imported from Vietnam be tested for contaminants after finding that significant amounts of shrimp imported into Japan from Vietnam contained chloramphenicol.² Japan, like Canada, reached an agreement with the government of Vietnam whereby the Vietnamese government would inspect and certify that shrimp exports destined for Japan were free from chloramphenicol and nitrofurans.³ Nevertheless, despite the agreement, in the first half of 2007, Japanese authorities found 54 shipments of Vietnamese shrimp to be contaminated with chloramphenicol.⁴ That same year, inspectors from the European Union reported that the EU similarly continued to find banned contaminants in Vietnamese seafood imports and identified a broader structural problem with control of banned veterinary drugs:

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.⁵

As might be expected, the U.S. Food and Drug Administration (FDA) continues to find the presence of banned contaminants in Vietnamese seafood imports. The FDA's own testing of a sampling of such imports indicates that almost seventeen percent of all Vietnamese seafood sampled between 2005 and April 2008 was contaminated with antibiotics. In other words, the FDA's own limited testing indicated that one in six seafood shipments imported from Vietnam was contaminated with banned veterinary drugs.⁶ And, yet, despite the problems identified by all other major seafood import markets (including the United States), the United States has failed to effectively address the intentional addition of harmful contaminants to Vietnamese seafood.

¹ Arrangement Concerning the Inspection and Certification of Aquaculture Fish and Fish Products Exported from Vietnam to Canada for Drug Residues; available at <http://www.inspection.gc.ca/english/fssa/fispoi/export/mupd/vieviee.shtml>

² "Controlling Banned Chemicals and Antibiotics in Fishery," Statement of the Vietnamese Ministry of Fisheries National Fisheries Quality Assurance and Veterinary Directorate of the Vietnam Ministry of Fisheries (NAFIQAVED), Ref. 2983/CLTY-CL (Dec. 19, 2006).

³ "NAFIQAVED Declares Three Reasons for Unsafe Seafood," Vietnam Economy (Dec. 15, 2006).

⁴ "VASEP Asks Minister to Declare Emergency as Japan Threatens to Halt Vietnamese Shrimp Exports," Seafood News (July 9, 2007).

⁵ 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).

⁶ Letter from Stephen R. Mason, Acting Assistant Commissioner for Legislation of the U.S. Food and Drug Administration to the Honorable Charlie Melancon, p. 2 (July 7, 2008).

Given the absence of any meaningful action and the risk posed to U.S. consumers of seafood, the TPP negotiations present an ideal opportunity for the United States to address Vietnam's problems both of the continued use of banned substances in the production of farmed seafood and the export of contaminated seafood to the United States. Contaminated shrimp is harmful to the health of U.S. consumers and detrimental to the shrimp market in the United States. Accordingly, two important negotiating objectives of the proposed TPP would be the elimination of the use of banned substances in the production of farmed seafood in Vietnam and the prevention of exportation to the United States of contaminated or otherwise harmful seafood.

Transshipment

Second, the transshipment of shrimp imports through third countries to unlawfully avoid U.S. antidumping duties and scientifically demonstrated food safety controls are well-documented problems. As you are aware, existing antidumping duty orders on certain shrimp imports are meant to enable the domestic shrimp industry to compete with unfairly traded goods on a level playing field. However, foreign shrimp producers subject to these antidumping orders have been circumventing the orders by transshipping shrimp imports through non-subject countries. In March 2006, for example, U.S. Customs and Border Protection ("CBP") found 54 shrimp importers had falsely designated imported Chinese shrimp as Indonesian-origin shrimp, and thus had failed to pay over \$65 million in required antidumping duties.⁷ According to recent press reports, CBP's testing of shipments of shrimp ostensibly from Indonesia has led the agency to conclude that the product was actually transshipped from China.⁸ Apparent transshipment of Chinese shrimp continues through other countries such as Malaysia, Cambodia and Vietnam as well. The government of Malaysia has, to the domestic industry's knowledge, refused to cooperate in preventing the transshipment of Chinese merchandise. As a result, large quantities of unlawful, unfairly traded, and potentially unsafe imported shrimp enter the United States. Ensuring the effective enforcement of the antidumping orders and other U.S. laws would protect the health of U.S. consumers and have a direct and positive impact on the livelihood of U.S. producers and the value of U.S. fair trade laws. Accordingly, effective enforcement of these laws and controls by preventing transshipment and mislabeling would be another important negotiating objective of the proposed TPP.

Subsidies

Finally, subsidies in a number of shrimp producing countries artificially increase shrimp production beyond market demand. Shrimp producers and exporters depend heavily on subsidies to compensate for the low prices caused by massive overcapacity and overproduction spurred by the use of illegal antibiotics and pesticides. The subsidization of one country's shrimp industry leads to further subsidies granted in other countries, as each tries to contend with the distortions caused by subsidization. As a result, the U.S. shrimp industry is denied a level

⁷ Declaration of Bruce W. Ingalls, , Chief of Debt Management Branch, Revenue Division of the Office of Finance, U.S. Customs and Border Protection, Court No. 05-00683 (Mar. 9, 2006).

⁸ "Company Disputes Customs' Shrimp Testing: Agency Alleges Seafood Transshipped from China," Pacific Shipper (Jan. 12, 2009).

playing field and the U.S. market is overrun with unfairly low-priced, subsidized, and often contaminated shrimp imports.

The development of the export oriented seafood industry in Vietnam has been heavily dependent on the patronage of the government. The Vietnamese government has played a seminal role in the development of aquaculture in the country⁹ and is currently spearheading the nation's transition from Black Tiger shrimp to White shrimp production.¹⁰ In a recent interview regarding the state of the seafood export industry in light of a global economic downturn, Vietnam's Minister of Agriculture and Rural Development (Cao Duc Phat) said that "more support from the Government is necessary" to bolster the prospects of the country's seafood exporters.¹¹ The Minister reported that the Vietnamese government implemented nine of ten requests made from the Vietnam Association of Seafood Exporters and Producers (VASEP), adjusting the exchange rate band and ensuring that capital was available to shrimp farmers and processors. In addition, the Vietnamese government has provided generous subsidies to fishermen to offset increased fuel prices.¹² Accordingly, another important negotiating objective of the proposed TPP would be to discourage and eliminate production and export subsidies by foreign governments to their respective shrimp industries.

The United States has a unique opportunity during these proposed negotiations to take a strong stand for U.S. industries struggling in this difficult economy against violations of U.S. fair trade and food safety laws. Accordingly, among its negotiating objectives, the United States should seek to (1) eliminate the use of banned substances in the production of shrimp in Vietnam and prevent exportation to the United States of contaminated or otherwise harmful shrimp; (2) prevent transshipment and mislabeling of shrimp; and (3) discourage and eliminate production and export subsidization by foreign governments of their respective shrimp industries. We urge you to act upon this opportunity for the sake of the domestic shrimp industry. In the interim, SSA stands ready to answer any questions, provide clarification, or submit additional information regarding the foregoing at the USTR's request.

Sincerely,



John Williams
Executive Director
Southern Shrimp Alliance

⁹ "Government Floats Aquaculture Growth Plan," Embassy of Vietnam (United States) (Mar. 11, 2003).

¹⁰ "Vietnam Diversifies Its Breeds of Shrimps for Export," VOV (July 16, 2008); "Decision Regarding the Promulgation of Regulation on Fish Seed Management," Ministry of Agriculture and Rural Development, Socialist Republic of Vietnam, No:85/2008/QD-BNN, Hanoi (Aug. 6, 2008).

¹¹ "Vietnam Seafood Sector Must Fish for Opportunities," Asia Pulse Pte Ltd. (Jan. 22, 2009).

¹² "Fishermen Hit By Falling Seafood Price," VNS (Sept. 20, 2008).