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Docket No. USCBP-2018-0045

Mr. Brandon Lord
Deputy Executive Director, Trade Policy & Programs
Office of Trade
U.S. Customs and Border Protection
1331 Pennsylvania Avenue NW
Suite 950N
Washington, DC 20229

Re: Comments of the Southern Shrimp Alliance on the U.S. Customs and Border Protection's "21st Century Customs" Initiative

Dear Deputy Executive Director Lord:

The Southern Shrimp Alliance is pleased to offer the following comments on U.S. Customs and Border Protection's ("CBP") 21st Century Customs Framework initiative.¹ The Southern Shrimp Alliance looks forward to working with CBP as it develops and implements its 21st Century Customs Framework to ensure that the initiative enhances all aspects of CBP's trade mission, including the enforcement of trade laws involving unsafe, unfairly traded, or fraudulently entered goods. Each of the comments discussed below aim to protect the American public against health and safety risks, ensure that CBP has the necessary tools and resources to perform its responsibilities, and contribute to American economic prosperity.

I. About the Southern Shrimp Alliance

The Southern Shrimp Alliance is an organization comprised of shrimp fishermen, shrimp processors, and other members of the domestic industry in the eight warmwater shrimp producing

¹ *Public Meeting: 21st Century Customs Framework*, 83 Fed. Reg. 65,703 (Dec. 21, 2018); *see also Announcing the Re-Opening of the Public Comment Period for 21st Century Customs Framework*, 84 Fed. Reg. 8884 (Mar. 12, 2019).

states of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.² Since its founding in 2002, the Southern Shrimp Alliance has worked to support the continued vitality of the U.S. shrimp industry. The central mission of the Southern Shrimp Alliance is to ensure that the shrimp industry remains a foundation of the economy and social structure of coastal communities throughout the Gulf and Southeast Atlantic regions.

Because of substantial differences in regulatory control and oversight in the major shrimp importing countries around the world, the U.S. market has become a dumping ground for shrimp that would not be accepted in other markets. These imports, in turn, pose an existential threat to the warmwater shrimp industry in this country. In response, the Southern Shrimp Alliance has pursued, obtained, and maintained antidumping duty orders on unfairly-traded shrimp imports and has sought to establish a level playing field in terms of the regulation of shrimp producers in the United States and overseas. The Southern Shrimp Alliance achieves these objectives through educational activities and by working directly with local, state, and federal agencies. Throughout the Southern Shrimp Alliance's existence, CBP has been an essential partner in enforcing U.S. laws at the border. CBP's efforts have allowed thousands of commercial fishermen in dozens of communities across the coast to continue working.

II. Comments on U.S. Customs and Border Protection's 21st Century Customs Framework Initiative

CBP has identified six themes to facilitate public participation in the agency's 21st Century Customs Framework initiative. In this submission, the Southern Shrimp Alliance limits its comments to three of the six themes ("Intelligent Enforcement"; "Data Access and Sharing"; and "Self-Funded Customs Infrastructure").

A. Intelligent Enforcement

CBP describes intelligent enforcement as the process of applying U.S. trade laws to protect America's economic security by way of identifying high-risk activity, deterring non-compliance, and disrupting fraudulent behavior. Distilled to its essence, intelligent enforcement must mean that CBP is able to expeditiously identify bad actors as well as take specific action that substantially enhances general incentives to comply with our trade laws. An emphasis on intelligent enforcement should not only increase CBP's capacity to respond to bad actors, but also sends a powerful general deterrence message to the trade community preventing fraudulent trade actions in the first instance.

In its efforts to secure enforcement of trade remedies, the Southern Shrimp Alliance has confronted non-compliant or fraudulent behavior regarding the classification of imports, the country-of-origin of these goods, and the identity of the foreign exporter or other entities within the supply chain. These illicit schemes have used non-resident importers or resident paper/shell companies to evade U.S. laws. By operating illicit schemes through entities that CBP and other government authorities cannot effectively reach after sufficient evidence is amassed to pursue enforcement actions, significant segments of the trade operate with impunity.

² *About Us*, Southern Shrimp Alliance, <http://www.shrimpalliance.com/about/> (last visited Apr. 2, 2019).

A prerequisite to intelligent enforcement is the agency's knowledge of the participants in the trade community. Through the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), Congress explicitly and specifically directed CBP to improve its performance in this area. Section 114(b)(1)(B) and (b)(3) of TFTEA (Importer of Record Program) mandated that CBP ensure that "sufficient information is collected to allow U.S. Customs and Border Protection to identify linkages or other affiliations between importers that are requesting or have been assigned importer of record numbers." Consistent with this instruction, the agency has revised CBP Form 5106 to include fields that will better capture information regarding the identity of the importer, as well as its linkages and affiliations.³ However, the new form makes responses to the data elements requested in Section 3 (Company Information) optional, which would appear to substantially undermine the utility of these new questions as well as be grossly inconsistent with Congress's mandate. The Southern Shrimp Alliance believes that, in order to be effective, CBP must communicate out to the trade that, while ostensibly optional, an importer's decision as to whether to provide responses to Section 3 will have a significant impact on the way in which the agency assesses the risk presented by the importer. In particular, CBP's activities to implement Section 115 (Establishment of an Importer Risk Assessment Program) should clarify that the information provided in response to the entirety of CBP Form 5106 will be a significant consideration in the agency's risk assessment program.

Importers of record are not the only participants in the trade community and intelligent enforcement must also encompass the roles of other essential actors, such as sureties and customs brokers. The Southern Shrimp Alliance is therefore concerned that although Section 116 (Customs Broker Identification of Importers) requires the agency to "prescribe 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," no such regulations have been released for public review and comment. The promulgation of effective regulations to ensure that customs brokers take steps to verify the identities of the importers that they work with should be seen as an essential element of intelligent enforcement.

As a general matter, the Southern Shrimp Alliance urges CBP to continue to develop enforcement mechanisms that are effective and transparent. Recent statutory enactments, such as the Enforce and Protect Act ("EAPA") within TFTEA, represent positive developments in CBP's ability to address bad actors and fraudulent behavior in a more transparent and time-efficient process. Specifically, the formal procedures for submitting and investigating allegations of antidumping or countervailing duty evasion contained in the EAPA provide the party filing the allegation a level of participation and transparency previously unavailable. Moreover, the statutory deadlines that exist for EAPA investigations make it more likely that the process will lead to timely relief for U.S. domestic industries that have expended considerable time and resources to obtain relief from unfairly traded imports.

However, while we applaud the progress that the agency has made in enforcement through administration of EAPA, the Southern Shrimp Alliance is concerned that CBP has not yet developed and/or adopted metrics for evaluating the agency's success in stopping or preventing evasion of

³ See Form 5106 – Create/Update Importer Identity Form, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/CBP%20Form%205106.pdf> (last visited Apr. 2, 2019).

AD/CVD orders. The extent of the problem of undercollection of AD/CVD duties has been made clear by CBP's publication of collection statistics showing an increase in uncollected AD/CVD duties from \$1.0 billion in FY2010 to \$3.1 billion in FY2017. Detailed breakouts of undercollection by AD/CVD order have facilitated analysis indicating the nature of the challenge presented – including the fact that just six AD orders account for roughly 81 percent of all uncollected duties. In contrast, there appears to be no similar reporting metric utilized by CBP to quantify the amount of AD/CVD duties that the agency has prevented from being evaded by enforcement actions taken through EAPA or through other AD/CVD enforcement tools utilized by CBP. In the absence of such a metric, CBP makes it significantly more difficult to evaluate the achievements of its enforcement operations. The agency additionally makes it more difficult to develop support for enhancing the resources allocated by Congress to these essential enforcement activities. Accordingly, intelligent enforcement should encompass the development of objective measures designed to encourage activity within the agency that go to CBP's core mission of protecting the revenue.

The Southern Shrimp Alliance commends CBP's efforts to collect AD duties payable on entries of shrimp from a number of Asian countries determined to be engaged in dumping shrimp into the U.S. market. It is axiomatic that AD/CVD orders need to be fully enforced in order for them to have the desired impact in the market. Increased emphasis on intelligent enforcement makes it possible that CBP can use its resources to more efficiently target bad actors while facilitating legitimate trade. Currently, however, there remain other AD/CVD orders that – for a variety of reasons – have resulted in large amounts of duties owed to the United States going uncollected. Intelligent enforcement should make use of all available information to assess the overall risk posed by a particular entry and require security in the forms of enhanced bonding to ensure that duties laid on goods, wares, and imported merchandise be collected. Such techniques should improve overall collection of AD/CVD duties and ensure that all duties owed are collected.

B. Data Access and Sharing

CBP coordinates with numerous partner government agencies on laws governing the entry of merchandise into the United States. The 21st Century Customs Framework should facilitate and improve the sharing of data between CBP and partner government agencies. Specifically, CBP should ensure that information flows openly between the National Oceanic and Atmospheric Administration (“NOAA”), which administers the U.S. Seafood Import Monitoring Program (“SIMP”), the Food and Drug Administration (“FDA”), and CBP. Both NOAA and the FDA collect and review data relevant to CBP's trade facilitation role. Having information from NOAA and the FDA immediately available to CBP makes it possible for CBP to detain non-compliant entries before they are entered and released.

The Southern Shrimp Alliance also believes that CBP should continue to develop relationships with foreign countries to prevent evasion of U.S. trade remedy laws at home. To this point, section 414 of the Trade Facilitation and Trade Enforcement Act of 2015 directs the Treasury Secretary to negotiate and enter into bilateral agreements “for purposes of cooperation on preventing evasion of the trade remedy laws of the United States.” CBP should continue its efforts to coordinate with the Department of the Treasury to develop bilateral partnerships that would improve the efficiency of CBP's efforts to investigate and verify allegations of AD/CVD evasion. The use of this provision of TFTEA also improves transparency of CBP's enforcement efforts because it requires that “bilateral cooperation and other activities {such as verifications} conducted pursuant to or

enabled” by this section be reported to the appropriate congressional committees. The Southern Shrimp Alliance believes that increased overseas verification would result in fewer attempts by importers to brazenly evade U.S. trade remedies laws.

Further, the Southern Shrimp Alliance concurs with the comments of the International Trade Surety Association regarding the need to improve data available to sureties.⁴ Sureties augment CBP’s ability to assess and evaluate the risk presented by certain types of importations, as well as particular importers. Through the provision of better and earlier information, sureties’ underwriting activities can assist in ensuring that fraudulently-traded goods do not enter the U.S. marketplace. Where trade participants intend to disappear before their illicit schemes are discovered, bonds issued by sureties are the only assets available to mitigate the loss to the U.S. Treasury. The Southern Shrimp Alliance believes that with better data available, sureties can more accurately price bonds and “complement the efforts by CBP to protect and collect revenue, especially for AD/CVD shipments to help protect domestic industry”⁵

C. Self-Funded Customs Infrastructure

The Southern Shrimp Alliance fully supports any and all efforts by CBP to move towards a self-funded Customs infrastructure.

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Thank you for your consideration of these comments. The Southern Shrimp Alliance looks forward to working with CBP as it commences its first comprehensive review of its statutes and regulations since the Customs Modernization Act. The Southern Shrimp Alliance is confident that the efforts being taken by CBP will result in a regulatory framework that better allocates resources to protect American citizens from risks to public health and safety, while at the same time enhancing the economic competitiveness of American producers and manufacturers.

Respectfully submitted,



John Williams
Executive Director

Dated: April 11, 2019
Tarpon Springs, Florida

⁴ See Letter from International Trade Surety Association to U.S. Customs and Border Protection, Docket No. USCBP-2018-0045 (Feb. 4, 2019) at 4.

⁵ Letter from Avalon Risk Management to U.S. Customs and Border Protection, Docket No. USCBP-2018-0045 (Feb. 4, 2019) at 2.