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Submitted via email

Senator Bill Cassidy, M.D.
455 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Updating U.S. Customs Laws

Dear Senator Cassidy:

Thank you for your letter requesting feedback from the trade community regarding Congress's consideration of updates to our customs laws.¹ In this letter, the Southern Shrimp Alliance seeks to describe how Congress can strike the appropriate balance between security/enforcement and trade facilitation, as well as maximize the benefits that customs modernization would have for Americans.

The Southern Shrimp Alliance appreciates U.S. Customs and Border Protection's (CBP) dual-mandate of facilitating legitimate trade and effectively enforcing U.S. trade laws. The agency's enforcement priorities have grown significantly over time, as CBP reports that in fiscal year 2022 it collected approximately \$111.9 billion in duties, taxes, and other fees, representing an incredible 117 percent increase over a five-year period.² In fiscal year 2022, CBP collected \$3.6 billion in antidumping duty (AD) and countervailing duty (CVD) deposits, up from \$1.5 billion in fiscal year 2017.³ Throughout this time, CBP has enforced antidumping duty orders on frozen warmwater shrimp from a number of countries, including China and India. By committing substantial resources over the last fifteen years to tackling fraud in the supply of

¹ See Letter from Sens. Bill Cassidy, M.D. (R-LA), Catherine Cortez Masto (D-NV), Marsha Blackburn (R-TN), and Maggie Hassan (D-NH) (June 13, 2023) ("Request for Comment").

² See U.S. Customs and Border Protection, *CBP Trade and Travel Report: Fiscal Year 2022* at 1 ("FY22 Trade and Travel Report").

³ Compare *id.* at 11, with U.S. Customs and Border Protection, *CBP Trade and Travel Report: Fiscal Year 2017* at 6 ("FY17 Trade and Travel Report").

imported shrimp to the U.S. market, CBP's enforcement efforts have greatly increased the effectiveness of this trade remedy and have helped to ensure that the shrimp industry remains a foundation of the economy and social structure in coastal communities throughout the Gulf and Southeast Atlantic regions. The entire domestic shrimp industry – comprised of commercial fisherman, unloading docks, fishhouses, processors, and suppliers – depends on CBP to eliminate the distortive impact of unfair trade.

In the twenty years since the shrimp industry first brought antidumping duty petitions, the Southern Shrimp Alliance has seen that robust enforcement of trade laws *increases* trade. In 2022, the United States imported \$7.2 billion in frozen, non-breaded warmwater shrimp, nearly twice the value of these shrimp imports in 2003 (\$3.7 billion). We believe that the experience of the shrimp industry is mirrored by trends in overall trade. As CBP has increased its enforcement activities across a wide variety of trade laws, the agency processed 39.1 million entries worth \$3.35 trillion in fiscal year 2022 compared to 33.2 million entries worth \$2.39 trillion in fiscal year 2017.⁴ Thus, the domestic shrimp industry believes that effective enforcement of trade laws inures to the benefit of not just the American businesses that must compete with imports but also to foreign suppliers and importers that are shut out of our market because of unfair trade practices. Accordingly, initiatives to modernize our customs laws should emphasize increasing the capacity and capability of CBP to distinguish between legitimate and illegitimate trade.

Section 484 of the Tariff Act of 1930, as amended, establishes the requirement for importers of record to make entry for merchandise to be imported into the customs territory of the United States.⁵ Congress has empowered CBP to collect all information “reasonably necessary to ensure cargo safety and security pursuant to those laws enforced and administered by the Customs Service.”⁶ The information collected by CBP is used by the agency and its partner government agencies (PGAs) to determine whether merchandise may be released from CBP custody into commerce.

Information regarding goods arriving by vessel has long been available to the public and has served as an invaluable tool in understanding and analyzing trade patterns.⁷ Public release of vessel manifest data has helped facilitate legitimate trade. However, the approach of U.S. law to ocean-going vessel manifest data is sharply contrasted by the lack of public release of data regarding manifests for freight transported into the United States through other means. Accordingly, as Congress considers ways to modernize U.S. customs laws, the Southern Shrimp Alliance believes that any customs modernization proposal should provide for the public disclosure of truck, rail, and aircraft manifest data, consistent with what is already required for ocean-going vessels. As detailed below, we believe the public availability of truck, rail, and air manifest information would both substantially augment CBP's enforcement of trade laws and, at

⁴ Compare *FY22 Trade and Travel Report* at 1, with *FY17 Trade and Travel Report* at 5.

⁵ See 19 U.S.C. § 1484.

⁶ *Id.* § 1415(a)(2).

⁷ See *id.* § 1431(c)(2) (providing for the public disclosure of certain vessel manifest information).

the same time, facilitate legitimate and compliant trade. This is because greater transparency into global supply chains reduces risks posed by illegitimate trade and creates a fair environment in which both foreign and U.S. suppliers may participate.

Shipping manifests contain information regarding the name and address of the importer, name and address of the shipper, the character of the cargo, country of origin, port of loading, port of discharge, and any trademarks on the goods.⁸ Under current law, only manifest information for cargo by sea vessel is publicly available.⁹ CBP reports that, each year, “more than 11 million maritime containers arrive at our seaports.”¹⁰ But even more containers arrive through other forms of transportation, as at our “land borders, another 11 million arrive by truck and 2.7 million by rail.”¹¹ Although most U.S. imports – measured by weight – are delivered to this country through ocean-going vessel, the majority of the value of such imports is delivered through other means. As reported by the Bureau of Transportation Statistics, over half of the value of U.S. imports in 2020 arrived via truck (16.2 percent), rail (4.2 percent), or air (30.3 percent), while U.S. imports arriving into the United States by water accounted for 42.7 percent of total import value.¹² This means that that the picture of U.S. imports available to the public is woefully incomplete. Without public manifest data for imports arriving by truck, rail, or air, Americans have no ability to access information regarding over half of the containers entering the United States and over half of the value of imports brought into this country each year.

Accordingly, requiring public release of manifest data for truck, rail, and air cargo – consistent with what is required for cargo arriving aboard ocean-going vessels – would provide much needed visibility into supply chains. This increased information would allow members of the Trade to apply their developed expertise and knowledge to trade data in order to identify patterns of illegitimate or risk-generating trade. For example, expanded public release of manifest information may allow a trademark holder to identify the importation of goods which copy or simulate registered trademarks owned by United States citizens. In result, expanded access to manifest information would permit better targeting and screening of goods entering the United States, allowing the agency to more accurately focus enforcement resources while not impeding legitimate trade.

The utility of the public release of manifest data has been long demonstrated by ocean-going vessel manifest data. Not only has this information allowed for the Trade to develop a

⁸ See 19 U.S.C. § 1431(c)(1); 19 C.F.R. § 103.31.

⁹ See *Panjiva, Inc. v. United States*, 975 F.3d 171 (2d Cir. 2020) (holding that the Tariff Act only requires public release of ocean-going vessel manifest information).

¹⁰ U.S. Customs and Border Protection, *Cargo Security and Examinations*, <https://www.cbp.gov/border-security/ports-entry/cargo-security>.

¹¹ *Id.*

¹² See Bureau of Transportation Statistics, *On National Maritime Day and Every Day, U.S. Economy Relies on Waterborne Shipping* (May 12, 2021), <https://www.bts.gov/data-spotlight/national-maritime-day-and-every-day-us-economy-relies-waterborne-shipping>.

better understanding of the goods that enter the United States market, it has also provided a tool through which businesses and non-governmental organizations (NGOs) may identify shipments that pose risks to Americans as well as supply chains that evade payment of money legally owed to the federal government. Companies and NGOs have used manifest data, released by the United States and by other governments, to track and identify shipments that may contain illicit drugs, counterfeit merchandise, or unsafe products.¹³ For example, publicly available manifest data was used to track tainted batches of cough syrup from India that led to the death of twenty children in Uzbekistan.¹⁴

Although not generally thought of as something directly related to the shrimp industry's operations, the Southern Shrimp Alliance believes that the use of manifest data that has been made available to the public demonstrates that increased visibility into truck, rail, and air cargo data would help to spotlight the supply chains that have allowed the unmitigated flow of fentanyl and fentanyl precursors from China into the United States through Mexico. Abuse of these narcotics has devastated communities throughout the country, including throughout the coastal United States. In attempting to track transshipment schemes through Canada and Mexico designed to evade the trade remedy laws applicable to shrimp imports, the domestic shrimp industry has firsthand experience as to how a lack of transparency has allowed criminal networks to flourish.

Moreover, updating our customs laws to provide broader public access to manifest data would generate additional benefits. Under U.S. law, goods that were mined, produced, or manufactured with forced labor are prohibited from entering the United States.¹⁵ Separately, the Uyghur Forced Labor Prevention Act created a rebuttable presumption that goods mined, produced, or manufactured wholly or in part in Xinjiang are prohibited from importation into the United States.¹⁶ Public manifest data has proven useful in identifying instances where merchandise that should be prohibited from entry has found its way into the U.S. marketplace, inadvertently making American consumers complicit in the Chinese Communist Party's labor abuses. For example, manifest information documented instances where seafood produced by indentured workers was able to enter the United States.¹⁷ Expanding access to manifest data would facilitate legitimate trade and provide benefits to Americans by reducing the possibility

¹³ See Michael Kanko, CEO & Co-Founder, ImportGenius, *Written Testimony Before the House Committee on Ways and Means Trade Subcommittee: Hearing on Modernizing Customs Policies to Protect American Workers and Secure Supply Chains* (May 25, 2023), <http://waysandmeans.house.gov/wp-content/uploads/2023/05/Kanko-Testimony.pdf> (“Kanko Testimony”).

¹⁴ *Id.*

¹⁵ 19 U.S.C. § 1307.

¹⁶ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78 (2021).

¹⁷ See *Kanko Testimony*.

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that illicit goods are entered into the United States and sold to American customers. In contrast, “[h]iding the import data will allow abuse of human rights to flourish in the shadows.”¹⁸

We believe that making manifest information related to truck, rail, and air shipments available to the public is an important and essential step towards achieving transparency in increasingly global and complex supply chains. We note that supply chain visibility is one of the stated goals of CBP’s 21st Century Customs Framework.¹⁹ Consistent with CBP’s objectives, public release of air, rail, and truck manifests will “strengthen CBP’s ability to root out violative actors.”²⁰ For these reasons, we believe that the public release of truck, rail, and air manifest data represents a legislative initiative that strikes an appropriate balance between security/enforcement and trade facilitation.

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Thank you in advance for your consideration of these comments.

Respectfully submitted,



John Williams
Executive Director

¹⁸ Rep. Lloyd Doggett, *Press Release: Pressing for Progress on Trade Transparency & Human Rights in Labor – Not Backsliding* (Nov. 18, 2022), <https://doggett.house.gov/media/press-releases/pressing-progress-trade-transparency-human-rights-labor-not-backsliding>.

¹⁹ U.S. Customs and Border Protection, 21st Century Customs Framework (July 7, 2023) (“**Achieve end-to-end supply chain transparency**”), <https://www.cbp.gov/trade/21CCF>.

²⁰ *Id.*