

**Testimony of Edward T. Hayes,
Partner,
Leake & Andersson LLP**

**Before the United States Senate Committee on Appropriations,
Subcommittee on Homeland Security**

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Madam Chairman, Ranking Member Coats, members of the Committee, good morning. My name is Eddy Hayes, and I am a partner at the law firm of Leake & Andersson LLP in New Orleans, Louisiana. I lead the firm's international trade practice, and I am an adjunct professor of Law at Tulane University Law School, where I teach a seminar on the WTO. I am a member of the Louisiana District Export Council, part of the U.S. Department of Commerce Commercial Service, and a member of the Board of the New Orleans World Trade Center. I serve on the roster of panelists eligible to adjudicate trade disputes under Chapter 19 of the North American Free Trade Agreement. I also represented the city of New Orleans on the U.S. Trade Representative's Intergovernmental Policy Advisory Committee from 2011 to 2013.

I am also privileged to serve as counsel to the American Shrimp Processors Association, the largest national organization of shrimp processors. Many of these processors are small businesses. Often, they are the largest employers in their communities. We work closely with the boats and docks, and our communities understand the importance of strong trade enforcement to their livelihoods.

Louisiana's shrimp industry in particular supports over 14,000 jobs and contributes 1.3 billion dollars to Louisiana's economy.

As a result of illegally dumped imports of shrimp from several countries, the American shrimp industry has lost jobs and profits. Over the past decade, the industry has fought to obtain and maintain relief from these imports.

This dumping has occurred at sizeable levels. For example, the China-wide entity dumping margin on shrimp is almost 113 percent.¹

We are deeply appreciative of all of the support the industry has received from this Committee, including the powerful testimony that both Chairman Landrieu and Senator Cochran provided to the U.S. International Trade Commission in its 2011 sunset review of the antidumping orders on shrimp, which resulted in a vote to keep the orders in place.

¹ See *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 Fed. Reg. 53,586 (Dep't Commerce Sept. 4, 2012) (finding a PRC-wide entity dumping margin of 112.81%).

We also appreciate Chairman Landrieu's and Senator Cochran's testimony supporting the countervailing duty cases against shrimp from seven different countries last year.

We commend Chairman Landrieu and Senator Cochran for their bipartisan leadership for the shrimp industry on a range of issues from Katrina to the Gulf Oil Spill to trade.

I would also like to mention the crawfish industry. There are more than 1,800 crawfish farmers and fishermen in Louisiana alone, and crawfish contributes nearly 120 million dollars to Louisiana's economy each year.

Like our shrimp industry, America's crawfish industry has lost jobs and profits from illegally dumped imports from China, and it has secured trade relief. The China-wide entity dumping margin on crawfish tail meat is over 200 percent.²

But America's seafood industry has not seen the full measure of relief intended under the law, due to duty evasion, transshipment, and circumvention.

In fact, America's seafood industry has been perhaps the hardest hit by duty collection and enforcement shortfalls. As the Committee is aware, Customs has reported more than 1.7 billion dollars in unpaid antidumping and countervailing duties since 2001. Unpaid duties on seafood alone account for about 40 percent, or 689 million dollars, of that total.³ Most of that amount is due to duties that have not been paid by importers of crawfish and shrimp.

Duty non-payment in the shrimp industry alone has deprived the U.S. Government of more than 77 million dollars in tariff revenue since the orders were imposed.⁴

The shrimp industry in particular has also had to tackle transshipment and circumvention firsthand. In recent reviews of the antidumping duty orders on frozen warmwater shrimp from China and Vietnam, a party submitted evidence from a federal criminal investigation of the president and owner of a U.S. importer that was an affiliate of Chinese and Vietnamese producers, which indicated transshipment of shrimp from Vietnam and possibly China and other countries through Cambodia to avoid duty liability.⁵

² See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of the Third Expedited Sunset Review of the Antidumping Duty Order*, 79 Fed. Reg. 13,278 (finding a PRC-wide entity rate of 201.63%).

³ ASPA's calculations based on CDSOA data reported by CBP for Fiscal Years 2001-2013, available online at <http://www.cbp.gov/trade/priority-issues/adcvd/continued-dumping-and-subsidy-offset-act-cdsoa-2000>.

⁴ *Id.*

⁵ *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 Fed. Reg. 53,856,

Unfortunately, such schemes are quite common.

Indeed, some companies even blatantly advertise providing transshipment services for the purposes of duty evasion over the internet. One company, for example, has a webpage entitled “Transshipment, the Best Way to Avoid Anti-dumping.” It states as follows (typos in the original):

Are you looking for a way to avoid antidumping? Transshipment may be the best way at present.

Nowadays, Transshipment is the best way to avoid anti-dumping duties. Now, we will tell you how it helps you to avoid antidumping and how it reduces your cost.

As we know, your country doesn't charge high tariffs for all the country but China. Now we can help you to provide the documents to your government certifying that the products are made of other low tariff countries instead of China.

How can we do it?

1st: We need to export those products (made in China) to other country (just as Malaysia). It is easy for us to do it and which just need cost your little money.

2nd: We will finish custom clearance for those cargos in Malaysia and then send it to our warehouse. Picking up those to re-load it to the new container (booking with Malaysia).

3rd: Finding a local factory to provide all the original documents to your country. And then export the products to your instruction Post.

After the operation of above, the original will be changed from China to Malaysia. You just need to pay the normal import duty.

We are experienced in it for many years, and we are confident that we have the ability to help you to lower the import tariff. . . .⁶

These problems have seriously compromised the integrity of US trade laws, trade relief for American industries and have cheated the Government of tariff revenue, at a time when fiscal concerns are as important as ever. The losses due to unpaid duties alone

53,857 (Dep't Commerce Sept. 4, 2012) and accompanying Issues and Decision Memorandum at 2-6, 28.

⁶ “Transshipment, the Best Way to Avoid Anti-dumping,” available on-line at <http://reexport.en.busytrade.com/products/info/1796943/Transshipment-the-Best-Way-To-Avoid-Anti-dumping.html> (last visited July 11, 2014).

exceed 1.7 billion dollars since 2001; it is impossible to quantify the additional amounts lost to transshipment, circumvention, and other schemes.

If the IRS only collected two out every three tax dollars owed, it would be on the front page of every newspaper, and rightly so. This duty collection problem deserves a similar level of urgent attention.

The Government has tried to beef up enforcement actions, and there have been some headlining cases in recent years. The shrimp importer case I mentioned is one example.

But duty evasion persists, and more must be done.

According to a GAO report, Customs received approximately 400 allegations of evasion from 2008 through August 2011. Of those, about half could not be verified and no further action was taken, roughly one quarter were verified and referred to the appropriate port or to ICE for enforcement, and the rest were still pending as of September 2011.⁷

And according to Customs' own AD/CVD enforcement data, in fiscal year 2012, Customs received 149 allegations of duty evasion and noncompliance. Of those 149 allegations, Customs confirmed and took action on 15 violations and found no violation or insufficient information for 11 allegations.⁸ Thus, Customs either took action or determined no further action was needed within a year or less on only 17 percent of allegations.

For these reasons, we strongly support the trade enforcement objectives provided in Senate Bill 2534, and Chairman Landrieu and this Committee's trade enforcement priorities, and we hope this will provide an opportunity to improve the trade remedies system.

We understand that resource constraints often limit Customs' enforcement efforts, and so we thank Chairman Landrieu first and foremost for securing 3 million dollars for duty collection.

We appreciate Chairman Landrieu's specific emphasis on the need for Customs to work to collect the 1.6 billion dollars in uncollected antidumping and countervailing duties from China. As is the case with uncollected duties overall, imports from China account for the vast majority of uncollected duties on seafood — almost 58.9 million dollars in uncollected duties on shrimp, and 582 million dollars in uncollected duties on crawfish.

We also thank Chairman Landrieu for directing Customs, Commerce, and the Department of Treasury, to report to the Committee on how requiring cash deposits of

⁷ Government Accountability Office, *Antidumping and Countervailing Duties: Management Enhancements Need to Improve Efforts to Detect and Deter Duty Evasion*, GAO Report No. GAO-12-551 (May 2012) at 28-29.

⁸ CBP, "Fiscal Year 2012 AD / CVD Enforcement Results" (Jan. 14, 2013).

estimated duties during new shipper reviews would strengthen the administration of the Nation's AD/CVD laws. Currently, a new exporter or producer enjoys the privilege to post bonds rather than cash deposits while it awaits the results of a new shipper review. This should be abolished. Importers of merchandise from new shippers should face the same cash deposit requirements as importers from other companies that have not received individual rates.

The problem is that the bonds required in these situations are simply not sufficient to allow Customs to collect the full amount of duties it is owed. In too many cases, when a new shipper fails to achieve a lower rate in its requested review, the importer of record is unable or unwilling to meet its duty obligation. In some cases, the "importer" is little more than a U.S. post office box address for the foreign producer or exporter, and there is no way to collect at all. Customs is then forced to try to collect against the surety that provided the bond. But if importers are only required to obtain a continuous entry bond, which is capped at ten percent of the duties owed in the previous year, what Customs is able to collect from a surety may be far less than the full amount actually owed.

Indeed, the GAO has found that the chief obstacle to ensuring collection of retrospectively assessed duties is the absence of adequate security, such as bonds.⁹

The problem is particularly acute for agriculture and aquaculture products, where fragmentation in the foreign industries allows players to appear and disappear without a trace. That is one of the reasons why seafood alone accounts for about 40 percent of uncollected duties.

We further thank Chairman Landrieu for directing Customs to review the Advisory Committee on Commercial Operations membership and consider adding affected domestic industries to sit on its Trade Enforcement subcommittee. The domestic industry has the most vested interest in enforcing our trade laws and should have a voice on that committee.

We welcome Chairman Landrieu's directives to Customs to provide public reports on its collection and enforcement efforts, as well as the challenges that prevent collection. So far, Customs has not been required to report on its enforcement activities to the public in a comprehensive or systematic manner.

We support Chairman Landrieu's efforts to urge the United States Trade Representative to include in the principal negotiating objectives of the United States for trade agreements the objectives of preventing evasion of U.S. trade remedy laws through information exchanges and site visits.

⁹ Written Testimony of Timothy E. Skud, U.S. Department of the Treasury, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy Before the Subcommittee on Trade, Committee on Ways and Means (May 20, 2010), available at http://waysandmeans.house.gov/media/pdf/111/2010may20_skud_testimony.pdf.

We also appreciate Chairman Landrieu's encouragement of a joint legislative proposal from the Department of Commerce and Customs to remove legal barriers to the sharing of information between those two prime trade compliance and enforcement agencies. Customs should forward information about duty evasion to Commerce so it can be part of its own record, and so that parties to the Commerce proceeding can access that information under protective order. Similarly, parties should be allowed to share confidential information learned in a Commerce proceeding with Customs without violating their confidentiality obligations.

In addition to information sharing between the Commerce and Customs, information sharing between the domestic industry and Customs should also be encouraged. The ability of Customs to share useful information with the domestic industry is currently hampered by legal restrictions such as the Trade Secrets Act. Procedures akin to Commerce's administrative protective orders should be available at Customs. Customs should also be able to update the domestic industry on the status of investigative matters without violating its confidentiality obligations. This would keep the domestic industry involved and invested and permit Customs to share its successes.

Finally, we further support automation of single transaction bonds by Customs to improve duty collection and to develop the necessary expertise to verify the adequacy of such bonds. We hope that Customs will review and reassess bonding requirements based on the expertise it gains from this process.

While these improvements to the trade remedy system are needed, we strongly support the continuation of the current retroactive system for assessing AD/CVD duties. The retroactive system is the most accurate and fair way to determine the proper duty margins. Moving to a prospective system, as some have advocated, would not solve the problem of duty under-collection; it would simply mask the problem, undermining the relief domestic producers are due under the law.

Under the current system, duty margins can be reexamined each year, if an administrative review is requested. Through the administrative review, Commerce can determine whether the dumping or subsidization has increased or decreased retrospectively based on prices, costs, levels of subsidization and other data contemporaneous to the importation of the merchandise. Commerce then can adjust the margins up or down accordingly. This method ensures that the margins reflect the market reality with respect to sales of the particular imported merchandise.

Only a retrospective system provides a remedy for under-assessment of duties due to increased dumping or subsidization. Other countries' current prospective systems permit duty refunds for importers, but do not permit increases in duty assessments after importation where dumping or subsidization has increased. Importers could get a low rate initially and then increase dumping in the future. A prospective system would remove the consequences for increasing dumping or subsidization in the future. Thus, a prospective system could allow — and even encourage — foreign producers to hide

increased dumping and subsidization, and give domestic producers no remedy for this practice.

Congress should not permit such a foundational shift that would make our system less accurate and less fair.

And a prospective system would not solve the problem of evasion tactics like transshipment and circumvention. Those tactics are used to falsely claim that imports are not subject to AD/CVD duties at all, and this would persist whether duties are assessed prospectively or retrospectively.

A prospective system is not the answer.

In sum, investment in trade enforcement will bring a concrete revenue return to the Government from companies that do not follow the trade rules, and will save American businesses and jobs. This is money well spent. At a minimum, we should ensure that Customs has the resources it needs, and we should ensure and reinforce the integrity of our trade remedy laws.

I thank the Committee for the opportunity to testify today, and I look forward to working with you on these important issues. I would be happy to take any questions you may have.