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U.S.-China Economic and Security Review Commission

"Hearing on Chinese Seafood: Safety and Trade Issues"

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1. Port Shopping

- The FDA does not require imports to be physically quarantined for inspection or testing prior to entry into the United States, which allows "importers to take possession of even highly suspect goods and arrange for their testing by private laboratories."[1] Even imports subject to an FDA import alert are not physically quarantined and may be delivered straight to importers.[2] Further, "FDA does not require a separate bond be posted by the importer taking delivery."[3] In the interim, there is ample time for product to slip into the U.S. market. Reviewing the FDA's administration of its food safety program, the U.S. Government Accountability Office ("GAO") found that it takes an average of 348 days for the FDA to notify port-of-entry officials of a rejected import shipment.[4]

- While the USDA clearly marks all rejected shipments "United States Refused Entry" and tracks all shipments through its AIIS database system, the FDA does not have any marking requirements nor does it otherwise have any procedures to prevent importers from sending rejected shipments to other U.S. ports, or "port-shopping" rejected imports. Congress explicitly gave the FDA the authority "to require the marking of refused food" in the Bioterrorism Act of 2002, [5] but to date, the FDA has yet to use this authority or issue final regulations.[6] The FDA has proposed "marking" rules that would prevent port-shopping but the FDA's proposals have been bitterly opposed by seafood importers.[7]

- In 2006, Customs intercepted 45 containers with chicken, chicken parts, pork and meat products being smuggled into the U.S. <u>as frozen seafood</u>. These meat products were prohibited entry into the U.S. because they were from a country that was not approved by USDA to export them to the U.S.[8]

  Even where seafood imports enter the United States from countries that the USDA determines do not administer U.S.-equivalent food safety laws, the

chances that the FDA will inspect the shipment are so low that importers believe that they can bring in a container filled with meat products, label it as seafood, and enter the product into the United States. Indeed, the fact that the scheme was discovered does not provide much comfort as the shipment was interdicted by U.S. Customs and Border Protection and not the FDA.

When faced with 100 percent inspection by the USDA and a 1 percent chance of being inspected by the FDA, it is easy to understand why unscrupulous importers would chose to misidentify poultry, pork, and meat products as frozen seafood. By the same token, it is even easier to understand why exporters choose to ship unsafe product to this country and why importers appear not to feel compelled to insure that seafood brought into the United States is free of harmful contaminants.

2. What has been the effect of imports of Chinese seafood on your industry?

- In 2000, Chinese shrimp imports totaled 38.6 million pounds. In 2001, total Chinese shrimp imports amounted to 59.4 million pounds, then increased to 105.4 million pounds in 2002. In 2003, Chinese shrimp imports reached a high of 169.1 million pounds.

- The domestic shrimp industry responded by successfully seeking trade relief on dumped shrimp imports and, in consequence, total import volumes from China have decreased. In 2004, Chinese shrimp imports totaled 124.8 million pounds, and decreased to 23.9 million pounds in 2005. In 2006, total imports from China increased to 60.3 million pounds, but decreased to 45.6 million pounds in 2007.

- Commercial shrimping licenses have decreased from 23,911 in 2002 to 16,450 in 2005. We are still waiting on 2006 figures.

3. What steps have you taken to compete, and how effective have they been?

- 2002 Began retailing on roadside to sell shrimp at a higher price.

- 2002-2003 Working with many organizations to help fishers to retail shrimp in their areas and at farmer's markets. We began selling shrimp at different farmer's markets. Placed a freezer unit aboard one of our vessels. Started calling local businesses to buy straight from the vessel.

- 2003-2004 Began taking business classes in college from our state agencies to help new businesses thrive. Obtained a grant to help place a web site online to begin sales throughout the United States.

- 2005-2006 Helped WASI (Wild American Shrimp, Inc.) to promote our wild domestic shrimp. We spoke with many different newspapers and television stations in dealing with our domestic product. Built dock to unload other vessels, bought a freezer truck and tractor trailer to hold our IQF (individually quick frozen) product to sell to local seafood markets. Updated the web page.

- 2007-2008 Updating the web page to use paypal. Working to keep domestic shrimp in the minds of the consumers through newsletters and advertising.

The effectiveness of these strategies in getting through to the wholesale and retail market has helped our company to grow. The growth is small scaled due to competing against prices with China and other countries. We have had many times where we could not come down to the price that the wholesaler wanted due to the cheaper imported prices. We do well in our local market in selling our shrimp and through word of mouth through our website.

4. The U.S. has brought anti-dumping cases against China and other countries for selling shrimp and crawfish at prices below the cost of production. Has this helped or hurt your industry?

    - Import prices have stabilized.

    - Import volume has stabilized.

    - The trade remedy on unfairly traded shrimp imports arrested a flood of cheap, dumped imports into the U.S.

    - The crawfish trade remedy has been severely undermined by our government's inability to collect antidumping duties. Over the last five years, Customs has reported that nearly 95 percent of the antidumping duties, totaling hundreds of millions of dollars, assessed on crawfish imported from China have been uncollected. The dollar amount that we have obtained is $424,870,778.

    - In contrast, the shrimp industry benefited from an enhanced continuous bonding program implemented by U.S. Customs and Border Protection on shrimp imports that helped to guarantee that assessed antidumping duties would be collected. That program, however, has been criticized by the World Trade Organization and the removal of the program will likely lead to massive under collection problems on antidumping duties assessed on shrimp imports.

    - Undercollection rates of Chinese crawfish imports and other products can be found at http://www.shrimpalliance.com/Press%20Releases/Continuous%20bonding%20chart.pdf.

5. What accounts for the trend toward imports, particularly of farmed fish?

    - Flood of cheap Chinese shrimp imports is caused in part by factors related to production:

        (a) Subsidies to Chinese shrimp producers;

        (b) Use of banned pesticides and antibiotics to artificially increase production yields in over-crowded shrimp ponds; and

(c) Compromising environmental standards and workers rights.

- Flood of cheap Chinese shrimp imports is also caused by U.S importers' insatiable desire for profit. Market distortions for the production of farmed shrimp makes imported farmed shrimp cheap. The failure of our government to impose meaningful regulation of the safety of imported seafood makes shrimp in the U.S. even cheaper. For example, concerns about the safety of China's seafood exports in other importing markets, like Japan, the EU, and Canada, meant that, until the FDA finally took action last year, the United States was the preferred market for potentially unsafe shrimp, shrimp which sold for a discount.

6. How would you characterize the response of the state and federal government to the influx of imported fish?

- The response of the federal government, particularly the FDA in safeguarding the U.S. food supply against contaminated Chinese shrimps imports, has been grossly inadequate.

- On food safety issues, concerns about the FDA's inability to assure the safety of imported seafood have risen to the point that states have been doing their own testing of seafood imports. And these states have repeatedly found harmful, banned substances in the imported seafood they test -- seafood allowed by the FDA to enter this country. Some notable examples of states taking action against contaminated seafood imports include:

  Louisiana: Louisiana has had an Emergency Rule in place since 2002 to test imported shrimp and crawfish for the contaminant chloramphenicol. In 2007, Louisiana required testing for fluoroquinolones in seafood from China and Vietnam.

  Mississippi: Mississippi currently tests imported seafood for the presence of fluroquinolones and chloramphenicol, both banned contaminants in food products. Mississippi's laboratories have repeatedly found Ciprofloxacin, Enrofloxacin, and chloramphenicol -- all banned antibiotics -- in imported seafood.

  Florida: Florida began testing imported seafood in 2002, focusing its testing efforts on fluroquinolones and chloramphenicol. In 2005, 15 of 19 seafood samples tested for fluoroquinolones came back positive. In 2007, 3 of 16 samples tested positive for fluoroquinolones.

  Georgia: Since 2003, the results of Georgia's laboratory tests on imported seafood have repeatedly shown the presence of Ciprofloxacin and Enrofloxacin in imported seafood.

  Arkansas: When Arkansas began its imported seafood testing program with the FDA in 2007, the FDA found that one out of the six shipments of imported

seafood from China it sampled contained harmful contaminants. Arkansas sought to undertake additional tests, but the FDA expressed an unwillingness to assist with future imported seafood testing efforts. As a result of the FDA's unresponsiveness, Arkansas's Public Health Laboratory devoted significant resources to testing equipment so that it could independently test imported seafood for harmful contaminants.

- However, there is no substitute for a strong federal food safety system. State governments do not have sufficient resources to make up for the FDA's deficiencies.

7. Are the activities of the federal government in regulating seafood imports, processing, transportation, and sales of fish from all sources adequate to the task?

   - The FDA, the federal agency charged with ensuring the food safety of shrimp imports, is lax, broken, and ineffective. The essence of the FDA's approach to imported food safety is to accept unverified representations of importers who have repeatedly disregarded the safety of American consumers. The FDA does not require foreign government or foreign producer equivalence as a condition of entry into the United States. In the absence of equivalence agreements or certifications, the FDA relies solely on its very limited testing of imported seafood to identify food safety violations. But because the frequency of FDA testing is not mandated by law, FDA inspection rates have hovered at 1 percent since 2002. In consequence, the FDA is effectively allowing exporters to self-certify their compliance with U.S. food safety standards.

   - Imported farm-raised shrimp are often produced with minimal quality control, in crowded ponds filled with feces, banned antibiotics, and toxic chemicals.[9] And yet, the FDA's only check on self-serving representations from those who profit on imported seafood is to inspect a tiny amount of these imports.

8. What new seafood safety activities should the federal government undertake or what activities should it discontinue? Are the laws and regulations on seafood safety being administered fairly?

   - SSA has proposed 11 recommended elements for food safety reform that fundamentally suggests:

     - Demonstrated and verified equivalence of exporting countries and foreign producers;

     - Mandatory testing and inspection rates at U.S. borders;

     - Significant penalties for noncompliance; and

     - Increased multilateral cooperation with other major importing countries.

- SSA's 11 recommendations can be found at http://www.shrimpalliance.com/Press%20Releases/10-16-07%20FDA%20Reform%20Proposals.pdf.

- Further, federal enforcement of U.S. food safety standards is not administered fairly between domestic and foreign producers. U.S. producers are required to demonstrate HACCP compliance and adherence to U.S. food safety standards. The FDA conducts frequent and systematic on-site inspections of domestic production facilities, while foreign facilities are rarely inspected.

    - According to the FDA's budget summary for fiscal year ("FY") 2006, the FDA conducted approximately 2,480 inspections of domestic fish and fishery products facilities for HACCP compliance.[10] The FDA has regulatory responsibility over "approximately 210,000 food establishments."[11] Even though the same number of foreign establishments -- 210,000 foreign food establishments -- are registered to export food to the United States, the FDA made only about 200 inspections for FY 2006 for all foreign food production facilities, from vegetable growers to seafood producers, and estimates that it will make approximately 100 foreign inspections in FY 2007.[12] Statutory increases in the frequency of foreign on-site inspections would only impose the same level of accountability on foreign exporters as domestic producers.

9. How successful has the FDA's Certification program for imported seafood from China been? Does it need any changes?

    - On December 11, 2007, the FDA and China's General Administration of Quality Supervision, Inspection and Quarantine ("AQSIQ") entered into a memorandum of agreement ("MOA"), which, among other provisions, required the AQSIQ to certify whether export shipments of aquaculture products, including shrimp, is in compliance with U.S. food safety standards.[13]

    - Fundamentally, the FDA's Certification program lacks transparency to allow the public to evaluate whether U.S. food safety is actually improved by the MOA.

    - In addition, certification by AQSIQ is not a prerequisite for entry into the United States nor does it appear to be a prerequisite for export from China. The United States has only committed to "explore finding a mechanism to notify AQSIQ/CNCA about Designated Covered Products [including shrimp imports] not accompanied" by an export certificate.[14]

      As of April 2008, four months after the signing of the MOA, the FDA is still awaiting final approval from the Chinese government on the opening of U.S. FDA's office there. FDA officials expect to "begin work" on such offices in May 2008, although the official opening of a FDA office in China is not expected until October 2008.[15]

10. Are America's seafood retailers and restaurants held to an adequate standard of liability? How about wholesalers?

- No. America's seafood retailers and restaurants are absolutely not held to an adequate standard of liability.

- Rampant species substitution at both the retail and restaurant level presents a significant obstacle to creating a niche market for domestic wild-caught shrimp. The substitution of imported pond-raised shrimp for domestic wild-caught shrimp harms consumers in two ways:

  - First, consumers suffer economic harm in that they are sold a low-cost, inferior product -- imported pond-raised shrimp -- at prices that reflect the value of the premium product supplied by U.S. shrimp fishermen. The consumer is paying for what they believe to be delicious, wholesome domestic shrimp, but is instead receiving mass-produced shrimp grown on artificial feed in ponds half-way around the world.

  - Second, and just as importantly, consumers are unwittingly exposed to health risks by being supplied imported pond-raised shrimp, which often can be contaminated with banned antibiotics and other harmful substances, while believing that they are consuming healthy, wild-caught domestic shrimp.

  - The health risks posed by imported shrimp have been well publicized. Beginning in August 2007, shrimp imported from China has been subject to an Import Alert issued by the Food and Drug Administration because of repeated findings of concentrations of banned antibiotics and harmful substances in the shrimp exported from China. The contaminants in these shrimp include the antibiotic chloramphenicol, which, under FDA regulations cannot be present in <u>any</u> level in food, and which has three known potential human health risks even if exposure to it is only at low dietary levels: (1) aplastic anemia, (2) carcinogenicity, and (3) reproductive toxicity.

11. Are U.S. seafood testing laboratories adequately supervised and regulated?

- Fundamentally, private food safety testing laboratories must be subject to federal regulatory licensing and accreditation. The problems with industry self-regulation of food safety testing laboratories, which is currently allowed by the FDA, were reported by House Energy and Commerce Committee investigators:

> One particularly important problem that staff field investigation uncovered dealt with the unverified reliance by FDA on the use of private laboratory tests to release suspect imports. . . . <u>FDA neither accredits nor debars private laboratories that analyze imported food</u>

samples, despite the fact that these laboratories often use incorrect methods or report incorrect results.[16]

- An FDA Science Branch Director found that "private laboratory work is 'shoddy' because results are driven by financial rather than scientific concerns."[17] Despite overwhelming evidence demonstrating the enormous scope of the problem, a proposed federal regulatory accreditation system was dropped by the FDA following resistance from private laboratories.[18]

- While the FDA inspects only about 1 percent of imported food at the border, an even smaller percentage, 0.2 percent, is tested in a laboratory.[19]

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1 Diminished Capacity: Can the FDA Assure the Safety and Security of the Nation's Food Supply - Part 2, Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce, 110th Cong., p. 2 (July 17, 2007) (Statement of David Nelson, Senior Investigator) ("David Nelson Testimony").

2 Import Program System Information, U.S. Food and Drug Administration, Office of Regulatory Affairs (last updated May 17, 1999) ("When a sample of an article offered for import has been requested by FDA, the owner or consignee shall hold the shipment and not distribute it until further notice is received regarding the results of the examination of the sample.").

3 David Nelson Testimony at p. 3.

4 FDA's Imported Seafood Safety Program Shows Some Progress, But Further Improvements are Needed, U.S. General Accounting Office, Report to Congressional Requesters, GAO-04-246, p. 5 (2004).

5 Implementation of the Food Security Provisions of the Public Health Security and Bioterrorism Preparedness and Response Act, Pub. L. No. 107-188, § 308 (2002).

6 Implementation of the Food Security Provisions of the Public Health Security and Bioterrorism Preparedness and Response Act, Hearing before the H. Comm. on Energy and Commerce, 108th Cong. (2004) (Statement of Lester M. Crawford, Acting Commissioner, Food and Drug Administration).

7 See Marking Requirements for and Prohibitions on the Reimportation of Imported Food Products That Have Been Refused Admission into the United States: Proposed Rule, U.S. Food and Drug, 66 Fed. Reg. 6,502 (Jan. 22, 2001).

The proposed rule was subsequently withdrawn without action in August 2002. Marking Requirements for and Prohibitions on the Reimportation of Imported Food Products That Have Been Refused Admission Into the United States: Withdrawal, U.S. Food and Drug, 67 Fed. Reg. 54,138 (Aug. 21, 2002).

8 Protecting American Consumers Every Step of Way: A Strategic Framework for Continued Improvement in Import Safety, A Report to the President, Interagency Working Group on Import Safety, p. 9 (Sept. 10, 2007).

9 See "Shrimp's Success Hurts Asian Environment, Group Says," NATIONAL GEOGRAPHIC NEWS (Dec. 20, 2004) (discussing the Environmental Justice Foundation's "concerns over the levels of antibiotics, disinfectants, fertilizers, pesticides, and other chemicals used by shrimp farmers to maximize profits and combat disease."); Global and Local: Food Safety Around the World, Center for Science in the Public Interest, pp. 14-16 (June 2005); "Chicken from China?," BOSTON.COM (May 9, 2007) ("In China, some farmers try to maximize the output from their small plots by flooding produce with unapproved pesticides, pumping livestock with antibiotics banned in the United States, and using human feces as fertilizer to boost soil productivity. But the questionable

practices don't end there: Chicken pens are frequently suspended over ponds where seafood is raised, recycling chicken waste as a food source for seafood, according to a leading food safety expert who served as a federal adviser to the Food and Drug Administration.") (emphasis added).

[10] FDA FY 2007 Budget Summary: Consolidated Narrative, Program Activity Data, Office of Management, Budget Formulation and Presentation (2007) available at http://www.fda.gov/oc/oms/ofm/budget/2007/HTML/1Foods.htm.

[11] Id.

[12] Id.

[13] Agreement Between the Department of Health and Human Services of the United States and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China on the Safety of Food and Feed (Dec. 11, 2007).

[14] Id. Annex § II(A).

[15] "Around the Globe," Washington Trade Daily (Apr. 16, 2008).

[16] Diminished Capacity: Can the FDA Assure the Safety and Security of the Nation's Food Supply - Part 2, Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce, 110th Cong., pp. 2-3 (July 17, 2007) (Statement of David Nelson, Senior Investigator) ("David Nelson Testimony") (emphasis added).

[17] Id. at p. 3 (emphasis added).

[18] Letter from the American Council of Independent Laboratories, FDA Docket No. 02N-0276 and 02N-0278, p. 8 (May 14, 2004).

[19] A. Barrionuevo, "Food Imports Often Escape Scrutiny," NEW YORK TIMES (May 1, 2007) ("Food Imports Often Escape Scrutiny").