



Southern Shrimp Alliance

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Via Electronic Mail

Tracey Denning
Regulations and Rulings
Office of International Trade
U.S. Customs and Border Protection
90 K St., NE
10th Floor
Washington, DC 20229-1177

Re: **60-Day Notice and Request for Comments; Revision of an Existing Collection of Information; Comments of the Southern Shrimp Alliance**

Dear Ms. Denning:

The following comments are submitted on behalf of the Southern Shrimp Alliance in response to the notice published in the Federal Register (79 Fed. Reg. 61,091) by U.S. Customs and Border Protection ("CBP") on October 9, 2014 inviting comments regarding CBP's proposed revision of an existing collection of information relating to the Importer ID Input Record (CBP Form 5106).

The Southern Shrimp Alliance is a non-profit alliance of members of the shrimp industry in eight states committed to preventing the continued deterioration of America's domestic shrimp industry and to ensuring the industry's future viability. The Southern

Shrimp Alliance serves as the national voice for the shrimp industry in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

The Southern Shrimp Alliance's interest in the agency's proposed revision to the Importer ID Input Record (CBP Form 5106) stems from the organization's efforts to enhance enforcement of the antidumping duty orders issued in February 2005 regarding certain imported shrimp. During the life of these trade remedies, the effectiveness of the relief against unfairly traded imports has been diminished and undermined through abuse of the legal process of importation, particularly through the proliferation of paper shell-companies acting as consignees and importers of record and foreign entities acting as importers of record. Fraudulent tactics employed by bad actors are not limited in design to the circumvention of duty payment, but are also used to evade general regulation of imported goods through the utilization of importers of record that are effectively judgment-proof. For example, the utility of the U.S. Food and Drug Administration's Import Alerts has been significantly mitigated by false designations of manufacturers and shippers through declarations made upon entry by paper shell-companies and foreign entities acting as importers of record.

Based on our experience, the Southern Shrimp Alliance supports the revisions proposed by CBP as they significantly strengthen the agency's capacity to enforce the trade laws and identify importers that pose a risk to revenue. Per the Federal Register notice, CBP instructs that "comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) annual costs to respondents or record keepers from the collection of information (a total capital/startup costs, operations and maintenance costs)." The Southern Shrimp Alliance's comments, set out below, focus principally on category (a) and seek to demonstrate that the collection of information is necessary and, moreover, vital for the proper performance of the functions of CBP and, further, that this information has essential practical utility.

I. Shell Companies Acting as Importers of Record and Non-Resident Importers Pose Substantial Challenges to Trade Regulation

Trade fraud takes numerous forms, each of which presents different enforcement challenges. The use of foreign entities as importers of record or paper shell-companies as importers of record reduces the risk of detection of circumvention schemes while, at the same time, precludes the collection of duties, fines, and fees due regarding these import entries following detection.

Shell and front companies, along with unscrupulous foreign entities, are a central component of various forms of evasion:

- Mislabeling, misclassification, and misidentification schemes that falsely declare imports as not subject to duties or additional regulatory obligations;
- Undervaluation schemes that understate the value of imported merchandise declared to be subject to duties thereby reducing duties owed; and
- Abuse of the retrospective antidumping and countervailing duty assessment system (obtaining low or zero percent cash deposit rates through U.S. Department of Commerce ("Commerce") review of a small number of shipments in a new shipper review or administrative review).

CBP has long recognized the threat posed by shell-company and non-resident importers with respect to the third category of schemes. For example, in reports to Congress regarding the collection of antidumping and countervailing duties, the agency has observed:

The U.S. AD/CVD system is a retrospective system, meaning that the AD/CVDs that CBP collects at the time of entry are only estimated duties. The actual AD/CVD an importer should have paid is not known until after Commerce conducts a review of the AD/CVD order, which is usually 1 to 2 years after entry has occurred. If the actual AD/CVD rate established by Commerce's review is greater than the estimated AD/CVD paid at entry, CBP is required to issue a bill to the importer to collect the additional duties. ***However, there are importers who are unwilling, unable, or simply have no intention of paying the actual duties and go out of business when CBP issues a bill.***¹

This state of affairs is a necessary byproduct of a system that allows virtually anyone to act as an importer of record. Because there are only minimal requirements for those wishing to act as an importer of record, importing entities can be created easily and disappear even more easily. As CBP observed in a more recent report to Congress:

In addition, this minimal capitalization allows undercapitalized companies easy entrance into the AD/CVD markets (no statutory qualifications or

¹ U.S. Customs and Border Protection, Report to Congress on (1) U.S. Customs and Border Protection's Plans to Increase AD/CVD Collections and (2) AD/CVD Enforcement Actions and Compliance Initiatives, Fiscal Year 2008 p.3 (emphasis added). See also U.S. Customs and Border Protection, AD/CV Duty Enforcement Actions and Compliance Initiatives, Fiscal Year 2009 Report to Congress (March 3, 2009) p.8 ("However, there are importers who are unwilling, unable, or simply have no intention of paying the actual duties and go out of business when CBP issues a bill.") and U.S. Customs and Border Protection, Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: Fiscal Year 2010, Fiscal Year 2011 Report to Congress (May 24, 2011) p.2 ("Some importers are unwilling or unable to pay the actual duties, and some are no longer in business when CBP issues a bill, leading to uncollected AD/CV duties.").

criteria must be satisfied to become an importer of record), and allows importers to quickly “disappear” if so inclined.²

In its most recent report to Congress regarding enforcement of antidumping and countervailing duty orders, CBP provided a more expansive discussion and explanation of the challenges presented by shell-companies and non-resident entities to the integrity of the legal process of importation:

Pursuant to law and regulation, the importer of record, which could be a foreign-based company, is liable for the additional duties in addition to the surety listed on the associated bond. ***Some importers are unwilling or unable to pay the actual duties, and some are no longer in business when CBP issues a bill, leading to uncollected AD/CVD.*** Undercapitalized importers with few assets, if still in business by the time bills for final AD/CVD are issued, often have difficulties in paying these bills. ***Other importers, often in the form of shell companies and foreign non-resident importers, have no intention of paying any final duties, and disappear as soon as there is any indication that final duties may increase.*** This is particularly true for AD/CVD orders covering imports from China, and Chinese agriculture/aquaculture imports in particular In addition, some importers participate in schemes to intentionally evade AD/CVD by filing incorrect entries, leading to additional uncollected AD/CVD.

CBP faces significant challenges in collecting unpaid duties from importers with no assets in the United States. In addition, CBP has limited legal recourse in collecting debts from importers located in other countries. Reciprocal revenue agreements between the United States and foreign countries could enhance CBP’s ability to collect from foreign-based entities. When CBP cannot collect from the importer, the amount of the bond is often insufficient to cover the additional duties.³

The risk to revenue created by these practices has been substantial:

² U.S. Customs and Border Protection, Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: Fiscal Year 2012, Fiscal Year 2013 Report to Congress (July 19, 2013) p.13.

³ U.S. Customs and Border Protection, Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: Fiscal Year 2013, Fiscal Year 2014 Report to Congress (Aug. 19, 2014) p.9 (emphases added).

There are approximately 36,000 unpaid AD/CVD bills from FY 2001 through FY 2013 totaling \$1.83 billion, for which CBP is pursuing collection. Of this amount, \$154.1 million was under protest and \$71.5 million involves bankrupt debtors. Further amounts are owed by importers that have disappeared or dissolved without going through the bankruptcy process. Additionally, tens of millions of dollars are owed by sureties that are in rehabilitation or receivership.⁴

In comparison, a grand total of \$449.8 million in antidumping and countervailing duties was deposited during fiscal year 2013⁵ – an amount less than one-quarter the total unpaid antidumping and countervailing duties reported by CBP.

Reviewing CBP's experience with the collection of antidumping and countervailing duties, the U.S. Department of Treasury ("Treasury") has reached similar conclusions. In testimony before Congress, a Treasury official observed:

Although CBP's overall duty collection rate is over 99 percent, CBP is able to collect less than 50 percent of antidumping and countervailing duties that have been retrospectively assessed. The conclusion of our reports is that the chief obstacle to ensuring collection of retrospectively assessed duties is the absence of adequate security, such as cash deposits or bonds. ***This problem has been exacerbated by unscrupulous importers who knew they were likely to incur retrospective duty assessments and absconded when payment was due.***⁶

⁴ Id. p.14.

⁵ Id.

⁶ Statement of Timothy E. Skud, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy, U.S. Department of the Treasury, Testimony before the Subcommittee on Trade, Committee on Ways and Means (May 20, 2010) (emphasis added). See also Testimony of Timothy E. Skud, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy, U.S. Department of the Treasury, Before the Senate Finance Committee (June 24, 2008) ("Although CBP's collection rate is over 99 percent for duties overall, CBP is able to collect less than 50 percent of antidumping and countervailing duties that have been retroactively assessed in excess of bonds or cash deposits. We concluded in the report that the chief obstacle to ensuring collection of such duties is the difficulty of obtaining adequate security (cash deposits, bonds, or other instruments). ***This problem appears to have been exacerbated in some cases by unscrupulous***

In a formal report issued in July 2007, Treasury emphasized the severity of the challenge faced by CBP in collecting antidumping and countervailing duties:

While antidumping and countervailing duties accounted for only 14.9 percent of all duties that should have been collected, *uncollected* antidumping and countervailing duties represent 87 percent (\$512.9 million) of *all uncollected* duties from FY 2003 through FY 2006.⁷

Identifying the reasons underlying the lack of collection of antidumping and countervailing duties, Treasury observed that some importers intended from the outset to evade payment of duty obligations:

Some Importers May Be Bankrupted, But Others “Game” the System

In some cases, importers are unable to pay the final duty bill because the bill exceeds their assets. In other cases, it appears that some importers expect that their final assessment will exceed their cash deposit, and that these importers plan to be “unavailable” to pay their duty obligations.

Some importers establish shell companies that they intend to close if CBP attempts to collect any duties that are determined retrospectively. In some cases, importers do not have sufficient attachable assets available for the government to pursue. In all these cases, the increase of the duty creates an unsecured obligation to the government. . . .⁸

Per Treasury’s report, the problem was particularly evident with respect to importers of agricultural and aquacultural goods who “tended to be undercapitalized”:

CBP also determined that the principal entities responsible for uncollected duties were importers of agriculture/aquaculture merchandise subject to antidumping duties. Based on CBP’s analysis, the collection problem with respect to this merchandise appeared to be attributable to the fact that

importers who imported knowing they were likely to incur duties not fully secured by bonds or cash deposits following retrospective duty assessment and who then absconded when payment was due.” (emphasis added)).

⁷ U.S. Department of the Treasury, *Duty Collection Problems FY 2003-2006* (July 2007) 4 (emphasis in original).

⁸ Id. 9 (emphasis of heading in original; other emphasis added).

importers of agriculture/aquaculture merchandise tended to be undercapitalized, and that by the time final liability was assessed (typically one or more years after the goods had entered), many of the companies were no longer in operation. Because the antidumping duties finally assessed often significantly exceeded both the cash deposit and the bond amount, CBP was left unable to collect the unsecured (retrospectively assessed) portion of the duties assessed.⁹

Similarly reviewing CBP's difficulty in collecting antidumping and countervailing duties, the United States Government Accountability Office ("GAO") discussed the role limited information regarding importers plays in undermining enforcement efforts:

CBP collects a minimal amount of information from companies applying to be importers of record, which challenges its ability to subsequently locate and collect duties from delinquent debtors. Aside from basic information such as an importer's name and its mailing address, CBP requires one additional unique identifying number. This number can be an Internal Revenue Service Taxpayer Identification Number (for a company) or a Social Security number (for an individual). In addition, applicants can request that CBP assign them a unique number for CBP's tracking purposes. ***Companies seeking to avoid paying AD/CV duties can easily drop identification numbers and obtain new ones, making the numbers an ineffective tool for enforcement.*** Regardless of the type of unique identifying number the importer uses, the company (or individual) is not subject to any credit or background checks before being allowed to import products into the United States. ***With such limited information about importers, locating them can be difficult, especially if they are trying to evade duties.*** According to CBP officials responsible for attempting to collect delinquent AD/CV duties, their collection efforts often are ineffective because by the time they are able to attempt to collect, importers have ceased business operations.¹⁰

⁹ Id. p.10.

¹⁰ U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, GAO-08-391 (Mar. 2008) pp. 28-29 (emphases added).

The lack of meaningful information regarding importers allows individuals and companies owing substantial sums of money to Treasury to continue to import merchandise under new identities.

As noted by the CBP officials interviewed by the GAO, substantial amounts of uncollected antidumping and countervailing duties are deemed uncollectible and are ultimately written off, never to be recovered: “CBP officials expect that most of the nearly \$290 million referred to its Office of Chief Counsel will be written off after proper legal review.”¹¹ Explaining how CBP’s Office of Chief Counsel makes its determination to write off debts owed, the GAO reported:

The Office of Chief Counsel cited several reasons for writing off outstanding bills, including (1) CBP is unable to locate the debtor(s), (2) the importer has no assets, (3) the debt against the debtor has been discharged in bankruptcy, and (4) the cost of collection is anticipated to exceed the amount recoverable.¹²

The GAO’s report further provided a detailed explanation of the practical impossibility of collecting duties from non-resident importers of record, where such parties do not voluntarily meet their obligations:

When the delinquent importer is a foreign importer of record, the option of pursuing litigation presents certain challenges. According to Justice officials, before pursuing litigation in a foreign country, they consider the ability to collect, the likelihood of success, and the cost of collection efforts versus the amount of debt. Justice also must consider whether the nature of the proposed action is one that can be the subject of a lawsuit in a foreign court. Because foreign courts generally do not enforce taxes or duties imposed by other countries, in the case of a collection action based upon delinquent duties owed by a foreign entity, Justice would have to be satisfied that the foreign court would be willing to

¹¹ Id. p.18.

¹² Id.

hear such an action or enforce a judgment that might otherwise be obtained. In addition, it would be particularly challenging to bring any CV duty cases because, by definition, the foreign government caused the unfair trade by providing a countervailable subsidy. Justice officials stated that given those challenges, ***it is unlikely that collection actions based upon delinquent duties can be successfully brought in foreign courts.*** For that reason, Justice officials were not aware of any referrals from CBP to initiate legal cases brought in foreign courts against foreign importers of record that owed AD/CV duties.¹³

CBP officials noted additional concerns regarding non-resident importers:

CBP officials pointed out that ***foreign companies and individuals are allowed to be importers, and that CBP's ability to collect from such importers, especially illegitimate ones, is very limited.*** According to CBP officials, the number of nonresident importers (i.e., foreign importers of record) seems to be growing and poses unique issues when it comes to collecting AD/CV duties. CBP officials indicated that if foreign importers of record do not pay supplemental duties, the cost of attempting to collect the duties would be high and would likely exceed the amount collected.¹⁴

Thus, CBP's experience demonstrates that certain types of importers (particularly those without assets and non-resident importers) pose particularized, acute risks to revenue.

In a more recent review of enforcement challenges, the GAO provided a fulsome summary regarding how the ease of becoming an importer of record facilitated circumvention of antidumping and countervailing duties:

Entities engaging in evasion can exploit the ease of becoming an importer of record, impeding CBP's ability to target and take deterrent action against them. As noted earlier, importers of record are responsible for paying all estimated duties, taxes, and fees on products when they are brought into the United States. However, ***importers seeking to evade AD/CV duties can exploit the ease of becoming an importer of record in several ways.*** First, according to CBP officials, companies can easily adopt new importer names and identification numbers, making it difficult for CBP to track their importing activity and

¹³ Id. p. 19 n.38 (emphases added).

¹⁴ Id. p. 29 (emphasis added).

gather evidence needed to prove that they are engaging in evasion. CBP officials stated that they suspect some importers evading AD/CV duties set up new names and identification numbers in advance to have ready for use in anticipation of CBP targeting efforts. Second, as our prior work has noted, **CBP collects a minimal amount of information from companies applying to be importers of record, which evaders can take advantage of to elude CBP efforts to locate and collect revenues from them.** For instance, companies are not subject to any credit or background checks before being allowed to import products into the United States. Third, foreign companies and individuals are allowed to import products into the United States, but CBP can have difficulty collecting duties and penalties from foreign importers—especially illegitimate ones—when the importers have no attachable assets in the United States. For example, as of February 2012, CBP had collected about \$5 million, or about 2 percent, of the approximately \$208 million it assessed in civil penalties between fiscal years 2007 and 2011. CBP attributed its collection difficulties, in part, to challenges experienced in collecting from foreign importers of record. CBP officials stated that, due to this risk of noncollection, a factor they consider when deciding whether or not to impose a penalty against a confirmed evader is whether or not it has assets in the United States.¹⁵

Summarizing the enforcement challenges faced by CBP, the GAO identified:

the inherently difficult and time-consuming process of uncovering evasive activity conducted through clandestine means, inconsistent access to foreign countries that limits CBP's ability (as well as ICE's) to gather necessary evidence, and the ease with which importers attempting to evade duties can change names and identification numbers to elude detection.¹⁶

In recognition of the challenges presented by commonly employed circumvention schemes facilitated through shell-company and/or non-resident importers, Congress has proposed and considered legislative amendments to augment CBP's regulation of importer entities. For example, in September 2011, Senator Claire McCaskill (MO)

¹⁵ U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion*, GAO-12-551 (May 2012) pp. 17-18 (emphases added).

¹⁶ Id. p. 30.

introduced the *Fighting for American Industry's Right (FAIR) to Enforcement Against Duty Evasion Act of 2011*¹⁷ that would have mandated the creation of an "importer of record database," to be updated on a regular basis and be accompanied by routine reports to Congress regarding "improvements made to the importer of record program"¹⁸ Separately, in December 2012, Rep. Kevin Brady (TX) – then the Chairman of the House Ways & Means Trade Subcommittee – introduced the *Customs Trade Facilitation and Enforcement Act of 2012*.¹⁹ Chairman Brady's bill dealt with numerous trade and CBP-related issues, including the establishment of an "importer of record program."²⁰ Section 221 of the introduced legislation required the establishment of a program to "assign and maintain importer of record numbers," as follows:

SEC. 221. IMPORTER OF RECORD PROGRAM.

- (a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish an importer of record program to assign and maintain importer of record numbers.
- (b) REQUIREMENTS.—The Secretary of Homeland Security shall ensure that, as part of the importer of record program, the U.S. Customs and Border Protection Agency—
 - (1) develops criteria that importers must meet in order to obtain an importer of record number, including—

¹⁷ See "McCaskill cracks down on unfair trade practices, boosts jobs," (Sept. 20, 2011) available at: <http://www.mccaskill.senate.gov/media-center/news-releases/mccaskill-cracks-down-on-unfair-trade-practices-boosts-jobs>.

¹⁸ See "Fighting for American Industry's Right (FAIR) to Enforcement Against Duty Evasion Act of 2011," S. 1581 (Sept. 20, 2011) § 4.

¹⁹ See "Brady Introduces Customs Trade Facilitation and Enforcement Act of 2012" (Dec. 7, 2012) available at: <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=314803>.

²⁰ See "Customs Trade Facilitation and Enforcement Act of 2012," H.R. 6642 (Dec. 7, 2012) § 221.

(A) criteria to ensure sufficient information is collected to allow the U.S. Customs and Border Protection Agency to verify the existence of the importer requesting the importer of record number;

(B) criteria to ensure sufficient information is collected to allow the U.S. Customs and Border Protection Agency to identify linkages or other affiliations between importers that are requesting or have been assigned importer of record numbers; and

(C) criteria to ensure sufficient information is collected to allow the U.S. Customs and Border Protection Agency to identify changes in address and corporate structure of importers;

(2) provides a process by which importers are assigned importer of record numbers;

(3) maintains a centralized database of importer of record numbers, including a history of importer of record numbers associated with each importer, and the information described in subparagraphs (A), (B), and (C) of paragraph (1);

(4) evaluates the accuracy of the database; and

(5) takes measures to ensure that duplicate importer of record numbers are not issued.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the importer of record program established under subsection (a).

(d) NUMBER DEFINED.—In this subsection, the term “number”, with respect to an importer of record, means a filing identification number described in section 24.5 of title 19, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act).

Although the proposed legislation discussed has not yet been adopted, the agency’s proposed changes to CBP Form 5106 are consistent with Congressional concerns regarding CBP’s compilation of information regarding entities acting as importers of record. Requesting additional information regarding importers of record creates minimal additional burden on a party seeking to act as an importer of record

while affording CBP with a stronger basis for assessing the risk to revenue posed by the entity. Through the collection of the information that would be obtained by the proposed revisions to CBP Form 5106, the agency will be able to further concentrate enforcement resources to areas of greater risk and reduce impediments to legitimate trade.

In this vein, the Southern Shrimp Alliance fully supports CBP's proposed revisions to CBP Form 5106 and appreciates the agency's efforts to augment its response to trade fraud. The Southern Shrimp Alliance additionally supports the changes and additions proposed by the Committee to Support U.S. Trade Laws in that organization's separate submission on this topic. In particular, the Southern Shrimp Alliance believes that the CBP Form 5106 should be improved as much as possible to facilitate the collection of information that would allow CBP "to identify linkages or other affiliations between importers that are requesting or have been assigned importer of record numbers" consistent with the goals of the *Customs Trade Facilitation and Enforcement Act of 2012*. As discussed in more detail below, past trade law enforcement efforts provide insight into how networks of linked, affiliated, and related companies are created and utilized to frustrate and evade trade regulation. CBP should endeavor, to the greatest extent possible, to identify linkages between these ostensibly independent companies as early as possible. CBP Form 5106 provides a unique opportunity to obtain relevant information for this objective.

II. Past Enforcement Efforts Underscore the Use of Networks of Shell-Companies

Unscrupulous importers establishing shell-company vehicles that act as importers of record is a common feature of circumvention schemes, including schemes

unrelated to manipulation of low cash deposit rates that eventually become high assessment rates. In these conspiracies, multiple front companies are established to evade payment of duties and fees and frustrate efforts to keep unsafe merchandise out of the U.S. market. The intentional design of these circumvention schemes has been well documented in multiple criminal prosecutions of trade fraud as well as in civil proceedings.

For example, in the criminal prosecution of Hung Ta Fan for evasion of antidumping duties on Chinese honey through transshipment, a U.S. Immigration and Customs Enforcement (“ICE”) Special Agent explained that Mr. Fan “was the registered agent of multiple California-based honey import companies, including Blue Action Enterprise, Inc. (‘Blue Action’); 7 Tiger Enterprises, Inc. (‘7 Tiger’); Honey World Enterprise Inc. (‘Honey World’); and Kashaka USA, Inc. (‘Kashaka’)”²¹ Mr. Fan used these companies “to act as registered importers of record to import and enter Chinese-origin honey into the United States.”²² The creation of multiple shell companies was designed to avoid CBP scrutiny:

FAN also told ICE agents that he created Honey World on the advice of ALW United States Executive 2, who told FAN that a high volume of imports by a single company would be noticed by CBP. FAN also stated that he acted upon additional advice provided to him by an employee of the FAN Companies, who advised FAN that ***he should import into the United States using multiple companies to avoid added scrutiny and***

²¹ Declaration of Immigration and Customs Enforcement, United States v. Fan, Case No. 1:10-cr-00198 (Mar. 12, 2010 N.D. Ill.).

²² Id.

attention by CBP and that this advice was seconded by ALW Executives in at least one-in-person meeting with FAN.²³

Mr. Fan registered these paper importing companies at different addresses, some of which had been used for other companies not discussed on the record of the criminal case.²⁴

In the criminal case brought against Jun Yang three years later for another trade evasion scheme involving transshipped honey, the U.S. Attorney's sentencing position paper again noted the role of shell-company importers in effectuating the fraud:

As part of the fraudulent practice, ***YANG ordered honey from Chinese honey suppliers, including "Chinese Transshipper A," knowing that the Chinese honey suppliers would send Chinese-origin honey to countries of intermediate destination, including Malaysia and India, where the honey was mislabeled as to country of origin before the honey passed through a United States customhouse as non-Chinese-origin honey.*** YANG and National Commodities also (a) caused the formation of at least three companies, including CCM Foods, Inc.; Kota Imports, Inc.; and Madu Jaya Inc.; and used at least one other company, Wintex Group, Inc. (collectively the "companies"), to import and enter honey supplied by Chinese Transshipper A knowing that all or some of the honey was Chinese in origin; (b) benefitted from the companies filing CBP entry forms 3461 and 7501 that falsely and fraudulently declared all the honey as originating from Malaysia and India; (c) purchased honey imported by the companies despite knowing that some or all the honey was Chinese in origin, but declared at the time of

²³ Id. (emphasis added).

²⁴ Blue Action and Kashaka were both registered at 23441 Golden Springs Dr. #208, Diamond Bar, CA. Mr. Fan also registered Sweet Spray, Inc.; Zitabs Enterprise, Inc.; Redsun Enterprises, Inc.; and Springkim Enterprise, Inc. at this address. Several other companies have been registered at this address. 7 Tiger was registered at 1107 Fair Oaks Ave., #438, S. Pasadena, CA 91030, the same address used for a company called Woody's Syrup, Inc. Honey World was registered at 2213 Wind River Lane, Rowland Heights, CA 91748. This residential address has also been used for corporate and trademark registrations of other companies as well. Each of the companies registered at these three addresses are currently listed as either "dissolved" or "suspended" in the California Secretary of State's database.

importation and entry as entirely originating from Malaysia and India; and (d) wire transferred funds to the companies as payment for the purchase of honey that fraudulently entered the United States.²⁵

Similarly, in the criminal case against Katy Lin regarding even more transshipped honey, the creation of front companies to act as importers of record was again a central component of the fraud. Here, however, the front companies were “controlled” by foreign entities. Responding to the defendant’s objection to the pre-sentencing report, the U.S. Attorney provided a fulsome discussion of the scheme:

KBB Express Inc. was a freight forwarding company located in South El Monte, California that provided nationwide transportation, delivery, and other logistical services for imported and entered merchandise, including Chinese-origin honey. LIN owned and operated KBB Express Inc., and also served as the U.S. agent for at least twelve importers of record that were controlled by Chinese honey producers and manufacturers. These

²⁵ “The Government’s Position Paper as to Sentencing Factors,” United States v. Yang, Case No. 1:13-cr-00139 (Nov. 8, 2013 N.D. Ill.) pp. 8-9 (emphasis added).

While heavily involved in honey trade fraud, Mr. Yang’s principal expertise was in seafood imports. Thus, at the same addresses as the shell company importers formed to facilitate the honey scheme, different companies were registered that facilitated the importation of “Malaysian” shrimp. Priority Seafood Company, for example, was registered at the same address as Madu Jaya (11152 Westheimer Rd. #199, Houston, TX 77042-3208). YZ Marine Inc. was registered at the same address as Kota Imports (5905 Sovereign Dr. #M-053, Houston, TX 77036-2309). And the address for the registered agent of both Kota Imports and Priority Seafood (10901 Meadowglen Lane, #302, Houston, TX 77042) was the same address used by a company named American Fisheries Inc. on its application for the trademarks “Easy Choice” and “Melody.”

During the course of Mr. Yang’s criminal case, American Fisheries Inc. filed an emergency motion seeking to recoup amounts paid by Mr. Yang to the U.S. Government as part of his plea agreement. In its emergency motion, American Fisheries argued that Mr. Yang had failed to make full payment for shrimp sold to raise the funds to pay his criminal penalties and fines. As an attachment to the emergency motion, American Fisheries included the container number for each shipment of “Malaysian” shrimp that eventually ended up in Mr. Yang’s possession. The container numbers reported can be matched with bills of lading indicating that the consignee for each of these shipments was YZ Marine.

importers of record included Bright Step (United States) Limited; Sweet Campo Co., Ltd.; Migrow Trading Inc.; Chix Trading Inc.; Rouka International Inc.; Oliv Amber Trading Co., Ltd.; Titto International Inc.; Stariver Trading Inc.; Tobest Trading Co., Ltd.; Russa International Inc.; Sunny (USA) Trading Inc.; and Silver Spoon International Inc. As the U.S. agent for these companies, ***LIN handled the process of importing, and coordinated with customhouse brokers to enter and bring in, Chinese-origin honey into the United States without paying antidumping duties*** and honey assessment fees.²⁶

Outside of trade in honey, the creation of shell-company importers to frustrate trade remedy enforcement was also documented in a False Claims Act suit involving evasion of antidumping and countervailing duties imposed on aluminum extrusions from China. In the U.S. Department of Justice's complaint intervening in part of the civil action initiated in 2011, the Government explained how importers of aluminum extrusions conspired to create a sham enterprise to act as the importer of record for falsely described merchandise.²⁷ The creation of the shell company importer was, according to the Department of Justice, an effort to insulate the actual purchasers from liability for their criminal acts and depended upon the participation of freight-forwarding (shipping) agents/logistic companies and customs brokers in a scheme developed by the Chinese supplier. The explanation of the scheme set out in the Complaint is

²⁶ "Government's Response to Defendant's Objection to the PSR," United States v. Lin, Case No. 1:13-cr-00125 (Sept. 25, 2013 N.D. Ill.) pp. 4-6 (emphases added).

²⁷ "United States' Complaint in Intervention and Demand for Jury Trial," United States ex rel. Valenti v. Wingfield, Case No. 1:11-cv-00368 (Nov. 14, 2013, M.D. Fla.) pp. 34-38.

comprehensive;²⁸ the section addressing the shell company importer is set out in full below:

E. Northeastern and Ma Knowingly Evaded or Caused the Evasion of Duties

147. William Ma worked for JKMY Logistics LLC and Teamwork Logistics, which were freight forwarding companies used to ship some of the containers of Tai Shan aluminum extrusions to customers after they cleared U.S. Customs.

148. Ma was asked by an employee of Ocean Bridge International Logistics Co. Ltd., which was Tai Shan's shipping agent responsible for shipping Tai Shan aluminum extrusions from the PRC through Malaysia to the United States, to form Northeastern and serve as the importer of record on future shipments of Tai Shan aluminum extrusions.

149. Ma and Northeastern joined the conspiracy on or about November 15, 2010, when Ma formed Northeastern for the purpose of serving as the importer of record of Tai Shan aluminum extrusions.

150. From December 6, 2010 through at least March 20, 2011, Northeastern served as the importer of record for Tai Shan aluminum extrusions entering the United States.

151. Nonetheless, neither Ma nor Northeastern was the owner, purchaser, or consignee of the aluminum extrusions for which Northeastern acted as the importer of record.

152. Ma communicated with Tai Shan employee Michael Wu regarding the entries he made of Tai Shan aluminum extrusions.

153. Although Ma and Northeastern facilitated the entry of these shipments into the United States, neither Ma nor Northeastern had any independent knowledge of the sender, contents of the containers, or origin and value of the merchandise.

154. Ocean Bridge International paid Ma \$100 per entry to be the importer of record for shipments of Tai Shan aluminum extrusions.

155. Despite being the importer of record, Northeastern never received the containers of aluminum extrusions, which were shipped directly to the

²⁸ Remarkably, the Government's allegations describe a paltry amount paid to the party responsible for administering the shell-company importer's entries. As noted in the reproduced excerpt, for a mere \$100 per entry, hundreds of thousands of dollars in antidumping and countervailing duties that might eventually be assessed upon discovery of the scheme could be avoided.

purchasers, including CRL, Southeastern, and Waterfall, upon clearing U.S. Customs.

156. Northeastern and Ma knew or should have known that Northeastern did not qualify as an importer of record for the shipments of Tai Shan aluminum extrusions.

157. Upon becoming the importer of record, Northeastern, through its customs brokers, ***continued to declare Malaysia as the country of origin*** of Tai Shan aluminum extrusions.

158. Upon becoming the importer of record, Northeastern, through its customs brokers, ***continued to undervalue the merchandise, and therefore failed to declare and pay the full amount of regular duties owed on these imports.***

159. Upon becoming the importer of record, Northeastern, through its customs brokers, ***continued to fail to declare and pay any antidumping or countervailing duties on these imports.***

160. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that for those imports of aluminum extrusions from Tai Shan where Northeastern was the importer of record, ***the Entry Summaries were false, or Northeastern and Ma acted in deliberate ignorance or with reckless disregard of the truth of those Entry Summaries, in that the Entry Summaries failed to declare that countervailing or antidumping duties were owed and declared that Malaysia was the country of origin.*** Northeastern and Ma had actual knowledge that this information was false, or acted in deliberate ignorance or with reckless disregard of the truth of the information, because Northeastern and Ma knew (1) that the aluminum extrusions were manufactured by Tai Shan in the PRC, (2) that instead of Tai Shan or Innovative invoices, invoices purporting to be from various Malaysian companies were provided, (3) that the aluminum extrusions fell within the scope of the antidumping and countervailing duty orders, (4) that the only reason to ship the aluminum extrusions through Malaysia was to evade duties on imports of aluminum extrusions from the PRC, (5) that Northeastern was holding itself out to be the importer of record of aluminum extrusions even though it was not the owner, purchaser, or consignee of the extrusions, and (6) that Northeastern was filing Entry Summaries with Customs based solely on information provided to it without ever having seen the goods.

161. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that for those imports of aluminum extrusions where Northeastern was the importer of record, the Entry Summaries were false, or Northeastern and Ma acted in deliberate

ignorance or with reckless disregard of the truth of those Entry Summaries, in that the Entry Summaries undervalued the aluminum extrusions and therefore also failed to declare the full amount of regular duties owed. Northeastern and Ma had actual knowledge that this information was false, or acted in deliberate ignorance or with reckless disregard of the truth of the information, because Northeastern and Ma knew (1) that Northeastern was not a valid importer of record, (2) that Northeastern was filing Entry Summaries with Customs based solely on information provided to it without ever having seen the goods, (3) that Malaysia was not the country of origin for the aluminum extrusions even though that was what Northeastern declared, and (4) that, if Northeastern was provided with false country of origin information for use in filing Entry Summaries with Customs, it was likely other information, which also impacted the amount of duties calculated, was also false.

162. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that the full amount of duties owed on imports of Tai Shan aluminum extrusions had not been paid, or acted with deliberate ignorance or reckless disregard as to whether the full amount of the duties had been paid.

163. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that they were causing a false record or statement material to an obligation to pay money to the United States to be made or used with regard to imports of Tai Shan aluminum extrusions for which Northeastern served as importer of record, or Northeastern and Ma acted with deliberate ignorance or reckless disregard as to whether they were causing such false records or statements to be made.

164. Despite this knowledge, Northeastern and Ma failed to correct the false information submitted to Customs in relation to imports of Tai Shan aluminum extrusions for which Northeastern served as importer of record, and failed to submit the correct amount of duties owed on those imports.²⁹

The facts alleged in the Government's complaint appear to be typical of the structure and operation of schemes employed to evade the payment of lawfully owed antidumping duties. Central to these schemes is the concealment of links between entities through the creation of paper entities. The additional information requested in

²⁹ Id. (emphasis added).

the proposed revisions to CBP Form 5106, coupled with the requirement that answers to the form be certified with the understanding that if the certifying party is to “make an intentional false statement, or commit deception or fraud in this 5106 document, I may be fined or imprisoned (18 U.S.C. § 1001),” should make it more difficult for companies to conceal links that would otherwise facilitate trade fraud. Even more information can and should be collected – such as, for officers of the applicant company, the names of all other companies for which the individual has served or currently serves as an officer and, for non-resident importers, information regarding the registered agent – to further assist in the identification of such linkages. Requesting more information simultaneously improves the information available to CBP while further discouraging parties that may otherwise consider participating in trade fraud.

Pursuant to the instructions from U.S. Customs and Border Protection, these written comments have been directed to Tracey Denning, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection.

We are grateful for any consideration provided to the foregoing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Williams", written in a cursive style.

John Williams
Executive Director