

**Testimony of
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**Before the U.S. Senate Committee on Appropriations,
Subcommittee on Homeland Security**

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Thank you for the opportunity to speak today. I'm John Steinberger, Of Counsel with the Washington, D.C., law firm of Adduci, Mastriani & Schaumberg. For many years, I have worked with a partner of that firm, Bill Leonard, on matters related to the U.S. antidumping duty order against imports of crawfish tail meat from the People's Republic of China, which has been in place since September 1997 and is, in my view, the main reason that Louisiana still has a viable crawfish industry.

The businesses that process crawfish in the United States are family businesses, mostly, run by ordinary folks, all of them in Louisiana. It used to be that there were a few crawfish processors in other states, but they got wiped out by the first avalanche of imports from China in the late 1990s. To my knowledge, no new processing operations have been established outside Louisiana since that time.

Our client in the ongoing antidumping case itself, before the U.S. Department of Commerce and the U.S. International Trade Commission, is the Crawfish Processors Alliance, a group of 31 crawfish processors, all in Louisiana, who collectively account for better than 85 percent of all domestic crawfish processing by volume. In court cases and here on the Hill, our law firm also represents, as co-counsel with Kelley Drye & Warren, the individual CPA members who have been eligible to receive offset payments under the Continued Dumping and Subsidy Offset Act (CDSOA). In that effort, our crawfish clients are part of a coalition that includes U.S. producers of honey, mushrooms, and garlic, each represented by Kelley Drye. Those industries have been having the same problem with Customs.

The problem is that a huge proportion of antidumping duties that should have been collected on imports from China that entered the United States prior to October 1, 2007, have not been collected, despite the fact that they are secured by bonds issued by large, U.S.-based insurance companies. That date is important because U.S. law requires a portion of the duties collected prior to October 1, 2007, to be paid to domestic producers who have been injured in their business by the dumping.

People who are unfamiliar with this area of the law are often surprised that there would still be unpaid duties on goods that came into U.S. ports in 2007 or earlier. They don't realize that part of this is just because antidumping duties are assessed retrospectively – so delays of a couple or three years are not shocking. However, we're still trying, right now in 2014, to get Customs to collect duties on entries from 2000, 2001, and so on.

Those were very tough years for the U.S. crawfish industry. Domestic crawfish tail meat

was selling around \$8.00 or \$9.00 a pound, and even at that price, profits were slim to none. And the local Piggly Wiggly stores down the road from these processors were full of crawfish tail meat from China, being advertised quite often at \$2.99 a pound.

Now, mind you, at this time, the antidumping duty order was in place, and it called for imposing antidumping duties running from 91 percent to more than 200 percent. I remember getting faxes. The U.S. producers would see those ads and tear them out of the paper and fax them to me with a short, handwritten message at the top along the lines of "What is this?" or "Why is this happening?" or "What about the duties?" We know now what was happening: most of the antidumping duties, which we had fought so hard to have imposed, were not actually being collected.

People might say they'd rather have Louisiana crawfish than Chinese crawfish, and they might actually mean it. But everyone has a price. With such a huge price difference, if you're a U.S. processor, you're going to be hard pressed to replace that old truck or upgrade your freezer of pay down your debt. You're just trying to survive another day. The CDSOA was set up to use the antidumping duties to correct that problem, but it only works when Customs actually collects what's owed. Even worse, the people importing the Chinese product – which, oftentimes, were just shell corporations with no real assets in the United States – started noticing that they didn't really have to pay the duties, so they weren't afraid of dumping. Massive volumes of imports kept pouring in, at very low prices. The hole just got deeper and deeper.

The responsible Congressional committees have been trying to fix this problem since at least July 15, 2002, the date of H.R. Report 107-575, in which the Appropriations Committee said: "The Committee is very concerned with the status of tariffs and duties assessed on crawfish . . . The U.S. Customs Service is therefore directed to begin, using funds currently available, vigorous and active enforcement of the tariff. Additionally, the U.S. Customs Service shall, not later than April 30, 2003, issue to the Committee and make publically available a comprehensive report detailing their efforts to enforce and collect this duty." That was in 2002 – twelve years ago.

Since then, there have been many, many more attempts by members of Congress to fix the problems at Customs. In October 2004, the House and Senate Committees on Appropriations (in Conf. Rep. 108-774 on H.R. 4567) again directed Customs to submit a detailed report, this time by January 15, 2005. There have been too many inquiries from Senators and Members of the House to recount here. The answers from Customs, unfortunately, have almost always been vague and unhelpful.

Last year, as part of the 2014 appropriation for Customs, this Committee made a number of highly detailed, specific requests for information from Customs. The details that Customs is supposed to provide are set out in Senate Report 113-77 (July 18, 2013), which was originally to accompany H.R. 2217, the Homeland Security appropriations bill for 2014. H.R. 2217 essentially got rolled into H.R. 3547, the Consolidated Appropriations Act. Senate Report 113-77 provides for Customs to provide several highly detailed reports to the Committee not later than 180 days after the date of enactment. The bill was signed into law on January 17, 2014. If we take January 17 as the date of enactment, the 180th day thereafter is July 16, 2014, the date of

this hearing. We are thus eager to know whether Customs is prepared to supply the requested information and, if so, what it will tell us about the nature of the antidumping duty collection problem and how to fix it.

We're also hoping to learn something about what happened with duty collections last year (FY2013) and what is happening this year (FY2014). More specifically:

- Last summer, Customs released its report on "Preliminary Amounts Available to Disburse" under the CDSOA for FY2013, reflecting collections made from October 1, 2012, through April 30, 2013. For crawfish, this "preliminary amount" turned out also to be the final amount, to the penny. In other words, during the last five months of FY2013, Customs did not collect a single penny of additional duties out of the vast backlog owed on entries made prior to October 1, 2007.
- This year, the "preliminary amount" for crawfish is only \$2,687,300.70, reflecting collections through April 30, 2014. Yet we know for certain that Customs collected \$6.1 million from Great American Insurance and Washington International Insurance, in February of this year, in crawfish antidumping duties on imports entered during 2000-01. We have copies of the checks from the sureties. Customs is on record, at the court, as saying that the checks had been received and were being processed in late February. It is unclear why this \$6.1 million has apparently not been included in the "preliminary amount" for FY2014.
- Customs has also stated, in a letter to Congressman Boustany dated April 11, 2014, that it had fully collected "more than \$14 million" in crawfish antidumping duties on April 7, 2014, one day before the six-year statute of limitations would have expired. From other information in the letter, we know that the money was owed by Hartford, a surety, on entries that came into the United States well before 2007. Although this money was allegedly collected prior to the April 30, 2014, cut-off date for the report on "preliminary amounts," it has obviously been left out. We do not know why.

In connection with the nomination of the current Commissioner of Customs, Mr. Kerlikowske, there was to be a liaison designated who would answer questions such as those I just raised. It is my understanding from our co-counsel at Kelley Drye & Warren that they have asked about the missing \$6.1 million and \$14 million but have received no answer.

One thing is clear: the problem cannot be solved if no one knows exactly what it is. Much of the past decade has been spent trying to get Customs to provide information at a sufficient level of detail that solutions can be created. The language in the FY2014 appropriations report was a huge step in the right direction, and we thank Chairman Landrieu and the rest of the subcommittee for it.

Much remains to be done. Our best information right now is that there is still more than \$600 million in bond money to be collected on imports of crawfish tail meat, honey, garlic, and mushrooms from China that entered the United States between May 1998 and August 2006. This

debt is secured by over 8,000 bonds. Yet, so far, Customs has filed lawsuits to collect on only about one-tenth of those bonds, representing roughly 12 percent of their face value.

Crawfish antidumping duties account for about \$150 million of the \$600 million. Because the amounts payable to domestic producers under the CDSOA are limited by a formula based on the domestic producers' expenses, it turns out that most of the \$150 million in unpaid crawfish duties would go directly to the U.S. Treasury if actually collected. We hope that this committee will continue to work toward that end.