

## Summary of the Imported Seafood Safety Standards Act

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### Executive Summary:

The Imported Seafood Safety Standards Act increases inspection standards on foreign imported seafood to ensure that tainted or infected seafood does not reach the table of American families.

The bill requires the foreign exporter meet US safety standards in order to export their product to the United States.

It mandates increased inspection of foreign imported seafood and imposes penalties on foreign exporters who fail inspections and safety test. The bill enables states governments to assist in the inspection of imported seafood by providing them the authority and funded needed to help.

The bill would also to an end to the practice of “port shopping” which can lead to infected seafood making its way into the market place and finally it imposes stiff fine on those who attempt to mislabel their production.

### Equivalence requirements

- An exporting country may not export to the United States unless it establishes and certifies that its food safety laws and procedures are equivalent to U.S. standards.
- Individual exporters within approved countries must certify equivalence with the United States’ standards on critical control points in the manufacturing process, monitoring and sampling requirements, and recordkeeping obligations.
- The FDA must conduct an initial and periodic follow-up on-site inspection -- at least annually -- of foreign production facilities.

**Issue:** Equivalence is not a prerequisite for U.S. market entry of seafood imports. Currently, seafood imports are presumed safe unless the FDA can prove otherwise.

Demonstrated equivalence would eliminate that presumption and require exporters to prove that their seafood products are safe before entry into the United States. Thus, equivalence transfers accountability and places legal responsibility on the exporting country and the individual exporter to certify compliance with U.S. seafood safety standards.

Country-specific equivalence allows the United States to place further import requirements on exporting countries to address specific risks posed by the exporting country. Site visits made only after a quality issue has arisen cannot effectively ensure consistent adherence to U.S. food safety standards.

### Mandated Inspection/Testing Rates

- At a minimum, the Secretary is mandated to inspect at least 20 percent inspection and testing rate for all seafood imports.
- New exporters to the United States should be subject to 100 percent testing for the first fifteen (15) shipments into the United States.
- If an importer fails an inspection or test, all subsequent imports are subject to 100 percent testing until fifteen (15) consecutive shipments pass inspection.
- Failure of 3 or more tests in a calendar year will result in imposition of producer and country bans for at least a one year period. After the subsequent ban, the exporter must adopt equivalence standards to the United States, and will still be subject 100 percent testing of imports for one year.
- If the Secretary determines that a country has repeated failed of inspections he or she can refused entry into the United States of the foreign countries product until the Secretary determines that the country has adopted equivalent safety standards.

**Issue:** The United States currently does not have a statutory or regulatory mandated inspection rate for fishery products, despite the fact that the United States imports more than 80 percent of its seafood. Seafood inspection rates are well below two percent.

The FDA's current inspection system allows exporters with inconsistent compliance issues to enter the United States because of both randomized selection process and miniscule inspection rates.

A mandated inspection rate will require FDA to meaningfully screen seafood imports to ensure safety.

#### Fees on Foreign Countries

- Importers would be required to pay an import inspection fee to help offset the cost of inspection and testing.
- The Secretary shall impose such fees on foreign exporters as necessary to assist in the operations of inspections, certification, and testing.
- Such sums as necessary to assist in increase inspections, certification, and testing are authorized under the legislation.

**Issue:** Other countries apply fees to importers to assist in the inspection process. The United States can and should adopt a similar system to assist with the cost of increased inspection.

For Example:

- Canada imposes an inspection service fee for each kilogram of imported fish, ranging from C\$0.15 per kilogram for ready-to-eat fish to C\$0.01 per kilogram for fresh or “other” fish imports.
- The European Union Council Directive include the following section: “For . . . all fishery products which have to go through border inspection posts, the fee . . . shall be fixed . . . at the minimum standard level of €5 per tonne, with a minimum of €30 per consignment, although above 100 tonnes, the minimum standard amount of €5 per tonne shall be reduced to: (1) €1.5 per additional tonne for fishery products which have undergone no preparation other than gutting; (2) €2.5 per additional tonne for the other fishery products”

### Putting an End to Port Shopping

- If a shipment fails to meet safety standards and contains banned substances, such shipment is to be destroyed unless the imported meets criteria for re-export.
- If the food safety regulator of the originating country or a third country notifies the FDA that the shipment will be accepted in that nation, it may be released to the importer.
- Rejected shipments shall be clearly marked “Refused Entry by the United States Government”.
- If such notification is not issued within 45 days, the shipment shall be destroyed.
- If the FDA deems that the shipment contains violations that the FDA deems, if it were to have been allowed entry, could have caused significant health risks if consumed by humans, the shipment should be destroyed even if a third country or the originating country would accept the shipment.
- The FDA should inform other ports of entry with five days that an shipment was found to be in violation and when a shipment was detained.

**Issue:** If a shipment of seafood is rejected by officials at a local port, current notification procedures are too slow to effectively prevent that cargo from being routed to another facility. Seafood imported from other countries should be held to the same high standards that we place on our own seafood. This section prevents the import of substandard seafood through US ports, and goes one step further to prevent individuals from attempting to import rejected shipments at another port.

### Oversight of Private and Public Laboratory Facilities

- Bolsters its own inspection and testing capabilities with sufficient funding for qualified staff and testing equipment.

- Testing should be conducted primarily by the FDA. If test results are issued by private laboratories, then these laboratories must be fully accredited, certified and licensed by the FDA. Such accreditations and licenses must be renewed annually.
- All FDA and private laboratories must test each class of imports based on a standardized list of controlled substances.

**Issue:** While FDA only inspects about 1% of imported food at the border, an even smaller percentage, 0.2%, is tested in a laboratory. Until Congress blasted the plan, FDA even considered closing 7 of its 13 laboratories, including one of its most effective laboratories in San Francisco, one of the United States' busiest ports.

Importers have gone so far as to ship products by air to Las Vegas "to avoid the scrutiny that the seafood would face in San Francisco." The FDA and USDA do not share inspection facilities. In the absence of its own adequate testing facilities, FDA relies heavily on analysis conducted by private laboratories. These labs are not subject to accreditation or monitoring by the FDA.

A proposed accreditation system was dropped by the FDA following resistance from private laboratories. The testing procedures for seafood products are not standardized by the FDA; there is no mandatory list of banned substances that must be inspected by each laboratory.

#### Annual Report and Prospective Enforcement Plan

- The FDA should publish an annual report describing significant incidents of import noncompliance and other areas of concern, as well as summary statistics. The report would describe the FDA's plans for addressing these issues in the coming year.
- The FDA would be mandated to implement its enforcement plan within 3 months of publication of the annual report.

**Issue:** The FDA issued an import alert in response to the presence of banned chemicals in farmed seafood from China on July 10, 2007. The FDA, however, has known about China's food safety violations in aquaculture facilities for several years.

If FDA had been required to release annual compliance reports, the agency likely would have been forced to address the problem sooner.

#### Significant Penalties for Knowingly Mislabeling

- Knowingly mislabeling, and other knowing violations of U.S. food safety laws, such as "port shopping," will result in significant civil and possible criminal penalties. An importer must certify the product's country-of-origin and the producer and exporter's identities.
- Knowingly falsifying these certifications would result in mandatory monetary penalties and denial of trading privileges.

**Issue:** Foreign shrimp producers have transshipped shrimp products through non-subject countries to circumvent existing antidumping orders. After the imposition of U.S. antidumping orders, shrimp exports from Indonesia and Malaysia to the United States skyrocketed and have been dramatically increasing since 2003.

In March 2006, Customs found 54 shrimp importers had falsely designated imported Chinese shrimp as Indonesian-origin shrimp, and thus avoided over \$65 million in antidumping duties. Transshipment threaten efforts to meaningfully insure the safety of seafood imports. Increased penalties for purposefully mislabeling imported food will deter transshipment schemes and help ensure the viability of any food regulatory program.

Teaming with States for improving enforcement

- Authorizes both authority and funding for states who want to assist the FDA to increase inspections of foreign imported seafood.
- States who participate in the program to assist with FDA would receive training of federal standards and must comply with both federal and state safety standards.

Partnering with State and local agencies

**Issue:** Increasing inspection of imported seafood can be a joint responsibility similar to how other federal agencies work with state and local agencies. For example DHS and DOJ often work with local law enforcement when it comes to national security and community safety. The FDA can and should be able to partner with States who want to assist in ensuring that safe seafood is imported into the US.