



Southern  
Shrimp  
Alliance



# *Southern Shrimp Alliance*

2008

*Activities Report*



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# **2008 Activities Report**

## Message to the Members

It is our pleasure to report on the activities and achievements of the Southern Shrimp Alliance (SSA) over the past year. SSA is the only national association that solely represents the interests of the U.S. shrimp industry. For the past six years, SSA has given a voice to shrimp fishermen and processors on a wide range of issues before Congress, regulatory boards, and legal institutions. Our work has enhanced the business environment for the U.S. shrimp industry, but it is far from complete.

Highlights of SSA's achievements include, among other things, preventing the threatened closure or severe restriction of fisheries in the South Atlantic and Gulf of Mexico, educating policy makers regarding the threat posed to the U.S. market for shrimp by contaminated imported shrimp, obtaining vital federal appropriations for national marketing efforts of wild-caught American shrimp, maintaining duties on unfairly traded imports; and preventing circumvention of the antidumping duty orders.

SSA undertook a broad range of activities in 2008 to advance the interests of the domestic shrimp industry. This report emphasizes SSA's national and regional work to improve fisheries management, international trade, and food safety issues. We hope it answers your questions about what SSA is doing to help our members and the industry at large. Please feel free to contact SSA with further questions at 727.934.5090.

Sincerely,



**Elaine Knight**  
President  
Southern Shrimp Alliance



**John Williams**  
Executive Director  
Southern Shrimp Alliance

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# About the Southern Shrimp Alliance

## Who Are We?

The Southern Shrimp Alliance (SSA) is an organization of shrimp fishermen, shrimp processors, and other members of the domestic industry in the eight warmwater shrimp producing states of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

## Purpose

Founded in 2002, SSA works to ensure the continued vitality and existence of the U.S. shrimp industry. The hard working lifestyle of U.S. fishermen is threatened by cheap, unfairly traded imported shrimp. The U.S market has become a dumping ground for shrimp that are turned away from other major seafood importing countries. Proposed restrictions on shrimp fishing and rapidly increasing costs of doing business also loom over the industry. SSA is committed to preserving the long term viability of one of our nation's most valuable fisheries, which for decades has been a foundation of the economy and social structure of countless coastal communities throughout the Gulf and Southeast regions.

## Governance

SSA is governed by a volunteer Board of Directors. The Board is composed of two elected representatives from each of the eight member-states and two representatives of the Vietnamese American Commercial Fishermen's Union. The Board sets policy and financial goals through majority rule decision making.

SSA has a small staff to implement Board decisions. It employs a full-time Executive Director, Director of Field Operations, and Assistant to the Executive Director. The staff also includes a part-time assistant.

Campbell & Virgilio, Certified Public Accountants & Financial Consultants of Spring Hill, Florida, completed a Compliance and Internal Controls audit in addition to a Financial audit of SSA in August 2007 for the fiscal years 2005 and 2006. The SSA Board expects to begin a Non-Profit Compliance and Financial audit shortly for the fiscal years of 2007 and 2008.

## Finances

SSA's accomplishments have required the services of a variety of individuals with expertise in areas such as fisheries biology, economics, and law. SSA has funded these efforts without federal appropriations and has made contributions to state programs that benefit the U.S. shrimp industry, such as state marketing programs. The proceeds from settlement of certain limited aspects of the trade litigation not only facilitated the timely distribution of antidumping tariff revenues to the industry but also fund SSA's activities on behalf of the entire domestic shrimp industry, with an extremely minimal cost to the members of the domestic industry.

As a 501(c)6, the organization files annual 990 forms which are available for public review from the Internal Revenue Service.

## Fighting for Fair Trade

On December 31, 2003, the Ad Hoc Shrimp Trade Action Committee, a sub-committee of the SSA, petitioned the Department of Commerce (Commerce) and International Trade Commission (ITC) to determine if six countries were violating U.S. trade laws by selling shrimp into the U.S. market at below fair value, a practice known as dumping. SSA won those trade actions, resulting in antidumping duties being imposed in February 2005 on imported shrimp from Brazil, China, Ecuador, India, Thailand, and Vietnam. However, that was the beginning of SSA's fight for fair trade, not the end.

### Protecting the Antidumping Orders

SSA is the only voice advocating for domestic interests in a wide range of litigation surrounding the shrimp antidumping duties. SSA actively defends the antidumping duties in the administrative reviews and numerous other appeals of the trade actions.

Every year, the Department of Commerce provides an opportunity, called an "administrative review," to identify increases or decreases in unfair trade since the duties were first imposed. Commerce adjusts the antidumping rates based upon the findings of a year-long investigation: more dumping results in higher antidumping rates, and less dumping results in a refund of collected duties.

#### First Administrative Reviews

The final results of the first administrative reviews announced in September 2007 confirmed substantial dumping by a number of companies, but suspended duty payments for a few other companies for the next year. Commerce made numerous changes in policy and, at times, exercised its discretion to favor foreign exporters in the first administrative reviews.

SSA filed appeals with the U.S. Court of International Trade (CIT) in 2008 that challenge Commerce's decisions in calculating the amount of dumping for Thailand and Vietnam.

Various exporters also appealed the first administrative review decisions. In certain cases, SSA is also defending decisions by Commerce that properly measure dumping.

#### Second Administrative Reviews

Commerce issued final results regarding the second administrative reviews of shrimp imported from Thailand, Ecuador, India, Brazil, and Vietnam in August 2008.

#### Why does SSA participate in an Administrative Review?

In each administrative review, SSA's counsel scrutinizes thousands of pages of data and legal arguments submitted by a large number of shrimp exporters. Counsel identifies deficiencies in the information provided by these exporters to the U.S. government—deficiencies which, unless addressed, would result in a failure to address the full extent of dumping occurring in the market—culminating in case and rebuttal briefs submitted to Commerce.

SSA's continued focus on the trade actions is needed because Commerce has limited staff and resources to investigate the amount of dumping in administrative reviews. SSA is able to identify problems and demonstrate the need for continued antidumping duties.

Absent SSA's participation in the review process, the duties undoubtedly would have declined sharply and the U.S. shrimp industry would not get the full relief it deserves under U.S. trade laws.

Incredibly, the second administrative review regarding shrimp from China was terminated because Chinese exporters claimed to have shipped no shrimp subject to the antidumping duty order between February 1, 2006 and January 31, 2007.

SSA appealed to the CIT a number of determinations made by Commerce in the second administrative reviews, such as Commerce's decision to ignore procedures established by the regulations and instead allow a Thai exporter to withhold necessary information without penalty. The effect of that and other Commerce decisions was to reduce the amount of duties owed from more than 15 percent to less than 3 percent. The appeals of the second administrative reviews are in process but decisions are not expected to be issued for a number of months.

### **Third Administrative Reviews**

SSA addressed numerous issues before Commerce in the third administrative review, such as how to measure dumping in non-market economy cases (China and Vietnam), whether companies have allocated costs associated with producing shrimp properly, whether all expenses have been reported, which are the appropriate product comparisons, and how intercompany relationships affect the proper measurement of the amount of dumping. Final results are expected in the summer of 2009.

#### **Didn't SSA settle the first administrative reviews?**

SSA reached agreements with 104 shrimp exporting companies through their legal counsel to withdraw requests for administrative review investigations on shrimp imports between August 4, 2004 and January 31, 2006. Here's how the settlements benefited the U.S. shrimp industry:

TheyIt allowed more than \$100 million of antidumping duties collected on shrimp imports from the 104 companies to be distributed to the U.S. shrimp industry under the Continued Dumping and Subsidies Offset Act (CDSOA or Byrd Amendment) in 2006. Had the administrative reviews continued, the duties would not have been available until the administrative reviews, and all litigation arising from those reviews, had been completed.

1. The antidumping rates for the 104 companies were locked-in for another year, removing the risk that the rates could have decreased. This also saved SSA the cost of defending the rates before Commerce.
2. The exporting companies paid \$18 million to SSA to fund initiatives to help the U.S. shrimp industry. The money provided to SSA was separate from and in addition to the duties paid to the U.S. government and distributed to the industry under CDSOA. SSA did not receive any CDSOA money, which went entirely to the industry. SSA is using the settlement money to pay off debt incurred from the trade actions, fund state marketing programs, and fund future programs to enhance the industry as a whole.

### **Thai Shrimp Appeal to the Court of International Trade**

On March 3, 2005, Thai I-Mei, a Thai shrimp exporter, filed suit at the CIT challenging Commerce's original finding that the company dumped shrimp into the U.S. market. Two years later, the court ruled in favor of Thai I-Mei and ordered Commerce to revisit its original

determination. The agency responded to the CIT's ruling later in 2007, again finding that the exporter had sold shrimp at dumped prices in the United States. Thai I-Mei once again challenged the decision and the CIT again ruled against Commerce.

In October of 2008, SSA submitted extensive comments to Commerce offering alternative methodological approaches that would address the CIT's concerns. In spite of these comments, Commerce issued a decision that decreased Thai I-Mei's antidumping duty to a *de minimis* level (1.88 percent).

If this determination stands, Thai I-Mei's importers will be refunded all antidumping deposits made on Thai I-Mei products (with interest) and Thai I-Mei will be excused from the antidumping order despite the fact that two subsequent administrative reviews of Thai I-Mei's exports to the U.S. confirmed that Thai I-Mei was dumping shrimp in the United States at margins exceeding 2.5 percent.

### **Defending Shrimp Duties after the WTO "Zeroing" Ruling**

In April 2006, the Government of Thailand appealed to the World Trade Organization (WTO) Commerce's 2005 determination of dumping by Thai shrimp exporters. Specifically, Thailand contended that Commerce violated international obligations by using "zeroing," a method of calculating dumping that does not allow normal sales to offset below normal value sales. The U.S. "zeroing" practice does not give credit for following the law, in the same way that a police officer would deny a speeding driver credit for driving under the speed limit at some other time. Ultimately, the WTO ruled that the use of zeroing was inconsistent with U.S. international obligations.

In December 2008, SSA participated in a lengthy hearing and provided extensive legal briefs that offered Commerce alternative calculations which were consistent with both U.S. and WTO rules, and which would result in a proper recognition of dumping margins. Commerce disregarded those legal arguments and determined that the dumping margins were *de minimis* for two of the three Thai exporters examined. The effect of the recalculation by Commerce and implementation by USTR is that two large Thai shrimp exporters are no longer subject to antidumping duties and will be free to export shrimp, even dumped shrimp, to the United States without hindrance.

### **Expanding the Order to Cover "Dusted" Shrimp**

Commerce created a significant loophole in the effectiveness of the trade actions by excluding so-called "dusted shrimp" from the duties. Commerce defined this product as shelled, individually quick frozen shrimp, dusted with between four and ten percent flour.

SSA has opposed the exclusion as a sham that makes getting around the duties simple because the "dusting" is easily removed after purchase, leaving a typical, frozen shrimp.

In 2005, SSA appealed the Commerce's exclusion of dusted shrimp from the antidumping duty orders to the CIT. In 2007 the CIT issued an unfavorable opinion based on a perceived jurisdictional problem without addressing the substance of the complaint. SSA appealed the CIT decision to the U.S. Court of Appeals for the Federal Circuit, which overturned the CIT decision in 2008. Accordingly, SSA's appeal of the exclusion is now back before the CIT awaiting decision on the merits. Closure of this loophole would be an important step in preventing additional volumes of dumped shrimp from entering the U.S. market and harming the domestic industry.

## **Improving Duty Collection**

The U.S. trade laws can only help the domestic shrimp industry if they are enforced. Failure to collect the antidumping duties undermines the hard-won cases brought by SSA and allows dumping to continue to injure America's most valuable fishery. Moreover, a failure to collect duties means that less funds are available for distribution to the domestic industry or to the U.S. Treasury. SSA works with various agencies to ensure the antidumping duties are collected.

SSA has conducted extensive analysis of trade patterns reported in official government statistics and commercial shipment data to detect and identify circumvention of U.S. trade and food safety laws. The data are used by SSA to help enforcement agencies identify and address circumvention of the antidumping orders and food safety laws.

## **Preventing Mislabeling**

Exporters and importers of Chinese shrimp, in particular, have employed a variety of schemes to avoid antidumping duties and FDA control. Substantial transshipment of Chinese shrimp through Indonesian exporters was uncovered by the investigatory work of Immigration and Customs Enforcement (ICE). CBP and ICE, at the request of SSA, prevented Chinese shrimp falsely labeled as "dusted" from entering the United States duty-free.

CBP's actions resulting from SSA's allegations and demonstration of circumvention of the antidumping duty order for Chinese shrimp resulted in the collection of millions of dollars in antidumping duties that would have otherwise gone unpaid.

In 2008, lawsuits began to be filed with the CIT attempting to prevent CBP from collecting antidumping duties owed on this falsely-labeled shrimp. Although official intervention in these cases by domestic industry groups is not permitted by U.S. law, SSA is monitoring these suits to ensure that the trade laws are vigorously enforced.

### **CBP Recognizes SSA's Help in Preventing Mislabeling**

The CBP's Report to Congress on Plans to Increase AD/CVD Collections and AD/CVD Enforcement Actions and Compliance Initiatives states:

Based on an allegation from the domestic shrimp industry, CBP conducted a special operation centered on cargo examination and lab analysis to determine whether imports from China were being misdescribed as "dusted" shrimp so that the shipments would fall outside of the scope of the AD order. CBP's operation confirmed the allegation. CBP determined that fourteen importers evaded the AD order, resulting in \$5 million in lost revenue. CBP recently completed this operation and has initiated procedures to collect the lost revenue and issue penalties. Further investigations with ICE and penalty processing are underway.

## **Identifying Transshipment**

After CBP's extensive efforts to mitigate the harm created by Commerce's ill-conceived "dusted" shrimp exclusion, exporters and importers of Chinese shrimp have attempted to circumvent U.S. trade and food safety laws largely by labeling the shrimp as the product of another country. In

2008, SSA continuously consulted with CBP officials regarding trade pattern changes that suggested circumvention of U.S. law. Some of these consultations resulted in formal allegations of illegal violations against specific importers.

CBP has taken enforcement action to address transshipment schemes from multiple countries. For example, CBP's analysis determined that significant quantities of shrimp ostensibly exported from Indonesia by a company named CP Prima was, in fact, Chinese in origin.

### **GAO Recognizes SSA's Help in Identifying Transshipment**

The Government Accountability Office's 2009 Report on Seafood Fraud states:

On the basis of industry information and CBP and ICE investigations, CBP determined that Chinese shrimp was being transshipped to the United States through Malaysia. Due to this illegal transshipment, importers of Chinese shrimp were able to circumvent not only the 2005 antidumping duty but also FDA's recent import alert. In September 2007, CBP tested shipments of suspected Chinese shrimp illegally transshipped through Malaysia for the presence of unapproved drugs and found some contaminated shrimp.

### **Defending Enhanced Bonding Requirements**

CBP, based on a well-documented and persistent failure to collect all antidumping and countervailing duties, particularly on agriculture and aquaculture products, implemented an enhanced bonding program for the shrimp antidumping duty orders to increase the likelihood that such duties would be collected. This program, intended as a pilot, reasonably required that parties importing shrimp subject to antidumping duties obtain a bond in the amount of duties expected to be paid on imports in the prior year.

Thailand and India separately appealed to the WTO claiming the enhanced bonding requirement violated international trade obligations. The WTO erroneously determined that the enhanced bonding program was an impermissible "measure against dumping" and, in essence, held that the United States could take no measures to protect itself against a failure to collect duties unless it could predict with certainty that duties ultimately owed would exceed the deposits made at entry.

SSA encouraged the USTR to appeal the initial decision and provided analysis of the decision's legal inadequacies. Ultimately, the WTO Appellate Body reached a conclusion similar to the lower panel and set a deadline for U.S. compliance of April 1, 2009.

SSA sought to work with CBP to develop a viable, WTO-consistent program for mitigating the harm of undercollection of antidumping duties. Unfortunately, CBP's reaction has not been to seek an alternative bonding measure that would be both consistent with WTO obligations and effective in protecting the ability to collect all duties owed. Rather, CBP has announced in a Federal Register notice that it intends to terminate the enhanced bonding program without proposing any substitute or alternative.

### **How Does Enhanced Bonding Help the U.S. Shrimp Industry?**

When CBP fails to collect shrimp antidumping duties, the U.S. shrimp industry is denied relief from unfair trade.

The enhanced bonding requirement was designed to help CBP collect antidumping duties and enforce U.S. trade laws. Even with the enhanced bonding program, CBP reports that the agency failed to collect \$42.5 million in assessed antidumping duties on shrimp imports in fiscal year 2008. The amount of uncollected duties actually exceeded the amount of duties collected on shrimp imports.

SSA continues to work with CBP and Congress to collect all antidumping duties assessed on imported shrimp.

Disturbingly, CBP announced its intent to remove the enhanced bonding requirement at the same time as it announced substantial difficulty in collecting antidumping duties. SSA submitted public comments to the agency criticizing the announcement.

### **Addressing Child Safety and Labor Abuses**

Child and forced labor is a serious problem in some shrimp exporting countries. The use of such labor is not only morally repugnant but also has a direct trade impact in that it provides an unfair cost advantage to producers who exploit such workers. In addition, imports produced by such labor can be excluded from entry into the United States and other restrictions may also apply. Accordingly, in response to a request for comments, SSA researched and filed extensive comments with the U.S. Department of Labor ("Labor") on June 11, 2008 regarding evidence of child and forced labor in the production of shrimp exported from countries such as Thailand. Labor was taking an initial step in compiling a list of products that may be produced by child or forced labor. Such products would be monitored by Labor and the list compiled would be published. Link to comments at: <http://tinyurl.com/SSA-Child-Safety>.

### **Summary of SSA's Fight for Fair Trade**

SSA has prosecuted and defended the antidumping duties imposed to respond to unfair pricing, and provided information and analysis to multiple government agencies to respond to illegal evasion of the duties.

Absent SSA's actions, the duties undoubtedly would have declined precipitously, federal agencies would have had little incentive or information to discover evasion efforts, and Byrd distributions would have been reduced and even more distorted.

## Fisheries Management

The U.S. brown, white, pink, rock and royal shrimp fisheries are managed in federal waters by a very complex regulatory process as authorized in the Magnuson-Stevens Fishery Conservation and Management Act. The primary regulatory bodies include the Gulf of Mexico Fishery Management Council, the South Atlantic Fishery Management Council, and fishery scientists and managers at the National Marine Fisheries Service (NMFS), which is a sub-agency of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce.

### How is the shrimp industry managed?

Fisheries Management Councils include diverse representatives from the state governments, federal agencies, commercial and recreational fishing industries, and the environmental community that are appointed by the Secretary of Commerce. Each Council also appoints representatives from industry and other stakeholders to serve on an array of Advisory Panels to provide input and expertise into the Council decision-making process.

Each year, Fisheries Management Councils hold a minimum of four week-long meetings during which they develop what are often very complex science-based conservation and management measures for the various shrimp fisheries as well as for bycatch (e.g. red snapper, sea turtles) in these fisheries.

These measures are recommended to the National Marine Fisheries Service (NMFS) for approval and implementation through a formal federal rulemaking process. This time-consuming process is both highly technical and intensely political.

### Representing U.S. Shrimp Fisheries

Through its representatives, members and staff, SSA participates extensively and aggressively in the Fisheries Management Councils and federal rulemaking processes on behalf of the domestic shrimp industry, serving in roles of public stakeholder and as Council and Advisory Panel appointees. SSA has contributed substantial shrimp industry expertise and influence in this process which had previously been dominated by strongly anti-shrimp industry sentiment and politics.

Unlike many other fishery stakeholders, SSA has taken the progressive approach of working cooperatively and extensively with federal scientists and managers and in coalition with other stakeholders in the development of management measures that achieve stringent statutory conservation requirements for shrimp and bycatch, but which also minimize adverse social and economic impacts on the shrimp fishery.

SSA also prepares and submits detailed comments on all federal fishery management rulemakings that directly affect the domestic shrimp fisheries including Fishery Management Plan Amendments, Draft and Final Environmental Impact Statements, and Proposed and Final Rules and Interim Rules. When appropriate, SSA also engages Congressional Members and staff in this process.

### **Important Management Achievements 2008**

SSA's comprehensive participation in the fishery management process has produced many positive results for the domestic shrimp fishery. SSA has become the definitive and highly-effective voice of the domestic shrimp industry in this difficult political and regulatory process. Important achievements include:

- Prevented the imminent closure of critical fishing grounds in the Gulf brown, white and pink shrimp fisheries while achieving bycatch reductions necessary to rebuild the Gulf red snapper stock.
- Prevented the closure of the South Atlantic royal red shrimp fishery while protecting deep sea corals through the development of Habitat Areas of Particular Concern.
- Repealed and revised draconian permit requirements on the South Atlantic rock shrimp fishery in order to enable this fishery to achieve its optimum yield.
- Substantially mitigated any adverse impacts of offshore aquaculture development on Gulf and South Atlantic shrimp fisheries.

A compliment to SSA's participation in the federal fishery management process is its participation in the legislative process in the U.S. Congress.

### **Important Legislative Achievements 2008**

As in the fishery management process, SSA has become the definitive and highly-effective voice of the domestic shrimp industry in the development and consideration of any federal fishery management legislation before Congress. Significant results include:

- Prevented the application of new statutory requirements for setting annual catch limits on all U.S. fish stocks to shrimp species, which would have had substantial and scientifically unjustified adverse impacts on domestic shrimp fisheries.
- Secured substantial annual appropriations to support federal research on shrimp fishing effort and bycatch that is central to the federal red snapper rebuilding program in the Gulf.
- Secured a delay and reconsideration of the application of draconian EPA discharge permit requirements to shrimp fishing vessels.

## **Addressing Permit and Gear Requirements**

### **Rock Shrimp Permit Requirements**

SSA spearheaded the ongoing effort to revoke the "Use it or lose it" policies hindering the rock shrimp fishery. Amendment 7 plans to remove the 15,000-pound rock shrimp landing requirement, reinstate all endorsements lost due to not meeting the landing requirement of 15,000 pounds of rock shrimp in one of four consecutive calendar years, and reinstate all endorsements for those who renewed their permit in the year in which they failed to renew their endorsement.

### **Operator Permits**

Unnecessary and burdensome bureaucracy was averted when SSA opposed new requirements for operators of shrimp vessels to have federal "Operator Permits." At SSA's request, NMFS confirmed that the proposed permit would not shield boat owners from costly penalties under the Magnuson Stevens Act, which was the primary reason the Gulf Council considered the adoption of new requirements for operators of commercial, charter and headboat vessels to obtain a federal permit. SSA also asked NMFS to consolidate information about past violations by operators on its website to assist vessel owners seeking to make educated decisions about whether or not to hire a captain. This would resolve the problem of scattered public information that faces vessel owners.

### **NPDES Permits**

In early 2008, a District Court decision revoked a longstanding exemption for commercial and recreational vessels from a requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act.

SSA participated in the coordinated effort to secure commercial vessel exemptions that were strongly opposed by the environmental community and resisted by the recreational boating community. Congress restored an exemption from the federal and state permitting requirements under the Clean Water Act for the U.S. shrimp industry—an act once thought to be politically impossible.

The legislation provides a 2-year moratorium on permits for all commercial fishing vessels of any size and for all other commercial vessels of 79 ft or less. It also requires the EPA, working with the Coast Guard, to conduct a 15-month study to evaluate the impacts of various discharges from vessels and report their findings to Congress for the purposes of making final decisions on vessel discharge permit requirements. SSA is currently working cooperatively with the EPA to secure SSA-member vessels for participation in this critical study.

### **Bycatch Reduction Devices**

NMFS decertified the Expanded Mesh and the Gulf Fisheye bycatch reduction device (BRD) designs in 2008 because the devices do not meet current BRD certification criteria. However, workshops testing currently certified BRDs show few, if any, BRDs can reliably meet the criteria to reduce finfish bycatch 30 percent by weight, which suggests the criteria must be reconsidered given current technology.

SSA has asked that NMFS perform a new, updated bycatch practicability analysis to determine if current BRD requirements exceed and are thus inconsistent with the Magnuson-Stevens Act bycatch reduction criteria.

## **Influencing Fisheries Management Plans**

### **Fisheries Ecosystem Plan**

Initial proposals by the South Atlantic Fisheries Management Council to develop a Fisheries Ecosystem Plan that protects deep sea coral threatened to eliminate access to traditional royal red shrimp harvesting grounds. However, after SSA's negotiations with the South Atlantic Fisheries Council, NMFS and other interest groups, a Habitat Area of Particular Concern was developed to protect important coral while preserving the fishery's traditional fishing grounds through the establishment of a Shrimp Fishery Access Area.

### **Red Snapper Management**

On January 29, 2008, the National NMFS published final regulatory actions to reduce the red snapper catch, bycatch, and discard mortality in the directed commercial and recreational fisheries, as well as in the shrimp fishery. These regulations are designed to ensure a reasonable probability of ending red snapper overfishing by 2010 and rebuild the stock by 2032 in accordance with new Magnuson-Stevens Act mandates. The rule required that shrimpers reduce red snapper bycatch mortality by 74% from the average levels five years ago in the 10-30 fathom areas of the western Gulf.

Initially, the Gulf Council was developing plans to shut down vast areas of the shrimp fishery but SSA worked successfully with the Council and NMFS to redesign a bycatch reduction strategy targeting only key juvenile red snapper habitat areas and thereby keeping the fishery open. SSA was also successful in building into the rule a relaxation of the shrimp bycatch reduction requirement as the red snapper stocks recover. Due primarily to market conditions and careful monitoring of the location of shrimp fishing effort, no regulatory reductions in shrimp effort are expected to be necessary to meet the goals set in the Management Plan.

### **Blacknose Shark Management**

In 2008, NMFS announced a surprising new stock assessment that finds blacknose shark is overfished and overfishing is occurring, which triggers an aggressive fishery management response under the Magnuson-Stevens Act. According to the report, 30-62 percent of the fishing mortality of this species is due to shrimp trawl bycatch in the Gulf of Mexico and an additional 4-7 percent is attributable to shrimp trawl bycatch in the South Atlantic. The potential management response may have profound implications for Gulf and South Atlantic shrimpers.

SSA funded a comprehensive scientific analysis of the federal stock assessment for blacknose sharks. SSA also conducted an in-depth review of trawl video used to sensationalize this issue and showed that 83% of the sharks escaped from turtle excluder devices that are widely used throughout the industry today. SSA will continue to work to prevent the application of draconian federal regulatory requirements concerning bycatch of blacknose sharks.

### **Loggerhead Turtle Recovery Plan**

SSA responded in July 2008 to a deeply flawed draft loggerhead turtle recovery plan, which includes offensively outdated data on the U.S. shrimp industry. The report's threat analysis relies primarily on trawl fisheries data from a 1990 study and ignores data published by NMFS in November 2002. By utilizing such old data, the government agencies effectively ignored the 1994 requirement for shrimpers to use turtle excluder devices (TEDs), the 2003 regulation to implement new, larger TED openings, and the dramatic change in shrimping effort. The result is a grossly overstated impact of the shrimp industry on the health of the loggerhead turtle and a distorted recovery plan.

### **Loggerhead Turtle Reclassification**

SSA submitted comments to NMFS opposing the reclassification of the Western North Atlantic loggerhead turtle as a "distinct population segment" that deserves endangered species status and critical habitat protections in all state and federal land and water used by the species. There appears to be a decline in nesting across all subpopulations of the loggerhead turtle. However, SSA noted that this figure alone does not indicate the species' health and requested that NMFS look at more robust indicators, such as abundance data, to determine the events that are causing (or caused) the decline in nesting females.

### **Artificial Reef Placement**

SSA has been collaborating with several counties on the development of two proposed artificial reefs located just south of Cape Canaveral in St. Lucie and Martin counties in Florida. The initial sites chosen for both reefs cut directly across productive rock shrimp fishing grounds used by Atlantic coast and Gulf coast fishermen.

In St. Lucie, the site has been moved two times and the County is now working on its third site revision. Site revisions have been based primarily on the information presented by SSA. The third revision appears satisfactory to several rock shrimpers.

Martin County is earlier in the process. SSA notified fishermen of the site's placement and provided input to the environmental consulting firm handling the site development.

### **Offshore Aquaculture**

A plan submitted by the Gulf Council to Commerce to set rules for offshore aquaculture development in the Gulf of Mexico excludes brown, white, pink and royal red shrimp from the list of eligible species for offshore aquaculture because SSA successfully argued that it would negatively impact U.S. shrimp stocks.

Also in response to SSA's recommendations, the Council adopted two important improvements to their Offshore Aquaculture Plan. First, the Council added new requirements to use Electronic Logbook data on the shrimp fishery and otherwise strengthen the criteria for siting aquaculture facilities in order to protect shrimp fishing grounds. The second measure would require NMFS to provide written notice and a public comment period when considering offshore aquaculture permit and siting applications to ensure that the shrimp industry has a voice in that process.

## **Summary of SSA's Participation in Fisheries Management**

SSA has undertaken (a) detailed analysis of proposals and supporting information presented by parties opposed to continued shrimp fishing, (b) funding of scientific studies, (c) securing appropriations for federal research and marketing, and (d) sustained participation in rulemaking and the legislative process.

Absent SSA's active involvement, fisheries would undoubtedly have been closed or severely restricted, often on scientifically unjustified information, and unnecessary and harmful constraints would have been imposed on shrimp fishermen. Such outcomes would have had disastrous impacts on the economic condition of the domestic shrimp industry.

## Enhancing Food Safety

SSA has demonstrated that the relatively lax U.S. imported food safety regime and the widespread use of banned substances to increase the production of foreign pond-raised shrimp combine to make the United States market a dumping ground for contaminated and likely contaminated shrimp imports. As a result, the health of American consumers and the economic viability of the domestic shrimp industry are gravely threatened.

### Providing Enforcement Solutions

Foreign producers of pond-raised shrimp have powerful economic incentives to use banned substances, such as antibiotics and pesticides, to increase production yields in crowded shrimp ponds and to reduce the risk of total crop failure. Use of these banned substances and various subsidies encourage overproduction and below fair market pricing.

The European Union (EU), Canada, and Japan, have strict food safety regimes that have repeatedly found banned substances in farm-raised shrimp imports. Every major shrimp importing country, except the United States, has taken action to prevent contaminated shrimp from entering their markets. Foreign pond-raised shrimp that is or may be contaminated is diverted to the U.S. market because of the relatively lax U.S. testing of imports. For example, the massive surge of U.S. imports from China in 2002-2004 was due in substantial part to the closure of the EU market to Chinese imports after banned antibiotics were detected.

### Legislation and Research

SSA has helped shape the debate on food safety and related legislation by providing a comparative analysis of the imported food safety regimes of major importing markets such as the EU, Canada, and Japan, and compiling research on topics such as seafood production food safety hazards, actions taken by importing markets, and strategies of parties seeking to avoid complying with U.S. food safety laws. SSA developed a set of preferred elements against which any proposed legislation should be judged, and discussed those elements and the results of its research with interested offices in Congress. SSA also commented on various proposed legislation regarding food safety, particularly as they relate to regulation and trade in seafood.

#### An Authority on Food Safety

SSA is a leading source of information on imported seafood safety for Congress, enforcement agencies, and the media due to its extensive research.

The side-by-side comparison of the food safety systems in the EU, Japan, Canada, USDA and FDA prepared by SSA has been a major agent of change because it clearly identifies weaknesses in FDA.

SSA's research has been used by *USA Today*, *Boston Globe*, *Chicago Tribune*, and other major media outlets in investigative stories revealing schemes to evade U.S. trade and food safety laws.

### House Energy & Commerce Committee Testimony

In February 2008, SSA Executive Director John Williams testified before the Subcommittee on Oversight and Investigations of the Energy & Commerce Committee in the U.S. House of Representatives. The Executive Director provided testimony regarding the failure of FDA to protect U.S. consumers from massive amounts of harmful imported seafood, including shrimp. In particular, the testimony condemned the minimal testing of imports conducted by FDA and contrasted lax U.S. controls on imported seafood with stringent controls imposed on imports by

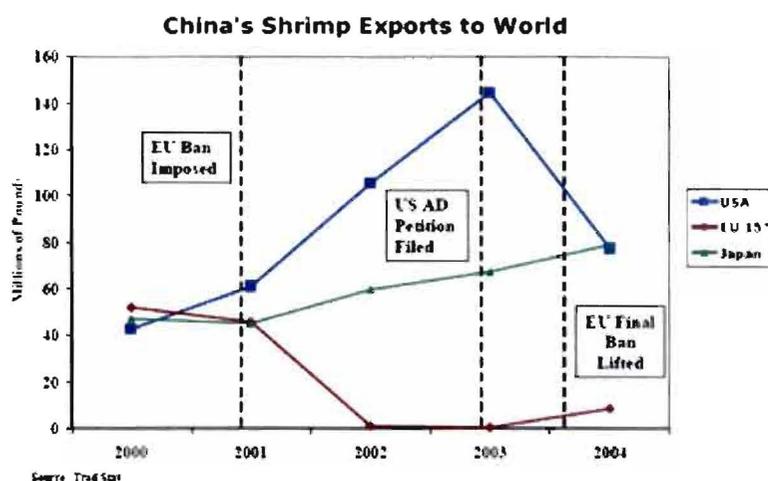
such major importing markets as the EU, Canada, and Japan. In short, stringent foreign controls and lax U.S. controls encourage the diversion of harmful or likely contaminated seafood products including shrimp to the United States. The Executive Director urged Congress to enact meaningful food safety reforms, based on SSA's 11-point legislative proposal. Link to testimony and legislative proposals at <http://tinyurl.com/2-08testimony>

	EU	Japan	Canada	USDA	FDA
Equivalence Required	✓	✓	✓	✓	
Country Certification	✓	Partial		✓	
Producer Certification	✓	✓		✓	
Designated Ports of Entry	✓	✓	✓	✓	
Percentage of Testing (Shrimp)	Up to 100	25-100	5-100	N/A	~1
Absolute Ban on Imports from a Non-Compliant Country	✓	✓		✓	
Marking of Rejected Shipments	✓			✓	
Time Between Rejection and Enforcement	60 days		45 days	45 days	>348 days
Mandated Inspection Rates	✓	✓	✓		

### U.S.-China Economic and Security Commission Testimony

In April 2008, SSA Executive Director John Williams testified before the U.S.-China Economic and Security Commission at a field hearing in New Orleans on "Chinese Seafood: Safety and Trade Issues." SSA provided testimony regarding Chinese government subsidies to shrimp and seafood, and the incentives for diversion of contaminated shrimp and seafood to the United States given lax U.S. food safety enforcement.

As an example, the testimony noted that the EU's actions against Chinese shrimp imports, with increased scrutiny in 2001 culminating in a 2002 ban on these imports resulted in a massive increase in Chinese shrimp imports into the United States (from 59 million pounds in 2002 to 169 million pounds in 2004). These shrimp, overwhelmingly pond-raised and subsequently found by FDA to require an import safety alert, threaten U.S. consumers with banned contaminants. In addition, these imports also harm the U.S. shrimp industry by severely undercutting the market price and creating the perception that all shrimp, regardless of source, may be tainted.



The testimony also explained the serious problems that have been uncovered regarding transshipment of Chinese shrimp to avoid duties and food safety controls, the inability of U.S. authorities to collect the duties owed on Chinese shrimp, and other problems with enforcement of U.S. laws regarding Chinese shrimp. SSA's issues and concerns were prominently discussed in the Commission's Annual Report release in November 2008. Link to the testimony <http://tinyurl.com/4-08testimony>; Commission report <http://tinyurl.com/CommissionReport>.

### Encouraging International Cooperation

In November 2008, SSA submitted a letter to the USTR urging the United States to address continuing violations of U.S. food safety and fair trade laws, particularly by foreign shrimp producers, with member countries of the Asia-Pacific Economic Cooperation (APEC) at its Ministerial Meeting. SSA urged the USTR to address the use of banned and harmful substances in the production of shrimp, transshipment of shrimp to evade antidumping duties and food safety import alerts, and subsidization of foreign shrimp production that artificially stimulates production beyond market demand. Link to the letter <http://tinyurl.com/11-08Letter>.

## **Developing Standards and Testing**

SSA is a primary sponsor and partner in efforts by the Association of Analytical Communities (AOAC) International to develop testing methods and standards to identify various harmful contaminants in seafood (and shrimp in particular).

Development of efficient, consistent, inexpensive, and reliable tests and test methods will assist in the monitoring of shrimp imports by federal and state officials, and will facilitate greater testing of imported products. For example, the veterinary drug chloramphenicol is banned from use in the production of shrimp yet it is known to be used in shrimp aquaculture and frequently discovered in imported shrimp. The FDA has not set any minimal level that is deemed harmless and instead has determined that the presence of this drug in any concentration is prohibited. A cheap and easy test for banned substances will lead to greater testing, and in turn, will decrease the benefits of using banned antibiotics in the production of farmed shrimp.

In September 2008, SSA attended the launch of AOAC's seafood initiative. Working with state government officials concerned about the safety of imported seafood, SSA assisted in the development of standards intended to guide the creation of new testing methodologies that may permit greater detection of contaminants in harmful seafood.

## **Defending Rules of Origin**

CBP has proposed changes to the standards for determining the country of origin of various imported goods, including shrimp. The proposed rules do not account for the food safety concerns relating to how a product such as shrimp is produced. For example, the proposed rules would allow the country of origin to be determined by the country in which shrimp was cooked, rather than the country in which it was raised, even though the primary concerns with contamination from antibiotics for example relate to where the shrimp was raised.

SSA submitted comments opposing reliance on "tariff shift" rules to determine the country of origin of shrimp. The comments recounted the current context of the shrimp market regarding overproduction of foreign pond-raised shrimp as a result of foreign production subsidies, widespread use of banned substances to increase production yields, and transshipment of shrimp through third country markets to evade antidumping duties and FDA food safety import alerts. Read SSA's comments at <http://tinyurl.com/dj4nbg>.

### **Summary of SSA's Efforts to Improve Food Safety**

SSA has shaped the debate on food safety and related legislation through research, written analyses, briefings, and Congressional hearing testimony. SSA is acknowledged as the primary producer organization seeking to improve U.S. law with well-founded proposals for statutory change.

## Industry Enhancement Efforts

In addition to the trade and management issues, SSA works on a variety of other national issues in an effort improve the environment in which the U.S. shrimp industry conducts its business.

### **Protecting the Continued Dumping and Subsidies Offset Act**

CDSOA, also known as the Byrd Amendment, allows antidumping and countervailing duties imposed on unfair trade to be distributed to the "affected domestic producers" that supported the trade action. The law was designed in 2000 to help U.S. industries, which demonstrated the negative impact of dumped or subsidized imports had on prices, recover from the years of damage incurred before U.S. trade laws were invoked. The WTO ruled that the law violated international trade agreements, which lead to the repeal of the law.

Antidumping duties imposed on shrimp that entered the United States before October 1, 2007 are distributed each year to members of the domestic shrimp industry who are identified by the U.S. International Trade Commission as "affected domestic producers." CBP manages the distributions, which are made once a year.

SSA has worked to maximize the amount of funds distributed to the U.S. shrimp industry under CDSOA, urged proper administration of that statute by CBP through verification and other actions, and ultimately, filed litigation to prevent CBP from making further distributions until it has addressed a number of problems.

### **Distributions of CDSOA**

The vast majority of CDSOA funds available to the domestic shrimp industry have been, to date, distributed to a small number of claimants, some of whom have submitted claims that raise significant questions regarding accuracy. In result, the benefits of the CDSOA program have not accrued to the benefit of most of the industry.

Abuse of the CDSOA program has largely been attributed to CBP's inability and historic unwillingness to verify claims made by parties seeking CDSOA funds. SSA has also met extensively with CBP officials in efforts to improve the agency's administration of the CDSOA program.

Notwithstanding these efforts, CBP failed to institute a number of changes that would discourage abuse of the system nor has it conformed its distribution process to be consistent with law.

SSA's concerns about fraud in the distribution process were recently highlighted by the guilty plea of a shrimp processor in a Louisiana federal court following an investigation conducted by NOAA law enforcement of the processor's submission of a false claim seeking CDSOA funds. In pleading guilty, the processor indicated that a false claim had been submitted because he believed that there was little chance that CBP would actually check his claims.

After working with limited success to address concerns regarding the FY 2006 and FY 2007 distributions, SSA filed suit at the CIT in November 2008 challenging numerous aspects of CBP's administration of the CDSOA program. SSA's suit also sought to prevent improper distributions for FY 2008. By demanding that CBP comply with the law, SSA's litigation seeks to increase the distributions to eligible members of the industry by excluding ineligible members,

recapturing improper payments, implementing disincentives for abuse and fraud, and reversing improper legal interpretations that have guided CBP's disbursements of CDSOA funds. As of the date of this report, the CIT has issued a preliminary injunction that prevents the distribution of antidumping duties collected from the shrimp antidumping duty orders in fiscal year 2008. The preliminary injunction is scheduled to expire, if not extended, on April 15, 2009.

### **Definition of "Affected Domestic Producer"**

A series of lawsuits have been filed before the CIT by a number of shrimp purchasers, several of whom primarily import shrimp, seeking to be declared eligible to receive CDSOA funds. These lawsuits allege that the CDSOA's requirement that an applicant be an "affected domestic producer" (*i.e.* a party that expressed public support for the petition for relief from dumped imports at the U.S. International Trade Commission) as a prerequisite to receiving distributions is unconstitutional.

SSA has sought to intervene in two cases filed by shrimp purchasers in May 2008 and is monitoring three cases filed by other shrimp purchasers later in the year. Each of these cases has been stayed pending final resolution of related litigation brought challenging the "affected domestic producer" requirement by other industries receiving CDSOA funds. A CIT decision finding the requirement unconstitutional was recently reversed by the Court of Appeals for the Federal Circuit.

Companies purchasing imported shrimp will likely receive the majority of funds available under CDSOA instead of U.S. shrimp producers if these lawsuits are successful. SSA has opposed the removal of any standards in the distribution of CDSOA funds. Elimination of the statutory standards guiding distribution of CDSOA funds would allow companies benefiting from dumped shrimp imports to also receive the largest portion of the antidumping duties collected to offset such unfair trade. The U.S. shrimp industry, which constitutes no more than ten percent of the U.S. market for shrimp, would receive an extremely small portion of funds available under CDSOA if the misguided efforts of some parties are successful. As these standards have been weakened, larger and larger portions of CDSOA funds are being set aside for businesses that benefit from dumped imports to the detriment of the domestic industry.

### **Reinstate the Law**

SSA supports the reinstatement of CDSOA, with necessary changes to address the concerns of the WTO and problems with distribution and enforcement. The CDSOA provides necessary funds to the struggling shrimp industry to deal with the damage inflicted by unfair trade without burdening U.S. taxpayers.

## **Creating New Markets for U.S. Shrimp**

### **USDA Procurement Program**

Since 2003, the U.S. Department of Agriculture (USDA) has spent nearly \$155 million procuring seafood products for government programs like the school lunch program. SSA has been working with the USDA's Agricultural Marketing Service to have shrimp included in the commodity purchase program.

### **Marketing Programs**

Through marketing, the U.S. shrimp industry can create niche markets that allow U.S. shrimpers to demand a higher price for superior product. SSA used part of the revenue from the first administrative review settlements to support state marketing programs.

In addition, SSA requested federal appropriations for national marketing efforts of wild caught American shrimp.

## **Confronting Barriers to Business**

### **H2B Visas**

Certain segments of the domestic shrimp industry rely on immigrant labor to address seasonal fluctuations in demand as well as limited availability of skilled and reliable crew. The H2B visa program can provide a solution but is severely limited by an annual cap of 66,000 visas which is insufficient to meet the demands of the shrimp industry along with many other industries. Inconsistencies between the duration of H2B visas and the timing of the visa release process have also made it difficult for shrimp industry businesses to secure visas when needed.

SSA continues to seek and support legislative opportunities in the 111th Congress as it did in the previous Congress to renew and extend an expired exemption from the annual cap for returning workers to allow for a greater and more reliable supply of skilled labor, including by working with other industries and coalitions with similar interests. Repeated efforts by Congress to pass this legislation have been blocked largely by the Hispanic Caucus due to unrelated concerns over comprehensive immigration reform policy.

### **Health Care Legislation**

The availability of affordable and reliable health care for all U.S. fishermen has become an unusually serious problem. SSA joined other U.S. fisheries in support of "The Commercial Fishing Industry Health Care Coverage Act of 2008" by sending letters to the membership's U.S. Senators and Representatives. The legislation would allow states and organizations to develop health plans based on regional needs and provide affordable, quality coverage to fishing families. Success in this endeavor will not only benefit all shrimp fishermen in the southeast, but all U.S. fishermen and their families.

## **Facilitating Communication**

### **Industry**

In 2008, SSA attended several commercial fishing meetings to update industry participants as to the latest activities by the organization and with regard to numerous issues that affect them and their businesses. This year, Shrimp Association Annual Meetings were attended in Georgia and

South Carolina as well as a meeting of the Shrimp Producers Association (northeast Florida). On the Gulf coast, information was presented in Tampa at the Gulf and South Atlantic Fisheries Foundation as well as throughout the Florida panhandle at dockside workshops. Similar dockside meetings with fishermen were conducted widely along the North Carolina coast.

SSA also produces an electronic newsletter that is e-mailed to its membership and posted on its public website on a monthly basis. A hard copy is sent to members without an e-mail address. Breaking news and other important updates are sent throughout the month as needed.

### **Congress**

In addition to communicating with the U.S. shrimp industry, SSA helps the industry maintain continuous communications with U.S. Senators, Members of the House of Representatives, Congressional Committees and key staff members in their home districts and Washington, DC. SSA helps provide information to the U.S. shrimp industry to present to elected officials in addition to their personal expertise.

Each spring, SSA also coordinates a DC Fly-In to provide SSA members the opportunity to bring priority issues directly to Congress and the Administration. While in the nation's capitol, SSA hosts a low country shrimp boil to provide congressional offices and federal agencies with the opportunity to meet shrimping families from their districts and to sample some U.S. wild-caught shrimp.

## **Summary of SSA's Industry Enhancement Efforts**

SSA is the only organization working to address the inequitable distributions of CDSOA and to ensure that future payments result in more money in the pocket of legitimate U.S. shrimp producers. Throughout 2008, SSA represented the business needs of commercial fishermen and businesses before elected officials and worked on developing new markets and demand for U.S. shrimp products. In addition, the organization has brought attention to other needs of the U.S. shrimp community, such as access to immigrant labor and affordable healthcare.

## **Conclusion**

SSA's legal and legislative efforts prevented the threatened closure or severe restriction of fisheries in the South Atlantic and Gulf of Mexico, educated policy makers regarding the threat posed by contaminated imported shrimp, and preserved duties and on unfairly traded imports. Since its inception, SSA has also imposed duties on unfairly traded imports, secured the distribution of over \$140 million to members of the domestic shrimp industry, and obtained vital federal appropriations for national marketing efforts of wild-caught American shrimp among other achievements. SSA looks forward to bringing the voice of the U.S. shrimp industry to legislators and regulators in 2009 and serving America's most valuable fishery.

## Terms

<b>Administrative Reviews</b>	An annual investigation by the Department of Commerce to determine whether the actual amount of unfair trade was greater than or less than the duty rate. The Review may result in duties being increased, decreased, or remaining the same.
<b>Antidumping Duties</b>	A tax imposed by the U.S. government on imports that have been found (1) to be sold for less than fair value, and (2) to cause injury to the domestic industry.
<b>BRD</b>	Bycatch reduction device.
<b>CDSOA</b>	The Continued Dumping and Subsidies Offset Act, also called the "Byrd Amendment" after its sponsor Senator Byrd. The repealed U.S. law allows duties collected on imports before October 2007 to be distributed to U.S. producers that supported trade actions.
<b>CIT</b>	The U.S. Court of International Trade, which rules on appeals regarding U.S. trade laws.
<b>Commerce</b>	The Department of Commerce, which determines whether or not U.S. trade laws have been violated.
<b>Dumping</b>	The practice of selling a product into the U.S. market for less than fair/normal value or below the cost of production.
<b>ICE</b>	The Department of Homeland Security's Immigration and Customs Enforcement, which helps identify illegal imports.
<b>ITC</b>	The International Trade Commission, which determines whether a domestic industry is injured by unfair trade.
<b>NMFS</b>	The National Marine Fisheries Service, a department of the National Oceanic and Atmospheric Administration that oversees the U.S. shrimp industry.
<b>Gulf Council</b>	The Gulf of Mexico Fisheries Management Council, which regulates the U.S. shrimp industry and other fisheries in federal waters of the Gulf of Mexico.
<b>South Atlantic Council</b>	The South Atlantic Fisheries Management Council, which regulates the U.S. shrimp industry and other fisheries in the federal waters of the Atlantic.
<b>USTR</b>	The United States Trade Representative, which negotiates trade agreements.
<b>WTO</b>	The World Trade Organization, which determines whether actions to impose restrictions on trade by a country are consistent with international trade agreements.



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