

December 27, 2009

Domestic Industry and Thai Frozen Foods Association Submit Joint Request for Revocation of Antidumping Order on Shrimp from Thailand

Questions & Answers

On Tuesday, December 22, the Ad Hoc Shrimp Trade Action Committee (AHSTAC) and the Thai Frozen Foods Association (TFFA) jointly re-submitted a request to the U.S. Department of Commerce to initiate a changed circumstances review to determine whether to revoke the antidumping order on shrimp imports from Thailand. The joint submission was accompanied by 747 letters of support from all segments of the industry, across the entire geographic reach of the domestic warmwater fishery. In addition to a letter of support from the Southern Shrimp Alliance (SSA), ten additional associations representing the shrimp industry also submitted letters in support of revocation of the antidumping duty order. The balance of support expressed by the domestic industry came from processors and unloading docks (88 in total) and shrimp fishing vessels (647 letters on behalf of 812 vessels).

The request for the initiation of a changed circumstances review is being opposed by the American Shrimp Processors Association (ASPA). This opposition has raised a number of questions regarding the significance and meaning of the request for a changed circumstances review and the potential impact of revocation of the order on the domestic industry. As this issue is of vital importance to the future of the domestic shrimp industry, this document seeks to address some of the most frequently asked questions regarding the joint request and the proposed settlement. To the extent that anyone within the industry has additional questions or concerns not addressed below, please contact SSA directly at 727-934-5090 or via electronic mail at john@shrimpalliance.com.

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Q: *Does the submission of a joint request mean that the antidumping duty order on Thai shrimp will be revoked?*

A: **No.** The request for the initiation of a changed circumstances review simply asks the U.S. Department of Commerce to begin an administrative process for considering whether revocation of the antidumping duty order is appropriate under law.

Q: *Has Commerce already rejected an earlier request by the domestic industry to revoke the antidumping duty order on Thai shrimp?*

A: **Yes.** Commerce declined to initiate a changed circumstances review following an earlier joint submission by AHSTAC and TFFA. Commerce held that the request failed to specifically identify changed circumstances sufficient to warrant a review. The re-submitted request addresses this technical deficiency and the agency must now determine whether to initiate a review.

Q: *If a review is initiated, does that mean that the antidumping order will be revoked?*

A: **No.** Initiation of a changed circumstances review only means that Commerce will consider whether revocation is appropriate. As part of the administrative review process, Commerce will consider the views of all parties who seek to be heard – whether in support of or in opposition to revocation – and make a determination as to whether revocation is appropriate based on those comments.

Q: *Is a changed circumstances review related to the settlement?*

A: **Yes.** A changed circumstances review is an administrative process that may result in the revocation of an antidumping duty order. The settlement reached with Thai exporters is dependent upon the revocation of the antidumping duty order on Thai shrimp. Under the proposed structure, if Commerce determines that revocation is appropriate, all deposits made on entries of shrimp imports from Thailand that have not been liquidated (i.e., have not yet had final antidumping duties assessed) would be returned, with at least \$100 million of that amount going to a fund to benefit the domestic industry.

Q: *Has a plan been finalized as to how any funds provided for the “benefit of the domestic industry” will be used?*

A: **No.** SSA, in consultation with associations representing the shrimp industry in each of the eight states involved in the fishery (Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas), has proposed a notional distribution mechanism whereby the distribution and use of the vast majority of settlement funds would be determined on a state-by-state basis, as directed by state advisory panels. These panels are to be comprised of members of the particular state’s shrimp industry. A much smaller portion of the total settlement funds would be distributed to state associations and SSA to support their continuance and expansion of programs to advance and defend the interests of the domestic industry.

Three major questions regarding the proposed use of settlement funds are unresolved. First, what portion of the funds would be made available through the state system and what portion would be directed to industry associations? Second, how are funds to be allocated between states? Third, what will be the composition of the advisory panels? Resolving these questions is, obviously, of tremendous importance in determining whether settlement would benefit the domestic industry more than maintaining the antidumping order. Nevertheless, they must be resolved by a consensus of those supporting settlement, because it is the industry itself that must decide whether settlement would benefit the domestic industry more than maintaining the antidumping order and therefore is worth pursuing.

Q: *Does SSA ultimately decide how any settlement funds will be used?*

A: **No.** SSA has negotiated a settlement that, if achieved, will result in at least \$100 million being made available in the near term to the domestic industry. How those funds are used would be determined by the industry, not by SSA. SSA is a non-profit organization that works to advance the interests of the domestic industry. Its board – representing each of the eight states involved in the domestic fishery – has determined that making funds available under the conditions outlined above would advance the interests of the domestic industry. As noted above, however, the ultimate structure of how settlement funds are to be used must be the product of industry consensus for the very simple reason that unless the industry generally benefits from settlement, revocation of the antidumping order is not worth pursuing.

This means that members of the shrimp industry must get involved (or re-engage) with the rest of the industry. Short-term needs of immediate survival should be balanced with long-term strategies designed to ensure the recovery and long-term health of the industry. The potential settlement offers a rare opportunity for members of the industry to be directly involved in taking affirmative steps to adjust to import competition and affect the future direction of the industry.

Q: *Isn't the real point of this settlement SSA's need for funds?*

A: **No.** The bulk of the income generated by SSA since 2005 has come from settlements reached with foreign exporters related to administrative reviews of those exporters' shipments to the United States. An administrative review is the administrative process by which Commerce determines whether an exporter curtailed or increased dumping during a particular time period. Because of the settlements, the parties agreed to not contest the preliminary dumping rate determined by Commerce and eliminated the risk that the antidumping duties ultimately determined would be higher than deposits previously paid (which would have required importers to pay more) or lower than deposits previously paid (whereby importers would have received refunds). Moreover, exporters committed to working with SSA on combating

circumvention of the antidumping duty orders and improving the safety of shrimp imports that enter the United States.

By any measure, the settlement strategy that has been pursued by SSA has been extremely successful. Settlements in 2006, coupled with the extraordinary efforts by Commerce and U.S. Customs and Border Protection (Customs), led directly to \$106 million being made available to the domestic shrimp industry through the Continued Dumping and Subsidy Offset Act (CDSOA) program that same year. Antidumping duty rates were maintained, something that generally has not been true with respect to subsequent administrative reviews that were fully litigated before Commerce and resulted in significant reductions in antidumping rates (and, as a result, refunds to importers).

In addition, the information provided to SSA as part of these settlements has assisted in the development of a broad-based anti-circumvention campaign whereby the organization has worked closely with Customs to secure enforcement of our trade laws, with notable success. Further, the information provided to SSA has assisted in the development of a comprehensive food safety strategy designed to redress the deficiencies in this country's regulatory controls on imported food, which fall far short of the more stringent controls imposed by other major seafood importing nations.

Finally, the settlements generated substantial revenue for the organization, which has been reinvested in the industry. These funds have allowed SSA to commit significant resources to fishery management controversies, food safety initiatives, anti-circumvention efforts with respect to the antidumping orders, anti-fraud efforts with respect to the wholesale shrimp market, marketing strategies, and the pursuit of equitable distribution of the benefits of trade relief.

If the primary goal was to generate revenue for the organization – as opposed to promoting the interests of the domestic industry – SSA would simply seek to have trade relief, including the Thailand order, maintained.

The accusation that a settlement has been pursued only because SSA is “in need of additional funds to perpetuate its existence” depends upon two false premises. First, the assertion assumes that the organization generates no revenue. Second, the assertion assumes that SSA's expenditures have remained constant and unchanged. Neither premise is correct, and the relevant information is a matter of public record. As a membership-based 501(c)(6) non-profit trade association, SSA's annual Form 990 IRS filings (public documents that are available for all to review– as are those of ASPA, another 501(c)(6) organization) set forth, in detail, the revenues and expenditures of the organization.

In addition, two unaddressed facts counter ASPA's allegation. First, SSA began discussions with Thai exporters regarding a potential settlement in 2007, shortly after the organization issued a public statement expressing its commitment to obtaining equitable distributions of the benefits of trade relief. SSA's decision two years ago to pursue a fairer and

more effective allocation of the benefits of trade relief, through multiple channels (including settlement), prompted members of ASPA to part ways with SSA. Second, SSA continues to commit substantial resources to obtaining equitable Byrd distributions for all segments of the domestic shrimp industry. ASPA's attacks on SSA are entirely inconsistent as they simultaneously portray SSA as bankrupt and flush with cash.

In the end, this line of attack is simple misdirection. By attributing false motives to SSA, ASPA's hope is that members of the industry will forget why settlement was pursued in the first instance. Despite the existence of antidumping duty orders (with stable import prices and volumes), shrimpers are facing the worst market on record. The CDSOA (Byrd) program, which was intended to assist trade-impacted domestic industries, has provided negligible benefits to the vast majority of the industry. At the same time, the 33 members of ASPA have received over **\$79 million** in CDSOA distributions since 2006. The disparity between the positions of the two organizations is painfully obvious: SSA seeks to generate funds for the entire industry; ASPA seeks to protect the funds that its members expect (because of ASPA's assurances) they will continue to receive.

Q: *Won't revocation of the antidumping order lead to an increase in the amount of Thai shrimp exported to the United States?*

A: **Perhaps.** The specter of an oncoming flood of Thai shrimp imports has been raised by ASPA as a reason for opposing the revocation of the antidumping order on Thailand. Although the removal of trade relief will unquestionably make it less costly for Thai exporters to ship product to the United States, ASPA's argument depends upon ignorance of Thai shrimp trade patterns. Shrimp imports from Thailand **increased substantially** after the imposition of the antidumping duty orders. In 2003, the year that the industry sought relief from dumped imports, Thailand shipped 278.6 million pounds of shrimp to the United States. In 2006, a year after antidumping duties were imposed, the volume of Thai imports had increased by close to 50%, up to 411.7 million pounds. Thai imports remain at high levels and, following the recent removal of duties on two of the largest Thai exporters, are likely to further increase regardless of whether settlement is achieved.

ASPA has, to date, failed to provide any analysis supporting its dire forecasts should the antidumping order be removed. While this is some indication of the lack of legitimacy of the argument, what is equally striking is that ASPA's contention rings hollow when viewed in light of its lack of effort to defend the antidumping order before the Department of Commerce. Commerce is currently conducting an administrative review of Thai shrimp imports that entered the United States between February 1, 2008 and January 31, 2009. The review will establish the final amount of antidumping duties to be assessed on these past imports and, simultaneously, will establish a deposit rate under which future imports will be entered. Despite claims of the seminal importance of the antidumping order and its members' receipt of over \$79 million in CDSOA funds to date, ASPA has taken minimal interest in defending the antidumping order in

that review. Although officially a party in the proceeding, the organization has submitted few formal filings in response to the information filed with the agency by Thai exporters. In short, ASPA's lack of involvement in the administration review process is not reflective of an organization that is truly concerned about maintenance of the order and its effect on the domestic shrimp market.

Q: *If the settlement is not successful, won't the industry receive \$117 million in funds through the CDSOA program from duties collected on Thai imports?*

A: **No.** An optimistic estimate of the potential funds that might eventually be available (several years) through the CDSOA program is roughly \$60 million. Customs has reported that \$117 million has been deposited in a clearing account with respect to Thai shrimp imports. A significant amount of these deposits, however, will be returned to importers because of success that the Thai exporters have enjoyed in reducing their antidumping duties through administrative reviews and court challenges.

For reasons that have not been explained, despite all evidence to the contrary, ASPA has publicly declared that as much as \$117 million would be made available to the industry. SSA has explained in detail the basis for its estimates (e.g., a successful Court of International Trade challenge by one Thai exporter and significant reductions in the antidumping duties assessed on exporters from Thailand in the second and third administrative reviews), but no similar demonstration has been forthcoming for ASPA's far higher estimation offered in opposition to settlement. Why ASPA has not provided an explanation is unknown, but the fact that the amount that may be available is far less than what ASPA purports is not debatable. Rather, because the relevant proceedings have already taken place, the actual amount likely to be distributed can be determined with a high degree of confidence.

Q: *If the settlement is successful, would \$120 million that would otherwise go to the U.S. Treasury be forfeited?*

A: **Unlikely.** ASPA's arguments regarding the relative amounts of antidumping duties paid versus the amount available for settlement depend upon the unfounded, unsupported, and clearly inaccurate assumption that the amount of deposits made on Thai shrimp imports is the equivalent of the amount of duties that ultimately will be collected. This assumption is so clearly wrong that there is little justification for continuing to assert it. For example, the importers of shrimp from Thai I-Mei made deposits equivalent to 5.29% of the value of those imports as a result of the imposition of the antidumping order. Following the completion of the first administrative review in 2007, those importers' deposit obligations fell to 2.58%, and went up to 3.09% following the completion of the second administrative review in 2008. Public information available indicates that these importers have, all told, made deposits in excess of \$10 million related to Thai I-Mei's imports. ASPA's simplistic analysis holds that where \$10 million in deposits has been made, that \$10 million will either be distributed through CDSOA or go into

the U.S. Treasury. In reality, Thai I-Mei has won a challenge at the U.S. Court of International Trade that will result in the refund of *all deposits* to its importers unless the decision is overturned on appeal at the Court of Appeals for the Federal Circuit. Thus, unless overturned on appeal – an appeal that ASPA has not involved itself in – the entire amount of these deposited funds will go back to importers and nothing, not one thin dime, will be made available through the CDSOA program or go to the U.S. Treasury.

Because the administrative review proceedings related to the antidumping duties that will be owed on imports of Thai shrimp entering the United States after February 1, 2008 are in progress or have not yet begun, it is impossible to predict how much in collected antidumping duties will go to the U.S. Treasury from these imports. Thai exporters generally have won significant reductions in antidumping duties, but there is no guarantee that this trend will continue. Nevertheless, the fact that the ultimate duty amount is unknown provides no basis for the assumption that this amount will be the equivalent of funds deposited.

Q: *Isn't this settlement inconsistent with the industry's need for relief from unfairly-traded imports?*

A: **No.** Imported shrimp plays an important role in determining the market for domestic shrimp. In 2003, ever-increasing volumes of cheap, dumped shrimp were causing prices for shrimp in the U.S. market to spiral downward. The antidumping orders on shrimp from Brazil, China, Ecuador, India, Thailand, and Vietnam were vitally important to arresting the adverse effects of these unfairly-traded imports.

For the last five years, SSA has committed substantial resources to the defense of the trade relief. The SSA has fully litigated all administrative reviews conducted by Commerce and challenged determinations that went against the domestic industry in federal courts. SSA has worked closely with Customs to address circumvention of antidumping duties and enhance the effectiveness of the trade relief. At the same time, the SSA has borne witness to how the benefits of trade relief have been allocated within the industry. In 2007, SSA made clear that it would pursue an equitable allocation of Byrd distributions. Having been unable to secure equitable distributions of benefits through working with Customs, obtaining legislative changes through Congress, or litigation through the federal courts, SSA has secured a settlement that will provide relief to the vast majority of the industry while allowing the industry to maintain trade relief with respect to the remaining antidumping orders.

That ASPA opposes settlement is not a surprise. ASPA formally opposed SSA's request that Customs not allow parties to claim shrimp purchases - including purchases of imported shrimp and the related antidumping duties-- as raw material expenditures. ASPA has opposed SSA's efforts for legislative reform of the CDSOA (Byrd) program that would allow for equitable distribution of CDSOA funds. ASPA even formally entered litigation positions defending Customs' flawed administration of the CDSOA program. Thus, ASPA's opposition to

settlement is entirely consistent with its record of pursuing what is best for its members at the expense of the rest of the industry. ASPA has no positive agenda for addressing the serious problems facing the domestic shrimp industry. Despite receiving over \$79 million in CDSOA funds in four years, ASPA's membership has invested negligible amounts back into the marketing of domestic shrimp, has not undertaken any meaningful defense of trade relief, and has not, in any way, assisted in the improvement of the shrimp fishing sector. Indeed, despite the more than \$79 million received by its membership, ASPA has incredulously asked the taxpayers of Louisiana to pay for its litigation costs related to the antidumping orders. This remarkable request underscores ASPA's lack of interest in the welfare of the domestic industry: despite stable import volumes and prices, and despite massive Byrd distributions to ASPA members generated by the antidumping orders, ASPA has not proposed a positive agenda for raising prices at the docks, but has instead asked for government help in paying their litigation costs and selling inventory that they haven't bothered to market. ASPA's entire agenda has focused on securing the highest CDSOA payouts for its members, and has ignored a host of initiatives that could benefit the domestic industry, its members included.

Q: *Won't settlement funds just be used to line the pockets of SSA's board members and the professional staff that work with them?*

A: **No.** This is an allegation that has been made by ASPA, the one party in opposition to the settlement, and is categorically false. The SSA Board members devote their time and effort on a voluntary basis and receive no compensation other than reimbursement of travel expenses. The SSA has assembled a "team" of folks that do receive compensation for the work as does most organizations. Including ASPA. But because ASPA's opposition is entirely self-interested, ASPA has descended to seeking to demean and vilify those within the industry who have volunteered substantial amounts of time – without remuneration – to working on the board of the SSA. There is always a risk that if any allegations are unanswered, they are believed to be true. However, ultimately personal attacks distract from the substance of important issues that must be confronted. Thus, SSA believes that spending any more time responding to false allegations, while easy to refute, would be a disservice to the interests of the domestic industry generally. Ironically, ASPA's membership has allocated hundreds of thousands of dollars to attack SSA. As SSA's pursuit of equitable benefits for the industry have become more public, ASPA's attacks have become increasingly desperate. ASPA ultimately has no positive agenda from which to chart a course for the recovery of the domestic shrimp industry. ASPA seeks to maintain the status quo. While the rest of the industry is sinking, ASPA's advisors ask that the ASPA membership dream of more large handouts of government funds just over the horizon.

There can be no serious dispute that the status quo is not worth maintaining. A substantial portion of the industry cannot survive unless immediate changes are made. This is not about the people that comprise the SSA or advise the organization (nor is it about the people that comprise ASPA or advise that organization), this is about what is best for the domestic shrimp industry, and that is where the focus should be.

Q: *Does settlement depend on SSA being able to convince Commerce that revocation of the orders is appropriate?*

A: **No.** *Settlement depends upon the domestic industry as a whole deciding that a settlement agreement provides greater benefits to the industry than continued antidumping duties on shrimp from Thailand. This means it requires the involvement and participation of everyone in the industry.*

SSA believes that settlement is the best option available to the domestic industry, and everyone in the industry should carefully consider whether they agree or disagree. This is an important decision that should be made based on facts and not unsupported accusations, which is why SSA continues to disseminate valuable information about the proposed settlement and encourage everyone in the industry to attend meetings it is holding throughout our shrimping communities. It is vital that those with questions contact the SSA or attend these meetings.

Fundamentally, the question presented to the industry is this – do we continue on as we have for the last five years and hope for the best or do we try alternative strategies? ASPA argues for the former (with 79 million reasons why), while SSA believes that dramatic new approaches are needed to ensure the survival of the industry.

The decision is ultimately in the hands of the industry.