



Southern Shrimp Alliance

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May 2, 2011

Docket No. USTR-2011-0002

VIA FEDERAL E-RULEMAKING PORTAL

Jared Wessel
Assistant General Counsel
Office of the United States Trade Representative
600 17th St., N.W.
Washington, D.C. 20508

Re: Comments Regarding the People's Republic of China's Request for Consultations Concerning Antidumping Measures Regarding Certain Frozen Warmwater Shrimp from China

Dear Mr. Wessel:

On behalf of the Southern Shrimp Alliance, we hereby submit comments as requested by the United States Trade Representative ("USTR") on the People's Republic of China's ("China") request for consultations concerning antidumping measures regarding certain frozen warmwater shrimp from China.¹ China's request for consultations, as summarized in the Request for Comments, addresses the determination made by the U.S. Department of Commerce ("Commerce") to not grant

¹ WTO Dispute Settlement Proceeding Regarding United States – Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from China, 76 Fed. Reg. 17,985 (Mar. 31, 2011) ("Request for Comments").

offsets in the original investigation and subsequent administrative reviews, and reliance on dumping calculations made without offsets in the recently completed sunset review. The Southern Shrimp Alliance continues to believe that the grant of offsets is not required by U.S. law and, more importantly, is not required by the agreements accepted by the U.S. government leading to the creation of the World Trade Organization (“WTO”). Accordingly, the Southern Shrimp Alliance continues to oppose the grant of offsets in these proceedings.

Moreover, China’s request for consultations raises two other concerns. First, the impact of Commerce’s practice of not granting offsets in administrative reviews, in this case, is minimal. Widespread circumvention of the antidumping duty order has severely undermined the efficacy of the trade relief obtained by the domestic shrimp industry and has made a mockery of Commerce’s administrative review process. We are aware of no actions taken by the Chinese government to address illegal circumvention, despite the fact that in some instances these circumvention schemes evade not only antidumping duties but also regulatory controls designed to keep unsafe food products away from American consumers. Yet, despite multiple incidents of significant illegal circumvention detected and documented by U.S. government agencies, the Chinese government is taking action under the WTO that seek to remove trade relief without having to address the impact that blatantly criminal behavior has on the rules-based international trading regime.

Second, to the extent that China is seeking a re-calculation of the level of dumping undertaken by certain exporters in the original investigation, these calculations are based, in part, on Commerce’s acceptance of arguments by Chinese exporters that a

surrogate labor wage rate of five cents an hour accurately represents the value of labor in the Chinese shrimp processing industry. In this case, Chinese exporters argued (and Commerce has accepted) that: (1) Indian seafood workers are compensated at a rate of five cents an hour; and (2) this labor wage rate accurately and appropriately reflects the value of labor in Chinese shrimp processing facilities. The contentions of Chinese exporters – and the acceptance of these arguments by Commerce – have largely gone unnoticed. Regardless of what happens before the WTO, these proceedings have underscored the challenges domestic shrimpers face in the marketplace.

I. CIRCUMVENTION OF THE ANTIDUMPING DUTY ORDERS HAS BEEN WIDESPREAD AND DOES NOT APPEAR TO HAVE BEEN ADDRESSED BY THE CHINESE GOVERNMENT

The effectiveness of the antidumping duty order on shrimp from China has been severely undermined by widespread illegal circumvention. In 2003, prior to the submission of petitions for relief from unfairly traded imports by the Southern Shrimp Alliance through the Ad Hoc Shrimp Trade Action Committee, China exported nearly 177 million pounds of frozen shrimp (both breaded and non-breaded) to the United States. The total volume of shrimp exports from China has fallen significantly, but remains substantial. Yet the total amount of shrimp from China entered into the United States claimed to be subject to antidumping duties has been minimal. The bulk of the shrimp coming into the country from China has been claimed to be either non-subject merchandise (breaded or “dusted”) or produced and exported by the lone company exempt from the antidumping duty order (Zhanjiang Guolian Aquatic) or is simply misclassified as a “Type 1” import entry (not subject to antidumping duties) rather than a “Type 3” import entry (subject to antidumping duties).

Misclassification of Chinese shrimp imports has been rampant and, following complaints from our organization, the U.S. government has uncovered significant examples of this type of circumvention. For example, in U.S. Customs and Border Protection's ("CBP") "Report to Congress on (1) U.S. Customs and Border Protection's Plans to Increase AD/CVD Collections and (2) AD/CVD Enforcement Actions and Compliance Initiatives" (2008) (p.11), the agency explained:

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 of shrimp 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.

A report by the U.S. Government Accountability Office ("Seafood Fraud: FDA Program Changes and Better Collaboration among Key Federal Agencies Could Improve Detection and Prevention," U.S. Government Accountability Office, Report to Congressional Requesters, GAO-09-258, (February 2009) ("GAO Seafood Fraud Report")) provided more detail on CBP's operation and underscored the large amounts of money involved in the circumvention scheme:

In 2007, the NTAG that works on seafood fraud issues also helped identify another scheme importers were using in their attempt to evade antidumping duties on Chinese shrimp. Under this scheme, importers provided CBP with fraudulent information on the product type to evade antidumping duties. A precursor to breaded shrimp called 'dusted shrimp' was exempted by the Department of Commerce from the antidumping duty order on imported Chinese shrimp. On the basis of allegations from the U.S. shrimp industry, CBP initiated an intensive examination and sampling operation to determine whether importers were bringing in shipments of falsely declared dusted shrimp to avoid the antidumping duties on Chinese shrimp. Over the course of a 90-day period, CBP found that of the 81

alleged dusted shrimp entries examined and sampled, approximately 64 percent of the shipments did not meet the criteria to qualify as dusted shrimp. The potential loss of trade revenue from these fraudulent dusted shrimp shipments was approximately \$5 million. Extrapolating back to when the antidumping duty order first became effective in 2005, **CBP concluded that the importers caught importing these fraudulent dusted shrimp imported approximately \$117 million worth of potentially fraudulent dusted shrimp with a possible loss of trade revenue from the uncollected antidumping duties of \$132 million.**

(pp.15-16, emphasis added, footnote omitted).

Misclassification of shrimp entered as product of China is only the tip of the iceberg. More distressingly, tens of millions of pounds of Chinese shrimp falsely labeled as the product of another country continues to enter the United States each year. False labeling as to the country of origin has allowed Chinese exporters and U.S. importers to avoid not only antidumping duties but also the U.S. Food and Drug Administration's (FDA) Import Alert 16-131, issued in August of 2007 (http://www.accessdata.fda.gov/cms_ia/importalert_33.html). In other words, transshipment schemes not only cheat the U.S. Treasury out of funds and deny the domestic shrimp industry the relief promised by the antidumping duty laws, they introduce unsafe shrimp into the U.S. marketplace in direct contravention of FDA action.

A little over a year after the antidumping duty orders were issued, a declaration submitted to the U.S. Court of International Trade on March 9, 2006, by Bruce W. Ingalls, then the Chief of Debt Management in Revenue Division of the Office of Finance of U.S. CBP (Declaration of Bruce W. Ingalls, National Fisheries Institute, Inc. v. United States, Court No. 05-00683 (Mar. 9, 2006)), described the uncovering of a massive illegal transshipment scheme that allowed Chinese shrimp to evade antidumping duties by being falsely labeled as product of Indonesia:

After initiation of the antidumping case, CBP noted substantial shifts in import patterns that suggest transshipment of shrimp to circumvent high tariffs on shrimp. CBP and U.S. Immigration and Customs Enforcement representative (ICE) from the Singapore Attaché office visited shrimp producers in Indonesia (a country not subject to antidumping) that appeared to be of high-risk for transshipment.

CBP confirmed that three producers commingled Chinese shrimp and exported the merchandise claimed as Indonesian to circumvent the payment of antidumping duties. Fifty-four importers were sourcing shrimp from three Indonesian producers during the time when Chinese shrimp was commingled. . . .

Customs has demanded \$65 million in antidumping duty cash deposits from all importers involved. The country-wide rate upon Chinese shrimp is 112.81%. To date \$756,000 has been collected.

The GAO Seafood Fraud Report included additional instances of significant transshipment uncovered by CBP officials:

{A} quick-response audit concluded in 2007 found that an importer did not pay approximately \$2.2 million in antidumping duties on imported Chinese shrimp that was transshipped through Indonesia (p. 16);

and

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. On the basis of CBP's information, in March 2008, FDA issued a new import alert requiring importers of shrimp from one Malaysian manufacturer to prove the absence of unapproved drugs prior to entering future shipments of shrimp into U.S. commerce (p.15).

The Southern Shrimp Alliance detailed additional concerns regarding the pervasiveness of transshipment through Malaysia in comments to the USTR regarding negotiation objectives with respect to Malaysia's participation in the proposed Trans-Pacific Partnership Trade Agreement (dated November 22, 2010). As we noted in those

comments, the evidence appears to indicate that circumvention schemes involving potentially unsafe food illegally transshipped from China through Malaysia to the United States are proliferating.

CBP's public reporting indicates that the agency assessed and collected less than \$2.6 million in antidumping duties on shrimp imports from China entered between July 16, 2004 and September 30, 2007. At the same time, CBP's annual reports (http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/) indicate that a cumulative total of \$58.8 million in assessed antidumping duties has gone uncollected on entries of Chinese shrimp over the same time period. This pattern of massive undercollection likely characterizes entries of Chinese shrimp made after September of 2007 as well. Further, widespread circumvention is not a unique phenomenon among agricultural and aquacultural commodities from China subject to antidumping duties.

We are aware of no action taken by the Chinese government to curtail or otherwise address widespread circumvention of the antidumping duty order on frozen warmwater shrimp. As such, we are disappointed that the Chinese government is now seeking to create further opportunities for Chinese exporters to circumvent the trade remedy by seeking relief under the DSU potentially resulting in additional company-specific exemptions from antidumping duties. To date, each hole carved out of the trade relief has been exploited to evade the payment of duties owed to the U.S. Treasury. In the absence of any serious effort by the Chinese government to prevent or control illegal actions by its own shrimp exporting industry, more holes in the trade remedy will inevitably lead to more circumvention.

From the perspective of the domestic shrimp industry, the Chinese government is now seeking to enforce rights it believes it has under a rules-based international trading system while, at the same time, members of its shrimp exporting industry are actively undermining the rules-based international trading system through criminal acts. The problems created by circumvention schemes are not limited to the antidumping duty order on Chinese shrimp; illegal evasion of trade remedies by Chinese exporters of merchandise subject to antidumping and countervailing duties is becoming the rule rather than the exception across products. In these circumstances, it would be inappropriate to respond to the behavior of Chinese exporters by granting further accommodations until serious efforts are undertaken by the Chinese government to stem illegal circumvention.

II. THE DUMPING MARGINS THAT THE CHINESE GOVERNMENT SEEKS TO AMEND ARE BASED, IN PART, ON THE ACCEPTANCE OF AN ARGUMENT THAT CHINESE SHRIMP PROCESSING WORKERS ARE COMPENSATED AT FIVE CENTS AN HOUR

Following the imposition of the antidumping order on Chinese shrimp, Chinese exporters challenged Commerce's calculation of dumping margins at the Court of International Trade. In one challenge, the litigation resulted in Commerce altering some of the surrogate values used to establish normal value in the dumping calculation. Most prominently, Commerce changed the surrogate values used for raw shrimp purchases and for labor, as explained by the Court:

In its Second Remand Redetermination, submitted to the court on May 21, 2009, Commerce calculated new surrogate values for shrimp using ranged data from the Indian shrimp producer Devi Seafoods, Ltd. ("Devi") and adopted a new surrogate labor rate of \$0.05 per hour.

Allied Pacific Food (Dalian) Co., Ltd. v. United States, Consol. Ct. No. 05-00056, Slip. Op. 10-83 at *4 (Ct. Int'l Trade July 29, 2010). The Court affirmed both new values,

finding with respect to the surrogate labor rate that the data on record supporting this amount “were specific to the Indian seafood industry” (pp. 21-22).

In result, the dumping margins from the original investigation that the Chinese government now seeks to challenge before the WTO are based on arguments from Chinese exporters, accepted by Commerce, that Indian seafood industry workers are compensated at five cents an hour and that this amount is an accurate and appropriate surrogate for the value of labor in Chinese shrimp processing plants.

Five cents.

In other words, if a worker in the Indian seafood or Chinese shrimp processing sector worked every hour (24) of every day in a year (365) – 8,760 hours total – she would earn \$438. Comparing this amount to gross national income data from the World Bank (<http://data.worldbank.org/indicator/NY.GNP.PCAP.CD?page=1>), a shrimp processing worker that **worked every hour of every day (24 hours a day and 365 days of the year)** would have earned less than 30% of the GNI per capita (Atlas method) of China in 2004 (\$1,500) and less than 70% of the GNI per capita (Atlas method) of India in the same year (\$640). And if the shrimp industry worker was less industrious and worked only 80 hours a week, every week for the entire year? She would only have earned \$208 – less than a third of the GNI per capita (Atlas method) reported for India in 2004.

Even with the acceptance of the argument that Chinese shrimp processing workers were compensated at levels similar to those required to maintain slave or prison labor, Chinese exporters **were still** found to be selling shrimp into the United States at less than fair value. Now, the Chinese government seeks additional amendments to the calculation of dumping margins intended to result in the exemption of these companies

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from the trade remedy. If successful, the domestic shrimp industry would be left without meaningful trade relief from dumped imports produced by a labor force earning five cents an hour.

Five cents.

We are grateful for the opportunity to provide written comments on the Chinese government's request for consultations concerning antidumping measures regarding certain frozen warmwater shrimp from China. Please contact me with any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "John Williams".

John Williams
Executive Director