



Southern Shrimp Alliance

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Docket No. ITA-2011-0001
Regulation Identifier Number (RIN) 0625-AA86

VIA FEDERAL E-RULEMAKING PORTAL

The Honorable Gary F. Locke
Secretary of Commerce
Attn: Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration
Room 1870, Import Administration
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: **Comments on Proposed Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders**

Dear Secretary Locke:

On behalf of the Southern Shrimp Alliance (“SSA”), we hereby submit comments as requested by the U.S. Department of Commerce (the “Department”) on the proposed modification to the agency’s regulation that, if adopted, would eliminate the provision for revocation of an antidumping or countervailing duty order with respect to individual exporters or producers having received antidumping margins of zero for three

consecutive years, or countervailing duty rates of zero for five consecutive years.¹ SSA supports the Department's proposed modification to eliminate the provisions of 19 C.F.R. § 351.222 that allow for the partial revocation of an antidumping or countervailing duty order with respect to an individual exporter or producer in certain circumstances.²

Antidumping duty orders are currently in place on certain frozen warmwater shrimp imports from five countries – Brazil, India, Thailand, the People's Republic of China ("China"), and the Socialist Republic of Vietnam ("Vietnam").³ In reviews of the antidumping duty orders of India, Vietnam, and now China, the Department's regulations regarding revocation of the orders with respect to individual exporters or producers (19 C.F.R. § 351.222) have been implicated. Requests for revocation of individual exporters or producers began with respect to the antidumping duty order on shrimp from Vietnam in

¹ Proposed Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 76 Fed. Reg. 15,233 (Mar. 21, 2011) ("Request for Comments").

² Id.

³ See Certain Frozen Warmwater Shrimp from Brazil, 70 Fed. Reg. 5,143 (Dep't Commerce Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order); Certain Frozen Warmwater Shrimp from the People's Republic of China, 70 Fed. Reg. 5,149 (Dep't Commerce Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order); Certain Frozen Warmwater Shrimp from India, 70 Fed. Reg. 5,147 (Dep't Commerce Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order); Certain Frozen Warmwater Shrimp from Thailand, 70 Fed. Reg. 5,145 (Dep't Commerce Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order); and Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 Fed. Reg. 5,152 (Dep't Commerce Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order).

the third administrative review,⁴ with requests repeated in the fourth⁵ and fifth⁶ administrative reviews of the order. For the antidumping duty order on shrimp from China, a request for revocation of the order with respect to an individual exporter or producer has been submitted in the most recent administrative review of the order.⁷ And, with respect to an antidumping duty order on shrimp from India, the Department revoked the antidumping duty order with respect to one exporter, Devi Sea Foods Limited (“Devi”), following the fourth administrative review of the order.⁸

As the Department correctly observes, “[c]ompany-specific revocations are not required by the Act.”⁹ The Department also correctly notes that: (1) the provision

⁴ Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 74 Fed. Reg. 10,009, 10,011-12 (Mar. 9, 2009) (Preliminary Results, Preliminary Partial Rescission and Request for Revocation, In Part, of the Third Administrative Review).

⁵ Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 75 Fed. Reg. 12,206, 12,209 (Mar. 15, 2010) (Preliminary Results, Preliminary Partial Rescission and Request for Revocation, In Part, of the Fourth Administrative Review).

⁶ Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 76 Fed. Reg. 12,054, 12,057-58 (Mar. 4, 2011) (Preliminary Results, Preliminary Partial Rescission and Request for Revocation, In Part, of the Fifth Administrative Review).

⁷ Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review, 77 Fed. Reg. 17,825 (Mar. 31, 2011) (“The Department received timely requests to revoke in part the antidumping duty order on Stainless Steel Bar from India with respect to one exporter and on Certain Frozen Warmwater Shrimp from the People’s Republic of China with respect to one exporter.”)

⁸ Certain Frozen Warmwater Shrimp from India, 75 Fed. Reg. 41,813, 41,814 (July 19, 2010) (Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part).

⁹ Request for Comments, 76 Fed. Reg. at 15,234.

requires the agency to expend additional resources, including additional mandatory verifications, where requests for revocation have been received; (2) only a small fraction of the companies involved in administrative reviews are ultimately found to be eligible for revocation; (3) revocation of the regulation would not affect the deposit rates or liquidation rates applied to eligible companies that can maintain rates of zero percent; and (4) few companies involved in the administrative reviews – particularly the administrative reviews of the antidumping duty orders on shrimp – will have the opportunity “to amass the three antidumping rates of zero percent (demonstrating an absence of dumping for three consecutive years) . . . necessary to be eligible for a company-specific revocation.”¹⁰ The regulations thereby establish an inequitable system by which only a small number of exporters are able to potentially benefit from 19 C.F.R. § 351.222 to the exclusion of all others.

Moreover, the regulation appears to be unnecessary following the adoption of statutory provisions in the Uruguay Round Agreements Act over fifteen years ago requiring the affected domestic industry to demonstrate that dumping is likely to recur or continue in the event of revocation of the antidumping duty order and that revocation would be likely to lead to continuation or recurrence of material injury to the domestic industry every five years.¹¹ The domestic shrimp industry recently demonstrated both that dumping would continue or recur in the event of revocation of the five remaining antidumping duty orders and that revocation would likely result in the continuation or

¹⁰ Id.

¹¹ 19 U.S.C. § 1675(c)(1).

recurrence of material injury to the industry.¹² The five-year review requirements exist in addition to statutory provisions that provide for reviews based on changed circumstances that can result in the revocation of an antidumping duty order.¹³ These statutory provisions afford full and fair opportunities for the removal of trade relief where unfair trade practices have ceased, where the domestic industry no longer is in need of such trade relief, or where exceptional circumstances exist warranting the revocation of an order.

¹² Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China and Thailand, 75 Fed. Reg. 27,299 (May 14, 2010) (Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders), Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 75 Fed. Reg. 75,965 (Dec. 7, 2010) (Final Results of the First Five-year "Sunset" Review of the Antidumping Duty Order), and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, 76 Fed. Reg. 18,782 (Apr. 5, 2011).

¹³ See 19 U.S.C. § 1675(b) and 19 U.S.C. § 1675(d).

To the extent that § 1675(d) also envisions revocations following administrative reviews, the Department's proposal establishes conditions upon which an entire order may be revoked following an administrative review should these conditions be met. Request for Comments, 76 Fed. Reg. at 15,235. In normal circumstances, these conditions may appropriately justify revocation. However, where circumvention of an antidumping duty order is widespread, the proposed regulation potentially supports the circumvention of trade relief, while encouraging companies to export only minimal commercial shipments of merchandise properly identified as within the scope of the antidumping duty order to the United States engineered to be above normal value for three review periods. If exporters can coordinate these efforts, successfully obtain zero margins with minimal shipments of subject merchandise, and obtain hollow certifications that exporters "will not sell the merchandise at less than normal value," an industry may obtain complete revocation of an order. To prevent this abuse, the Department should amend its proposed regulation to permit the agency to consider illegal circumvention of the order in determining whether to exercise discretion to revoke an order pursuant to 19 C.F.R. § 351.222(e)(1).

Rampant circumvention and evasion of trade relief with respect to certain trade remedies further demonstrates the importance of withdrawing the regulations relating to revocation of antidumping or countervailing duty orders for individual producers and exporters. Individual exporter exclusions substantially complicate U.S. Customs and Border Protection's responsibilities for enforcement of antidumping orders. The Department's final determination in its dumping investigation of certain frozen warmwater shrimp from China resulted in the exclusion of a single exporter, Zhanjiang Guolian Aquatic ("Guolian").¹⁴ Since the imposition of the antidumping duty order, commercial ship manifest data indicates that shipments attributed to Guolian have increased substantially. However, significant amounts of the shipments attributed to the company are unlikely to have been produced by Guolian. Guolian has itself acknowledged that other companies export Chinese shrimp falsely using its name: A Wall Street Journal article quoted the general manager for the company, Chen Han, arguing that the Canadian government's detection of banned antibiotics in shrimp claimed to be from the company "was a mistake."¹⁵ "{Han} said it appeared that another company had stolen Guolian's identity – perhaps using false paperwork."¹⁶

The company-specific exclusion has necessitated significant allocation of resources on SSA's part to monitor shipments attributed to Guolian that are unlikely to

¹⁴ Certain Frozen Warmwater Shrimp from the People's Republic of China, 69 Fed.Reg. 70,977, 71,003 (Dec. 8, 2004) (Final Affirmative LTFV Determination).

¹⁵ Jane Zhang, "U.S., Canada Split Over Chinese Shrimp," The Wall Street Journal (Dec. 15, 2007).

¹⁶ Id.

have originated from the company. We have worked extensively with U.S. Customs and Border Protection in an effort to prevent circumvention of the antidumping duty orders, involving a variety of schemes in addition to the false designation of product as originating from Guolian. Although some of these efforts have proven successful, millions of pounds of shrimp continue to illegally enter the United States each year in circumvention of the trade relief. Accordingly, when the antidumping duty order on shrimp from India was revoked with respect to Devi pursuant to 19 C.F.R. § 351.222, SSA worked with both the exporter and U.S. Customs and Border Protection to establish a coding system in an effort to prevent false designation of origin of shrimp in the future – in anticipation of potential increases in the antidumping duty rates applicable to companies remaining subject to the antidumping duty order.¹⁷ Similar individual company exclusions in other antidumping duty orders – particularly the order on shrimp from China – would create further unnecessary holes in the trade remedy that are likely to become vehicles for even greater circumvention of the trade remedy obtained by the domestic shrimp industry.

¹⁷ Southern Shrimp Alliance, “Foreign Shrimp Exporter Adopts Coding System to Prevent Seafood Fraud” (Mar. 21, 2011) available at: <http://www.shrimpalliance.com/new/?p=672>.

For all of these reasons, we strongly support the Department's proposed modification to the agency's regulations. We are grateful for the opportunity to provide our comments on the Department's proposed modification to the agency's regulations regarding the revocation of antidumping and countervailing duty orders and look forward to the agency's additional efforts to improve the efficacy of our antidumping laws.

Sincerely,

A handwritten signature in cursive script that reads "John Williams". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

John Williams
Executive Director