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Case No. A-351-838, A-331-802, A-533-840;
A-549-822; A-552-802; and A-570-893

Total Pages:12

Administrative Review (§ 751)
02/01/06-01/31/07

AD/CVD Operations, Office 2
Second Administrative Review Period

PUBLIC DOCUMENT

DELIVERY BY HAND

The Honorable Carlos M. Gutierrez
Secretary of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Attn: Sheila Forbes, Room 3065

Re: Second Antidumping Duty Administrative Review of Certain
Frozen Warmwater Shrimp from Brazil, China, Ecuador, India,
Thailand, and Vietnam (2006-2007)

Dear Secretary Gutierrez:

On behalf of the Domestic Producers¹ in the above-captioned administrative reviews, we hereby write in opposition to the U.S. Department of Commerce's (the "Department") abandonment of its practice in the initiation notices of antidumping duty

¹ Ad Hoc Shrimp Trade Action Committee ("Domestic Producers"). The Committee is a domestic interested party to this proceeding.

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administrative reviews on certain frozen warmwater shrimp from Brazil, China, Ecuador, India, Thailand and Vietnam. In the initiation notices, the Department states that it intends to select mandatory respondents in the administrative reviews by “the largest exporters/producers by U.S. sales/export volume.”²

This position is unprecedented and a deviation, without notice or viable explanation, from prior Department practice. The Department does not generally comment on the methodology for respondent selection in initiation notices for administrative reviews covering more exporters than the Department can possibly individually review.³ However, where the Department has addressed respondent selection methodology in an initiation notice, the agency has simply outlined the discretion afforded to the Department to utilize one of two methodologies in selecting mandatory respondents. For example, in March of this year (just one month prior to publication of the Shrimp initiation notices), the Department initiated reviews on 196 exporters for the second administrative review period for Wooden Bedroom Furniture from the People’s Republic of China.⁴ In that initiation notice, the Department stated:

² Certain Frozen Warmwater Shrimp from the People’s Republic of China and the Socialist Republic of Vietnam, 72 Fed. Reg. 17,095, 17,099 (Apr. 6, 2007) (Initiation of Antidumping Duty Administrative Reviews); and Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand, 72 Fed. Reg. 17,100, 17,110 (Apr. 6, 2007) (Initiation of Antidumping Duty Administrative Reviews).

³ See, e.g. Certain Softwood Lumber from Canada, 70 Fed. Reg. 37,749 (June 30, 2005) (Initiation of Antidumping Duty Administrative Review); and Freshwater Tail Meat from China, 71 Fed. Reg. 63,752 (Oct. 31, 2006) (Initiation of Antidumping Duty Administrative Review).

⁴ See Wooden Bedroom Furniture from China, 72 Fed. Reg. 10,159 (Mar. 7, 2007) (Initiation of Antidumping Duty Administrative Review).

Section 777A(c)(1) of the Tariff Act of 1930, as amended (“the Act”) directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to examine either (1) a sample of exporters, producers or types of products that is statistically valid based on information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Due to the large number of firms requested for an administrative review and the Department’s experience regarding the resulting administrative burden to review each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review using one of the two methods described above.⁵

The foregoing excerpt from the Department’s initiation notice is effectively the same language that the Department utilized in the initiation of the reviews of Certain Frozen Warmwater Shrimp entries during the first administrative review period.⁶

The Department, however, has provided no explanation as to why it is abandoning past practice and announcing selection methodology prior to receiving any information on the quantity and value of subject exports for exporters subject to the administrative review period. Nor has the Department provided any explanation for why the domestic shrimp industry, in the second administrative review period, is less deserving of the agency’s full consideration of respondent selection methodologies than any other domestic industry (including the domestic wooden bedroom furniture industry, which is

⁵ See id. at 10,163 (emphasis added).

⁶ See Certain Frozen Warmwater Shrimp from the People’s Republic of China and the Socialist Republic of Vietnam, 71 Fed. Reg. 17,813, 17,817 (Apr. 7, 2006) (Initiation of Antidumping Duty Administrative Reviews); and Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand, 71 Fed. Reg. 17,819, 17,828 (Apr. 7, 2006) (Initiation of Antidumping Duty Administrative Reviews).

also currently beginning proceedings regarding the second administrative review period).

Further, the Department has provided no explanation as to why it determined not to permit parties to comment on the change in practice prior to issuing the determination in its initiation notice. Indeed, the only record documents indicating that comments were received by that the Department on respondent selection methodology is a memorandum to the file regarding a meeting between Department staff and Mr. John Blazeovich of Contessa Premium Foods (Contessa), a U.S. importer of shrimp products opposed to the antidumping orders, who "expressed his concern" over the Department's respondent selection process.⁷ Thus, to the extent that the Department entertained any comments on the respondent selection process, it appears that the agency received comments only from a single party that opposed the Department's consistent practice in this proceeding.

The Department is not permitted to deviate from consistent practice without full elaboration of a reasonable basis therefor. Absent any explanation for this deviation, the Department's actions are wholly capricious and arbitrary. The Department is an administrative agency and absent a reasonable basis, the Department cannot choose to administer laws in one way for one group and another way for another group. As such, the Department's declaration of a respondent selection methodology prior to the opportunity to assess data and for interested parties to provide comments on the appropriate selection methodology to utilize in this administrative review without explanation is unwarranted and indefensible.

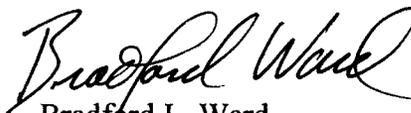
Accordingly, Domestic Producers request that the Department immediately

⁷ U.S. Department of Commerce Internal Memorandum from S. Thompson through J. Maeder to The File, A-549-822 (Mar. 21, 2007).

correct its initiation notices, provide interested parties with the opportunity to comment on an appropriate selection methodology, fairly assess any comments provided, and reserve judgment on an appropriate selection methodology until all relevant data and interested party comments are received. It is highly likely that the facts that will be developed on the record of these administrative reviews will demonstrate that the appropriate methodology for selecting respondents will be through the use of a statistically valid sample. Nevertheless, should the Department decline to extend this same opportunity to the domestic shrimp industry to comment on respondent selection methodology as it has with other industries, Domestic Producers request that the Department provide a detailed explanation for the discriminatory treatment.

This submission has been filed on interested parties as indicated on the attached certificate of service. Please contact any of the undersigned should you have any questions.

Respectfully submitted,



Bradford L. Ward
Nathaniel Maandig Rickard

Counsel to Domestic Producers