

DEWEY BALLANTINE LLP

975 F STREET, N.W.  
WASHINGTON, D.C. 20004-1405  
TEL 202 862-1000 FAX 202 862-1093

STAMP AND RETURN

June 6, 2007

JUN 06 2007

Case Nos. A-331-802 A-533-840,  
A-549-822 and A-351-838  
Total Pages: 16  
Administrative Review  
02/01/06-01/31/07  
AD/CVD Operations, Office 2

PUBLIC DOCUMENT

RECEIVED  
JUN - 6 2007  
DEPT. OF COMMERCE  
ITA  
IMPORT ADMINISTRATION

BY HAND DELIVERY

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, NW  
Washington, DC 20230

Attn: James Maeder, Room 3713  
Import Administration

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

Dear Secretary Gutierrez:

On behalf of Domestic Producers<sup>1</sup> in the above-captioned administrative reviews, we hereby submit the following response to the comments of certain Ecuadorian respondents<sup>2</sup>

<sup>1</sup> Ad Hoc Shrimp Trade Action Committee ("Domestic Producers"). The Committee is a domestic interested party to the proceeding and was the Petitioner in the underlying investigation.

<sup>2</sup> Letter from Akin Gump Strauss Hauer & Feld LLP to the U.S. Department of Commerce, Case Nos. A-331-802, A-351-838, A-533-840 and A-549-822 (May 31, 2007) ("Respondents' May 31 Submission").

ORIGINAL

objecting to Domestic Producers' request that the U.S. Department of Commerce (the "Department") obtain from all mandatory respondents detailed information on the comparability of merchandise sold in each of the various potential comparison markets to the merchandise sold in the U.S. market.<sup>3</sup>

In their submission, the Ecuadorian respondents have raised a number of objections to Domestic Producers' request that, as soon as it becomes apparent that a respondent's home market was not viable during the period of review ("POR"), the Department should immediately instruct the respondent to supply the total volume of each CONNUM (as defined in the Questionnaire) sold in the U.S. market and the total volume of each CONNUM sold in each of the respondent's three largest third country export markets. As shown below, those objections are off-base and fail to refute Domestic Producers' claim that obtaining such information will allow the Department in almost every case to quickly, easily and definitively determine the appropriate comparison market.

1. First, the Ecuadorian respondents claim that nothing in the antidumping statute or the Department's regulations requires the Department to obtain CONNUM-specific sales volume information for purposes of selecting the appropriate third country market.<sup>4</sup> While that statement may be true, it is not particularly availing. Certainly there is nothing in the statute or the Department's regulations that precludes the Department from obtaining such information, and it

---

<sup>3</sup> Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case Nos. A-331-802, A-533-840, A-549-822 and A-351-838 (May 9, 2007) ("Domestic Producers' May 9 Submission").

<sup>4</sup> Respondents' May 31 Submission at 2.

is difficult to fathom how the agency can reach a definitive determination concerning which comparison market contains sales of merchandise “most similar” to that sold in the U.S. market -- as it must under the agency’s regulations -- without obtaining CONNUM-specific sales volume information. Domestic Producers have never suggested that the statute or regulations explicitly mandate the collection of CONNUM-specific sales volume information. Instead, Domestic Producers maintain that the agency will, as a practical matter, be unable to fully satisfy its regulatory requirement of determining the “most similar” comparison market<sup>5</sup> without obtaining such information. Nothing in the Ecuadorian respondents’ submission indicates otherwise.

Moreover, whether the Department has sought such information in the past is not determinative.<sup>6</sup> As Domestic Producers’ May 9 Submission explained, the failure of respondents in prior phases of this proceeding to provide sufficient information to permit the Department to fully assess all of the criteria set forth in the comparison market regulation has precluded a thorough analysis and assessment of whether the foreign like product exported to a particular third country is “more similar” to the subject merchandise exported to the United States than is the foreign like product exported to other third countries under consideration.<sup>7</sup> The issue is not what the Department may (or may not) have done in the past, but rather what the Department should do now -- in these second administrative reviews (“AR2”) -- to accurately determine the appropriate comparison market.

---

<sup>5</sup> 19 C.F.R. § 351.404(e)(1) (2006).

<sup>6</sup> See Respondents’ May 31 Submission at 2.

<sup>7</sup> See Domestic Producers’ May 9 Submission at 3-4.

2. Second, incredibly, the Ecuadorian respondents take issue with the proposition that the most accurate and straightforward manner for the Department to determine which products are most similar to one another is to examine the CONNUM designations associated with the products.<sup>8</sup> Indeed, the respondents go so far as to state that Domestic Producers “erroneously” assume that “similarity is a function of the particular CONNUM that a producer assigns to a product.”<sup>9</sup> Of course, that assumption is not erroneous, and is firmly held not only by Domestic Producers but also by the Department.

It is beyond peradventure that, in every single market economy antidumping proceeding, the Department determines which products are most similar to one another using the CONNUM designations associated with the products. It is difficult to conceive of a statement less contentious, more obviously correct, more steeped in longstanding agency practice, or less disputable than the proposition that “similarity is a function of the particular CONNUM that a producer assigns to a product.” The respondents’ suggestion that such an “assumption” is “erroneous” could not be more wrong.

The respondents apparently would have the Department believe that simply because not all products sold in the U.S. market may find identical matches in any of the potential comparison markets, the agency cannot employ CONNUM designations to assess the relative similarity of products sold in different markets. Such a proposition is nonsensical. The simple fact of the matter is that there is no better, simpler or more accurate way in which to determine the relative similarity of products than to compare their CONNUM designations. That is

---

<sup>8</sup> Respondents’ May 31 Submission at 2.

<sup>9</sup> Id.

precisely why the Department does just that in its model-matching exercise in every single antidumping proceeding.

Of course, it is true that the various product groupings discussed on page 3 of the respondents' May 31 submission are somewhat "similar" to one another. However, that fact most certainly does not resolve the matter. The issue is not whether each potential comparison market contains sales of "similar" products. Instead, the inquiry clearly laid out in 19 C.F.R. § 351.404(e)(1) is which comparison market contains sales of products most similar to the products sold in the U.S. market. That inquiry can only be definitively answered by examining all of the physical characteristics of various products in the order in which those characteristics appear in the model-match hierarchy.

The respondents posit, without explanation, that by examining CONNUM designations the Department would somehow risk "overlooking the forest for the trees."<sup>10</sup> If respondents mean by that statement that the Department under certain circumstances may be able to reach a conclusion regarding the most similar products across markets without examining all of the various products' physical characteristics, then Domestic Producers agree. The most similar match to a given product may on occasion be determined by examining only some of the initial physical characteristics in the model-match hierarchy because an examination of those first few characteristics definitively resolves the matter. However, that is most certainly not always the case, and if respondents mean to suggest that the answer generated by examining full CONNUM designations could be wrong in any way, then Domestic Producers strongly disagree. Examining

---

<sup>10</sup> Id. at 3.

CONNUM designations would never result in a wrong determination of the most similar match. Indeed, it could not. Simply put, less detail can never generate a better, more accurate answer than more detail. Respondents' statements to the contrary are simply ludicrous. Contrary to respondents' suggestion, the issue is not one of the forest and the trees; rather, the issue is what information provides the most accurate answer, and, in many cases, the only definitive answer, to the question at hand: what is the appropriate comparison market?

Finally, respondents posit that if the Department were to employ a CONNUM-based analysis, it would subject the Department to a "battle over dozens, if not hundreds, of CONNUM-specific comparisons as the domestic producers and the respondents . . . provide their respective analyses of which market is more 'similar.'"<sup>11</sup> This is exactly backwards. Instances in which parties dispute the results of the Department's model-matching exercise are very rare. In addition, there could and would be virtually no ability for the parties to dispute which market is more "similar" if a CONNUM-based analysis were employed.

In stark contrast, if the Department were to employ a "back-of-the-envelope" analysis using representations about "similarities" put forward by respondents, then there is a very high likelihood that the "battle" over this issue discussed by respondents would ensue. In other words, respondents' "solution" exacerbates the "battle," whereas Domestic Producers' CONNUM-based proposal resolves it.

3. Third, the Ecuadorian respondents state that the Department took a "different approach" in the underlying investigation and in the first administrative review ("AR1") of

---

<sup>11</sup> Id.

warmwater shrimp from Ecuador in assessing the most appropriate third-country market.<sup>12</sup> That is certainly true. However, as Domestic Producers repeatedly pointed out over the course of AR1, the agency's simplified approach was deficient.<sup>13</sup> Even when the Department sought additional information through supplemental inquiries, the information the Department obtained was insufficient to perform a thorough CONNUM-specific analysis, and, in Domestic Producers' view, resulted in the wrong third country selection.<sup>14</sup>

In contrast, a CONNUM-based analysis would have removed all such deficiencies, and would have removed all doubt as to which comparison market was the appropriate selection. By hewing to what happened in the past, respondents would perpetuate past deficiencies at the expense of obtaining the definitive answer as to which comparison market is appropriate. Certainty, not blind consistency, is the analytical lodestar.

4. Fourth, the Ecuadorian respondents claim that Domestic Producers have "mischaracterized" and "reformulated" the second of the three criteria governing third country selection.<sup>15</sup> The Department should not give the slightest credence to this red herring.

The regulation provides that the Department will select the third country based on, inter alia, whether "{t}he volume of sales to a particular third country is larger than the volume of

---

<sup>12</sup> Id.

<sup>13</sup> See, e.g., Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. A-331-802 (Oct. 17, 2006) ("Domestic Producers' October 17 Third Country Submission").

<sup>14</sup> See, e.g., Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. A-331-802 at 16-18 (Apr. 16, 2007) ("Domestic Producers' AR1 Case Brief").

<sup>15</sup> Respondents' May 31 Submission at 4.

sales to other third countries.”<sup>16</sup> In our May 9 Submission, Domestic Producers described this provision as requiring the Department to select an appropriate third country market based on, inter alia, “the volume of sales to the particular third countries under consideration.”<sup>17</sup> Domestic Producers are puzzled how our statement of the criterion is a mischaracterization or reformulation of the statutory language, and respondents fail to explain why that is the case. The formulations are virtually identical.

Respondents also claim that Domestic Producers have sought to de-emphasize the second criterion, ostensibly because we have pointed out (correctly) that it is listed second in the regulation.<sup>18</sup> Respondents’ concern misses the point, which is that the Department should not treat the second criterion any differently -- or accord it greater weight -- than the first criterion (or the third), because all of the criteria are to be considered in determining the appropriate third country market. For that reason, in our May 9 Submission, Domestic Producers stressed that it is not enough to select a third country market merely because it has a higher volume of sales, because sales volume is simply “one factor.”<sup>19</sup>

In the First Administrative Review of the Ecuador proceeding, third country market sales volumes figured prominently in the Department’s comparison market selection analysis. For purposes of these Second Administrative Reviews, Domestic Producers are advocating a balanced, holistic approach which assesses the volume of sales in the second regulatory criterion,

---

<sup>16</sup> 19 C.F.R. § 351.404(e)(2).

<sup>17</sup> Domestic Producers’ May 9 Submission at 2.

<sup>18</sup> Respondents’ May 31 Submission at 5.

<sup>19</sup> Domestic Producers’ May 9 Submission at 3 (emphasis added).

in conjunction with the “more similar” provision in the first regulatory criterion -- through the use of a CONNUM-based analysis.

5. Fifth, the Ecuadorian respondents claim that supplying the total volume of each CONNUM sold in the U.S. market and the respondent’s three largest third country export markets would place an “extremely unreasonable burden” on respondents.<sup>20</sup> Respondents do not explain why this is the case. In proposing a third country comparison market from the pool of the three largest third country markets, a respondent necessarily would have to have performed a country-specific analysis for each of the three identified third countries to ascertain which third country contains sales of merchandise “most similar” to that sold in the U.S. market.

In that event, a respondent should have CONNUM-specific information at hand. If in fact a respondent does not have that information at hand, then there is no reasonable basis for a respondent to posit the appropriate third country -- unless the respondent based its comparison market selection solely on a sales volume basis, which is not permitted by the regulation.

Regardless, a CONNUM-based analysis removes all doubt and uncertainty regarding a respondent’s proposed third country market, and enables all parties to ascertain whether, based on all of the criteria in the regulation, the comparison market designated by the respondent is in fact the appropriate selection.

For these reasons, any incidental burden on a respondent to provide CONNUM-specific information is trumped by definitively determining the most appropriate comparison market based on all of the regulatory criteria.

---

<sup>20</sup> Respondents’ May 31 Submission at 5.

6. Finally, the Ecuadorian respondents claim that Domestic Producers have not explained why their CONNUM-specific approach would lead to better results than the Department's past approach.<sup>21</sup> For the reasons discussed above, this claim is exactly wrong. The Department can best consider all of the criteria under section 351.404(e) of its regulations when it has all of the information needed to thoroughly analyze each criterion, such that it can definitively determine the appropriate third country market. Complete information -- which includes CONNUM-specific sales volume information -- begets a thorough analysis that in turn leads to the correct determination.

\* \* \* \* \*

---

21

Id.

The Honorable Carlos M. Gutierrez

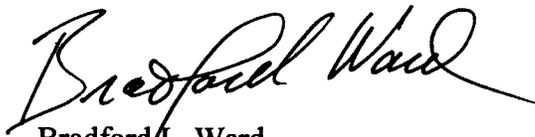
June 6, 2007

Page 11

This submission is being served today as indicated on the attached certificates of service.

Please contact any of the undersigned should you require clarification of any aspect of this submission.

Respectfully submitted,



Bradford L. Ward

Rory F. Quirk

Nathaniel Maandig Rickard

Gregory I. Hume, Economist

*Counsel to Domestic Producers*

cc: David Goldberger, Room 3083  
Shawn Thompson, Room 3087B  
Elizabeth Eastwood, Room 3083  
Kate Johnson, Room 3083  
Irina Itkin, Room 3083  
Alice Gibbons, Room 3090  
Jill Pollack, Room 3083  
Rebecca Trainor, Room 3089  
Brianna Riker, Room 3090  
Nichole Zink, Room 3088