



Southern Shrimp Alliance
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February 11, 2009

BY ELECTRONIC DELIVERY

Commissioner W. Ralph Basham
United States Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

c/o David Genovese
ADCVD/Revenue Policy & Programs Division
Trade Policy & Programs Division
Trade Policy & Programs
Office of International Trade
United States Customs and Border Protection
David.Genovese@dhs.gov

Re: Docket Number USCBP—2008—0112; Enhanced Bonding Requirement for Certain Shrimp Importers

Dear Commissioner Basham:

On behalf of the Southern Shrimp Alliance, we hereby submit comments regarding U.S. Customs and Border Protection's ("CBP") proposal to end the designation of shrimp covered by antidumping and countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. This submission is being filed consistent with CBP's Notice requesting comments on the agency's proposal.¹

In 2005, as a result of well-documented and persistent problems in fully collecting antidumping and countervailing duties owed, CBP implemented an enhanced bonding program to provide greater assurance that such duties would ultimately be collected from

¹ U.S. Customs and Border Protection, "Enhanced Bonding Requirement for Certain Shrimp Importers," 74 Fed. Reg. 1,224 (Jan. 12, 2009).

importers of shrimp subject to antidumping duty orders.² Subsequently, after unfavorable (and illogical) decisions issued by the World Trade Organization, CBP has announced that it intends to terminate the enhanced bonding program. Incredibly, this announcement does not purport to offer an alternative to the current program or suggest means by which collection of duties owed will be achieved. This announcement is particularly astounding in that CBP proposes to terminate the program regarding imports from countries that did not challenge the enhanced bonding and after CBP has recently made public its continued inability to collect an enormous amount of antidumping duties on shrimp imports. In addition, the announcement also would additionally allow shrimp importers to request termination of existing continuous bonds, further risking the agency's ability to fully collect duties owed.

Accordingly, CBP should devise a bonding mechanism for imports of shrimp and other products of agriculture and aquaculture subject to antidumping or countervailing duties that will provide additional assurance that all such duties will be collected. CBP must explain how any new bonding mechanism addresses the large and increasing amount of duties that are uncollected or uncollectible. Finally, CBP must implement any new bonding mechanism prospectively only, as required by law.

In the Federal Register Notice announcing CBP's proposal, the agency states: "A key CBP mission is to collect all import duties determined to be due to the United States."³ The Notice further explained that "CBP has found that many importers subject to AD/CV duties fail to pay the additional duties determined to be due at liquidation."⁴ Nevertheless, CBP announced that it intends to remove the enhanced bonding requirement – designed to address the problem of under-collection of AD/CV duties – in that very same notice. Thus, **on January 12, 2009**, CBP recognized that (1) a key part of the agency's mission was to collect *all* import duties determined to be owed to the United States and (2) that many importers of merchandise subject to antidumping duties fail to pay all the duties they owe at liquidation. Regardless of these recognized facts, CBP is proposing the removal of the only novel tool the agency has employed to combat under-collection of antidumping duties – the enhanced bonding requirement applied to importers of shrimp subject to antidumping duties.

Three days later, on **January 15, 2009**, CBP published its annual report regarding antidumping and countervailing duty collection and distribution under the Continued Dumping and Subsidy Offset Act ("CDSOA") for fiscal year 2008 on the agency's website.⁵ That report indicated that although CBP had \$32.7 million in assessed and

² Clarification to July 9, 2004 Amended Monetary Guidelines for Setting Bond Amounts for Special Categories of Merchandise Subject to Antidumping and/or Countervailing Duty Cases (Aug. 10, 2005).

³ U.S. Customs and Border Protection, "Enhanced Bonding Requirement for Certain Shrimp Importers," 74 Fed. Reg. 1,224 (Jan. 12, 2009).

⁴ Id.

⁵ Available at:

http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_08/fy08_annual_rep/

collected antidumping duties on shrimp available for distribution under the CDSOA, **\$42.5 million in antidumping duties on shrimp had been assessed and not collected.**

Thus, just *three days* after announcing that CBP intended to eliminate the only program the agency has in place to assure collection of antidumping duties where the liquidation rate exceeds the amount deposited by an importer, CBP reported that it had been unable to collect \$42.5 million in antidumping duties on shrimp for fiscal year 2008 – a figure that exceeds the total amount of antidumping duties actually collected on shrimp for that same fiscal year. If the amounts set out in CBP's Annual Report are correct, the agency was unable to collect 56.5% of the \$75 million in antidumping duties assessed in FY2008. Yet, despite this, CBP has announced its intention to remove the only program the agency has implemented to assure that some portion of the uncollected \$42.5 million will eventually be collected.

The problem of undercollection of antidumping duties on shrimp imports has grown since the implementation of the order. In the first year for which duties were assessed and collected, fiscal year 2006, CBP reported that \$106.5 million in antidumping duties collected on shrimp were available for distribution. Only \$11.1 million was reported as assessed but uncollected. The fact that the vast majority of duties assessed on shrimp in that year were actually collected is largely attributable to the Southern Shrimp Alliance's strategy of seeking to have exporters and importers withdraw their requests for administrative review and accept liquidation at the deposit rate. Such a strategy was precluded for the second administrative review and, in result, in the second year for which duties were assessed and collected, fiscal year 2007, the agency reported having \$41.7 million available for distribution, with a substantially higher proportion of duties assessed - \$14.8 million – but not collected. The deterioration in CBP's ability to collect antidumping duties on shrimp accelerated this year, such that more antidumping duties assessed on shrimp went uncollected rather than collected. In the first year that the agency assessed duties on shrimp, for every dollar collected, ten cents went uncollected. In the second year, for every dollar collected, thirty-six cents went uncollected. But in this last year, for every dollar collected in assessed antidumping duties on shrimp, **\$1.30** went uncollected. These data indicate that the enhanced bonding requirement for certain shrimp importers is *too conservative* in that the agency sought additional bond security only equal to the amount of deposits. Last year's experience demonstrates that the enhanced bonding requirement *underestimated* the collection risk facing the agency for shrimp imports.

No mention of CBP's recent difficulties in collecting antidumping duties on shrimp imports is made in the agency's Federal Register Notice proposing the removal of the enhanced bonding requirement for shrimp importers. Shrimp, as a product falling within the "agriculture/aquaculture" category, fell squarely within the profile of products for which CBP has experienced difficulty collecting "all import duties determined to be due to the United States." The actual experience of the CBP over the last two years – where the liquidation rates have fluctuated significantly from the deposit rate – provides

concrete, incontrovertible proof that the agency's concerns were appropriate. Yet, again, no mention is made of this; a remarkable circumstance given that the agency is *voluntarily and on its own initiative* eliminating the very program that would have otherwise assisted CBP in ultimately collecting such duties.

The majority of uncollected antidumping duties involves shrimp imported from China. Undoubtedly, some portion of these uncollected duties are due to the agency's remarkable and laudable efforts to prevent circumvention of the antidumping orders by Chinese shrimp falsely labeled either as "dusted" shrimp or as the product of another country not subject to the orders. Because some importers thrived on business models of exclusively importing transshipped and falsely labeled shrimp, the agency's enhanced bonding requirement did not apply to them and collection will be further complicated by this evasion. Nevertheless, it is remarkable that CBP is not considering measures to address the undercollection risks posed by importers that specialize in circumvention of the trade laws but, instead, is proposing to handicap itself in efforts to collect from *all* importers. Thus, regardless of the specific facts underlying each of the entries of Chinese shrimp, the fact remains that for every dollar collected from duties assessed on Chinese shrimp, \$26.50 went uncollected. And CBP has, in response, proposed that *the agency should significantly reduce its ability to eventually collect these duties*.

Although duties on Chinese shrimp account for the bulk of the uncollected antidumping duties, exclusive focus on China distracts from the fact that the agency's problems with under-collection stem from two distinct categories of products subject to antidumping duty orders: (1) agricultural/aquacultural products; and (2) certain non-agricultural/aquacultural products imported from China. The table below breaks down CBP's collection performance with respect to the six separate antidumping duty orders on shrimp:

CBP Shrimp Antidumping Duty Collections, FY2008		
Country	Amount Assessed, Collected, and Available for Distribution	Amount Assessed and Uncollected
Brazil	\$464,611.28	\$553,412.84
China	\$1,448,483.78	\$38,400,687.23
Ecuador	\$2,343,572.15	\$104,258.53
India	\$14,239,702.49	\$3,023,064.29
Thailand	\$11,273,344.46	\$326,940.60
Vietnam	\$2,902,692.79	\$68,234.14

Total	\$32,672,406.95	\$42,476,597.63
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Note that over \$3 million in antidumping duties assessed on shrimp imports from India was reported as uncollected by CBP. Note further that for every dollar collected of antidumping duties assessed on shrimp from Brazil, \$1.19 went uncollected.

The problems experienced with collecting antidumping duties assessed on shrimp generally are consistent with the problems faced by CBP in collecting duties assessed on agricultural and aquacultural products broadly – whether such products originate from China or elsewhere. Below is a tabular summary of the agency's experience with undercollection on certain agricultural/aquacultural products for fiscal year 2008:

CBP Agricultural/Aquacultural Antidumping Duty Collections, FY2008		
Order	Amount Assessed, Collected, and Available for Distribution	Amount Assessed and Uncollected
Preserved Mushrooms from India	\$2,672,795.50	\$2,475,443.47
Certain Frozen Fish Fillets from Vietnam/Cambodia	\$8,661,135.48	\$8,091,749.65
Fresh Garlic from China	\$780,126.74	\$22,798,994.61
Crawfish Tail Meat from China	\$6,497,271.28	\$12,823,756.18
Preserved Mushrooms from China	\$909,008.38	\$40,912,468.16
Honey from China	\$6,017,987.27	\$3,210,726.10
Total	\$25,538,324.65	\$90,313,138.17
Total with Shrimp	\$58,210,731.60	\$132,789,735.80

Undercollection problems existed both with respect to agricultural/aquacultural products imported from China (Garlic, Crawfish Tail Meat, Preserved Mushrooms, and Honey) and those imported from other countries (Preserved Mushrooms from India; Frozen Fish Fillets from Vietnam/Cambodia). In total, antidumping orders on aquacultural/agricultural products accounted for nearly three-quarters of all uncollected duties last year. Thus, not only have CBP's concerns regarding potential problems

collecting assessed antidumping duties on shrimp imports been vindicated, but the problems identified by the agency with respect to the collection of such duties on agricultural/aquacultural products have also clearly remained.

Regardless of whether the problem is importers of products from China, importers of agricultural/aquacultural products, or something else,⁶ CBP clearly and unquestionably is failing to collect all antidumping duties determined to be due to the United States. At the same time, the Southern Shrimp Alliance is certainly aware of the fact that \$42.5 million in assessed antidumping duties went uncollected in fiscal year 2008 does not mean that these duties will never be collected. As CBP has previously reported to Congress,⁷ where the liquidation rate exceeds the deposit rate, importers frequently seek to delay liquidation by filing protests and other litigation. But it is precisely where importers are currently using administrative processes to delay ultimate liquidation of entries with antidumping duties significantly higher than amounts deposited that the enhanced bonding requirement will be essential for collecting these duties. CBP's unilateral termination of bonding requirements would, then, reward these importers for their delaying tactics.

The moral hazard created by CBP's proposal, moreover, extends beyond just benefiting those who abuse administrative processes to delay collection. CBP's proposal to eliminate the enhanced bonding requirement with respect to shrimp importers also affirmatively rewards and further encourages the refusal by certain importers to abide by their legal requirements. As the agency is well aware from its past efforts to enforce the trade laws and collect duties owed, for many agricultural/aquacultural products (and, separately, non-agricultural/aquacultural products of Chinese origin), the companies that become the importer-of-record for such goods frequently have little intent, much less ability, to pay duties above the deposit rate. As the agency reported to Congress *just last year*, "there are importers who are unwilling, unable, or *simply have no intention of paying the actual duties and go out of business when CBP issues a bill*."⁸ By requiring a significant investment prior to importation of goods subject to the antidumping duty orders, the enhanced bonding requirement provided a powerful check on the proliferation of such importers with respect to shrimp products subject to antidumping duties.

This is, perhaps, the most offensive aspect of the agency's announcement insofar as CBP has previously openly and candidly recognized the problem posed by importers that operate with no intention of complying with U.S. law, but, even with this knowledge,

⁶ Significant undercollection of assessed antidumping duties was also reported with respect to Cut-to Length Carbon Steel Plate from Romania (\$6,817,679.46) and Polyethylene Retail Carrier Bags from Thailand (\$8,102,835.02).

⁷ See, e.g., U.S. Customs and Border Protection, "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" (FY2007).

⁸ U.S. Customs and Border Protection, "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" (FY2007) at 3 (emphasis added).

CBP proposes to take action *not required of it* which would indisputably further encourage such importers to flaunt the laws passed by Congress to remedy unfair trade.

The experience of importers of Thai shrimp from Gallant Ocean (Thailand) Co., Ltd. ("Gallant Ocean") is instructive on this point. Following the first administrative review, Gallant Ocean was assigned a liquidation rate of 57.64%, substantially higher than the deposit rate of 5.95% that applied to the company after the original less-than-fair-value investigation. Gallant Ocean's importers faced a massive increase in their antidumping duty liabilities for entries of such shrimp between August 4, 2004 through January 31, 2006 (the "first review period"). According to PIERS data available through commercial subscription, Gallant Ocean's single largest U.S. importer during the first review period was Riptide Seafood Corporation ("Riptide Seafood"), which reported receiving 2,780,339 pounds over that time period. Official U.S. import data indicates that the average unit value of subject shrimp imports from Thailand during calendar year 2005 was \$2.90. Using this general average unit value as a proxy for the value of Riptide Seafood's subject imports from Gallant Ocean, the importer would have deposited an estimated \$479,747.49 in antidumping duties ($\$8,062,983.10 * 5.95\%$), but faced a bill of \$4,647,503.46 ($\$8,062,983.10 * 57.64\%$) – or \$4.2 million over what had been deposited.

CBP's liquidation of these duties has been delayed by an unsuccessful appeal that Gallant Ocean has made to the U.S. Court of International Trade ("CIT") regarding the liquidation rate determined by Commerce. Although Gallant Ocean's arguments recently have been rejected, CBP has been enjoined from liquidating Riptide Seafood's entries of Gallant Ocean's shrimp, thereby preventing the agency from even assessing (and thereby beginning to attempt to collect) the \$4 million plus that will eventually be due. According to the terms of the injunction, liquidation may be further delayed if Gallant Ocean seeks to appeal the CIT's ruling at the Court of Appeals for the Federal Circuit.

In the meantime, Riptide Seafood has drastically changed its importing behavior. Per PIERS data, Riptide Seafood received its last shipment of shrimp from Gallant Ocean on May 29, 2007, six weeks prior to Commerce affirming its preliminary determination of a 57.64% assessment rate for Gallant Ocean in a final determination issued on September 12, 2007.⁹ In fact, per PIERS data, Riptide Seafood's May 29, 2007 shipment from Gallant Ocean was the last seafood import that the company has received from any source.

On its own, the experience of Riptide Seafood demonstrates the need for the enhanced bonding requirement. At some point in the near future, CBP will have to attempt to collect duties owed by the importer which are substantially in excess of amounts deposited by the importer. Given Riptide Seafood's dormancy as an importer since Commerce's determination of a final assessment rate, Riptide Seafood is clearly an importer that presents a substantial risk of being unwilling and unable to pay the bill that will eventually come due. Thus, the only amount that CBP is likely to collect from the

⁹ See 72 Fed. Reg. 52,065 (Sept. 12, 2007).

duties owed above and beyond amounts deposited will likely be because of the enhanced bonding requirement – and CBP's proposal to eliminate this requirement means that the agency is unlikely to collect any of the amount owed by the importer. But the likely inability to pay is only part of this importer's story.

A simple internet search for Riptide Seafood turns up the following contact information for the importer: 1111 Corporate Center Drive, Suite 204, Monterey Park, CA 91754; (323) 796-0588.¹⁰ This address information happens to now be the same address of the Los Angeles office of Seafood Castle Corporation ("Seafood Castle").¹¹ It is, then, perhaps not surprising that PIERS data indicates that Seafood Castle imports shrimp from Gallant Ocean and that Seafood Castle first began to import shrimp from the company in May of 2007, the same month in which Riptide Seafood stopped importing from Gallant Ocean. Since May of 2007, PIERS data indicates that through October of 2008, Seafood Castle has imported 2,615,503 pounds of shrimp from Gallant Ocean. Thus, in the 18-month period beginning in May of 2007, Seafood Castle has imported roughly the same quantity of shrimp from Gallant Ocean as Riptide Seafood imported during the 18-month period that encompassed the first administrative review period.

Thus, CBP's proposal not only means that the agency is unlikely to collect any of the duties that will be owed by Riptide Seafood beyond what has been deposited, it means that Seafood Castle may import shrimp from Gallant Ocean free and clear of any enhanced bonding requirement that might otherwise mitigate the agency's undercollection problems. The incentives created by CBP's proposal are abhorrent and are far too important to be ignored by the agency.

Nothing in the WTO Appellate Body's report can be read to require that CBP eliminate the enhanced bonding requirement. Indeed, as CBP recognizes in its Notice, the Appellate Body found only that the enhanced bond requirement *as applied* to importers of shrimp from *India* and *Thailand* did not constitute reasonable security.¹² Given the fact that more assessed antidumping duties on shrimp from *Brazil* and *China* went uncollected than collected last year, the use of the Appellate Body's report as an excuse to eliminate the enhanced bonding requirement *with respect to all shrimp imports* is irrational, unwarranted, and a clear perversion of CBP's mission to "collect all import duties determined to be due to the United States." Moreover, even with respect to shrimp imports from India and Thailand, CBP has reported that over \$3 million in assessed antidumping duties on Indian shrimp went uncollected last year and, as we have noted above, the agency will unquestionably face substantial difficulties in attempting to collect millions of dollars due on imports of Thai shrimp in the near future.

¹⁰ See http://www.bizearch.com/company/Riptide_Seafood_Corporation_338765.htm and http://www.manta.com/coms2/dnbcompany_6lbjkm (last visited Feb. 3, 2009).

¹¹ See <http://www.seafoodcastle.com/contact/> (last visited Feb. 3, 2009).

¹² 74 Fed. Reg. 1,224 at 1,225.

Removal of the enhanced bonding requirement, without any suggestion of an alternative developed to prevent massive undercollection of antidumping duties on shrimp imports, constitutes a full scale abdication of CBP's responsibility to administer the trade laws.¹³ The enhanced bonding requirement was an important initiative stressed by this agency in its report to Congress last year regarding the steps the agency was taking to improve collection of antidumping duties.¹⁴ CBP's proposal to remove the enhanced bonding requirement on shrimp in the face of open and obvious problems with undercollection of antidumping duties on shrimp imports when (1) *it is not so required* and (2) *without offering any alternative solution* can only mean that the agency has rescinded its commitment to Congress to meaningfully address the issue.

Based on the foregoing, the Southern Shrimp Alliance requests that CBP immediately withdraw its proposal to terminate the designation of shrimp covered by antidumping or countervailing orders as a special category or covered case subject to the requirement of additional bond amounts. Instead, CBP should issue a proposal and/or should seek comments on amending the enhanced bonding requirement in order to both comply with the WTO's Appellate Body report *and* address the substantial undercollection problem plaguing the agency's administration of our antidumping laws.

Sincerely,



John Williams
Executive Director
Southern Shrimp Alliance

cc: Daniel Baldwin, Assistant Commissioner, International Trade
Eugene H. Schied, Assistant Commissioner, Finance (CFO)
Seth Statler, Acting Assistant Commissioner, Congressional Affairs

¹³ As noted above, CBP has also proposed to retrospectively alter existing enhanced bonds. Any such action would both risk additional non-payment of duties owed and appear to be inconsistent with 19 U.S.C. § 3533(g)(2).

¹⁴ U.S. Customs and Border Protection, "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" (FY2007).