



The Shrimp e-Advocate

Breaking News

MAY 2009

The Southern Shrimp Alliance (SSA) is a non-profit alliance of members of the U.S. shrimp industry in eight states committed to preventing the continued deterioration of America's shrimp industry and to ensuring the industry's future viability. SSA serves as the national voice for the shrimp fishermen and processors in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

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BREAKING

NEWS

Injunction on CDSOA Distributions Expires

In November, SSA filed suit at the Court of International Trade (CIT) challenging U.S. Customs and Border Protection's (Customs) distribution of collected antidumping duties. The purpose of the suit was to get fair and equitable distributions of the duties in the future. As part of that suit, SSA obtained a Preliminary Injunction delaying the distributions for fiscal year (FY) 2008. On Friday, May 15th, that injunction expired and, on the same day, the CIT dismissed ten of the eleven counts of SSA's lawsuit against Customs.

What does this mean for the industry?

Basically and unfortunately, this means nothing has changed with respect to the unfairness of the Byrd distributions. Customs can now distribute the collected duties for 2008 whenever they are ready under the same guidelines that they have in the past. Although Customs has not indicated when FY08 distributions will be made, it is likely that payments will not be sent out until mid-June at the earliest. The total amount of Byrd distributions to be made for FY08 is reported to be \$32.7 million.

Unbelievable as it seems, when FY08 distributions are made, these distributions will suffer from nearly all of the same problems that occurred in FY06 and FY07. Over 70 percent of all distributions made to date have been received by shrimp purchasers, while only roughly 20 percent of Byrd funds have gone to shrimp producers. For FY08, Customs has reported that over 75 percent of the \$32.7 million in collected antidumping duties in FY2008 will be directed to just 59 entities. ([Read the full report of where CDSOA funds will be directed here](#)).

Amazingly, in dismissing most of SSA's claims, the CIT held that:

- Customs had total and unreviewable discretion to

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refuse to investigate claims that were clearly absurd, improper, obviously erroneous and potentially fraudulent.

- CBP can set aside or "hold back" Byrd funds for shrimp purchasers, including importers that did not support the petition for antidumping relief.
- The law is so broad that Byrd funds could be used to offset costs related to the payment of antidumping duties on imported shrimp!
- Customs is not required to ensure that expenditures used in claims for Byrd funds be related to the production or processing of shrimp. In other words, a shrimp purchaser may not need to demonstrate that it has, in fact, processed any shrimp.

These holdings allow CBP to continue to distribute collected antidumping duties in a manner that does not provide meaningful assistance to the domestic industry. Ironically, the impact of the CIT's rulings will likely have the most significant impact on shrimp processors. Their share of total distributions has decreased each year as the result of increased claims from (1) shrimp purchasers with limited or no processing activities and (2) shrimp importers. Now the claims from non-processing shrimp purchasers and shrimp importers will likely increase, leading to a further reduction in the portion of duties allocated to both shrimp processors and fishermen. Because the largest proportion of the duties has been distributed to US processors, they now stand to lose the most.

What does SSA intend to do now?

SSA remains committed to seeking fair and equitable distributions of antidumping duties to the benefit of the entire industry. Through FY08, **\$180.9** million in funds have been made available for distribution as the result of SSA's successful pursuit of trade relief on dumped imports. The fact that these funds have not been distributed in a manner to help shrimp producers is a travesty. Nevertheless, SSA will continue to pursue each and every option available to ensure that all BYRD funds - including both those already distributed and those yet to be distributed - are provided to the industry in a fair and equitable manner.