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DEPUTY WHIP

Commerce, Science, and Transportation

Environment and Public Works

Foreign Relations

Small Business and Entrepreneurship

Special Committee on Aging

United States Senate

WASHINGTON, DC 20510

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The Honorable Carlos M. Gutierrez
Secretary, U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

W. Ralph Basham
Commissioner, U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Sent Via Fax and U.S. Mail

Dear Secretary Gutierrez and Commissioner Basham:

As you are aware, the Appellate Body (AB) of the World Trade Organization recently issued a decision that severely hampers the ability of the United States to address unfair trade. This most recent decision threatens the trade relief the domestic shrimp industry obtained to address dumped shrimp imports from Thailand and, more broadly, the ability of U.S. Customs and Border Protection to collect antidumping and countervailing duties assessed on unfairly-traded imports. I request that the U.S. Department of Commerce thoroughly consider all available options for capturing the full magnitude of the dumping of Thai shrimp. Also, I request that CBP similarly devote careful attention to addressing the massive problem of under collection of assessed antidumping and countervailing duties. In addition, I ask to be kept advised of the progress made by your agencies on these two important issues prior to November 1, 2008.

The AB decision affirmed the WTO's unwarranted requirement that the United States must provide offsets for non-dumped sales in dumping margin calculations, otherwise known as "zeroing." As a result of the ruling, Commerce will be asked by the United States Trade Representative to reevaluate the dumping margins found to exist on Thai shrimp in the agency's original investigation. Commerce was asked last year to conduct a similar reevaluation of the dumping margins found on shrimp from Ecuador. This previous reevaluation led to the removal of relief related to unfair imports of shrimp from Ecuador, because Commerce indicated that it did not have sufficient time to fully explore alternative calculation methodologies. I feel that insufficient time is an inappropriate rationale to deny a domestic industry relief from the injury caused by unfairly traded imports. With respect to its reevaluation of the dumping margins on Thai shrimp, Commerce should fully and fairly evaluate all alternative calculation

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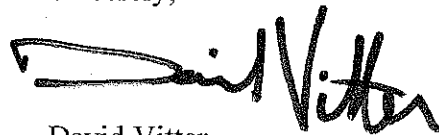
methodologies to quantify and capture the full level of unfair trade that has occurred in the U.S. market.

In addition, I feel that AB decision improperly held that the enhanced continuous bond (ECB) program designed and implemented by CBP on imports of shrimp from India and Thailand was inconsistent with the United States' obligations under the WTO Agreements. The ECB program is an important step forward in addressing a growing problem confronting the operation of our trade law. Deputy Assistant Secretary of the Treasury Timothy Skud recently testified before the Senate Finance Committee that CBP "is able to collect less than 50 percent of antidumping and countervailing duties that have been retroactively assessed in excess of bonds or cash deposits." As such, under collection threatens the integrity of the relief from unfair trade that vulnerable domestic industries are entitled under our trade laws. Prior to the AB's decision, the ECB program successfully prevented the substantial under-collection problem from impacting collection of antidumping duties assessed on imported shrimp. As a result of the ruling, USTR will ask CBP to reevaluate the bonding program implemented on shrimp imports from India and Thailand. I request that CBP conduct a thorough analysis of the authority vested in the agency to address the problem of under collection.

With respect to both "zeroing" and under collection of antidumping and countervailing duties, I ask that you keep me informed of all relevant developments. In particular, I would greatly appreciate an update by CBP on progress made in developing a program addressing the substantial under-collection of antidumping and countervailing duties and by Commerce of the consideration of all alternative calculation methodologies available to quantify fully the level of dumping occurring in the U.S. market prior to November 1, 2008.

I am grateful for the extraordinary efforts of Commerce and CBP officials to administer our trade laws. Thank you for your attention to this matter, and I look forward to assisting in any way I can with our ongoing efforts to respond to the unfortunate decision by the WTO Appellate Body.

Sincerely,

A handwritten signature in black ink that reads "David Vitter". The signature is written in a cursive, slightly slanted style.

David Vitter
U.S. Senator

cc: Ambassador Susan C. Schwab, USTR