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AM&S TRADE SERVICES, LLC
CARLOS MOORE, PRESIDENT

October 15, 2004

BY HAND DELIVERY
James J. Jochum
Assistant Secretary for Import Administration
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

PUBLIC DOCUMENT

Attn.: Lawrence Norton
Anthony Hill

Re: Request for Comments in *Separate-Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 69 Fed. Reg. 56,188 (Sept. 20, 2004): Comments of the Crawfish Processors Alliance, the Louisiana Department of Agriculture and Forestry, and Bob Odom, Commissioner

Dear Mr. Secretary:

On behalf of the Crawfish Processors Alliance ("CPA"), the Louisiana Department of Agriculture and Forestry and Bob Odom, Commissioner ("LDAF"), we hereby submit comments regarding proposed changes to the practice of the U.S. Department of Commerce ("Department") in establishing separate rates for respondents in antidumping proceedings involving imports from non-market economy ("NME") countries. These comments focus exclusively on the use of

"combination rates" (*i.e.*, rates that are limited to specific producer-exporter combinations or, where the producer and exporter are the same entity, to subject merchandise that is both produced and exported by that entity) in NME cases. *See Separate-Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries* ("Request for Comments"), 69 Fed. Reg. 56,188 at 56,190 (item 2 of Appendix) (Sept. 20, 2004).

EXECUTIVE SUMMARY

In the past, the Department normally has not assigned combination rates in administrative reviews and has offered only one rationale for this practice, regardless of whether the case involves a market economy or NME -- namely, that it is the exporter, rather than the producer, which is believed to establish the U.S. price. Although this rationale may be reasonable in most market economy cases where margins are usually based on price-to-price comparisons, it is inapplicable to NME cases where margins are based on a comparison between U.S. prices and a constructed normal value. In NME cases, combination rates provide the best practicable assurance that the cash deposit paid at the time of entry will be an adequate surety against the risk of nonpayment of final duty assessments. Actual experience in the enforcement of antidumping duty orders in NME cases, especially the order against freshwater crawfish tail meat from China, shows clearly that existing practices do not provide adequate surety against nonpayment and have permitted rampant circumvention of U.S. antidumping law. Combination rates would substantially reduce such abuses and would be more consistent with the Department's NME margin calculation methodology than the current practice. The Department therefore should use a combination rate in each instance in which a separate rate is assigned in an NME case. Where no such rate has been calculated, the country-wide cash deposit rate should be applied.

DISCUSSION

I. THE RATIONALE FOR DECLINING TO USE COMBINATION RATES IN MARKET ECONOMY CASES IS INAPPLICABLE TO NME CASES

The argument most often offered against the use of combination rates is that it is the exporter, rather than the producer, that establishes the export price.[1] While this explanation may be sensible in most market economy cases, it is an inadequate rationale for rejecting combination rates in NME cases because of important differences in the manner in which margins are calculated in those two contexts. In an antidumping case involving a market economy country, the exporter is normally in control of both sides of the formula used to calculate the dumping margin -- not just the export price but also the price for its sales of similar or identical merchandise in the comparison market. In contrast, the exporter in an NME case controls only one side of the formula (the export price), while the other side (normal value) is determined by the producer's factors of production and the surrogate values applied by the Department. The producer's factors of production lie outside the control, and normally also outside the knowledge, of the exporter. Since factors of production vary from one producer to another, dumping margins

[1] For example, this justification is repeated, in one form or another, by various parties who submitted comments opposing the use of combination rates in response to the Department's May 3, 2004, notice (*Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 69 Fed. Reg. 24,119), as indicated by the comments posted on the Department's website (http://ia.ita.doc.gov/download/nme-sep-rates/nme-sep-rates-cmts-index.html, visited Oct. 12, 2004), including: Comments of the PRC Bureau of Fair Trade for Imports and Exports, June 1, 2004, at 32 (stating that an exporter who receives a separate rate should be able to use it as the cash deposit rate for all future entries because "the exporter is responsible for setting its own prices, regardless of supplier"); Comments of the Shrimp Committee of the Vietnam Association of Seafood Exporters and Producers, June 1, 2004, at 17 (stating that "{i}t is the exporter's price to the United States that is material to the dumping margin," ignoring the materiality of the producer's factors of production).

on merchandise produced by different NME producers cannot be expected to be the same, even when sold through a single exporter at a uniform U.S. price. This variation in actual dumping margins based on the identity of the supplier cannot occur in market economy cases where the exporter receives a rate based on price-to-price comparisons.

One party has suggested, in response to the Department's notice of May 3, 2004 (*supra*), that combination rates are inappropriate in NME cases because a nonproducing exporter lacks knowledge of his suppliers' factors of production and therefore cannot predict his ultimate liability for antidumping duties. *See* Comments of California Cedar Products Company ("CCPC"), May 27, 2004, at 2. The final assessment rate, though, is always subject to a certain degree of unpredictability, if only because of changes in the factors used by the supplier (even where it is the same supplier as used previously) and in the surrogate values applied to such factors. Beyond those unavoidable uncertainties, the problem of which CCPC complains -- a lack of knowledge about the suppliers' factors -- arises entirely from the exporter's decision to use new and unfamiliar suppliers. The use of a combination rate can neither increase nor diminish the exporter's knowledge about the new suppliers' factors at the time of sale. The exporter's lack of knowledge therefore supplies no basis for rejecting the use of combination rates. To the contrary, the use of combination rates can be expected to help prevent undue surprise for unsophisticated importers who switch suppliers and then incorrectly assume that their deposit rate will closely approximate their final assessment rate.

II. COMBINATION RATES PROVIDE THE BEST PRACTICABLE SURETY AGAINST NONPAYMENT OF FINAL DUTY ASSESSMENTS IN NME CASES

The rate assigned in an administrative review is used both for final assessment of entries

made during the period of review ("POR") and as the cash deposit rate for future entries. However, since the rate assigned to an exporter in an administrative review is based on the factors of the producer that actually produced the merchandise during the POR, it is of no consequence whether the final assessment rate is characterized as a combination rate. Therefore, in assessing the wisdom of using combination rates in NME cases, the Department need only consider the effects of such a practice on the efficacy of the system of collecting cash deposits on future entries.

The principal purpose of a cash deposit is to provide a surety against nonpayment of the final duty assessment. Thus, the best cash deposit is the one that most closely approximates the final duty assessment. The statute presumes that the most recent dumping margin is the best practicable predictor of future dumping conduct by the same actor or actors. The presumption that past margins are predictive of future margins becomes highly attenuated, however, when the exporter radically alters the normal value portion of the margin calculation by using suppliers other than those on whose factors of production the past margin was based. Therefore, to maximize the predictive value of the cash deposit rate, the rate should be limited to shipments of subject merchandise produced by the same producer whose factors were used to calculate the rate in the previous review.

In response to the Department's notice of May 3, 2004 (*supra*), some parties have argued that combination rates are unnecessary because, where an exporter with a separate rate later changes suppliers, the Department will eventually calculate an actual margin based on those new

suppliers' factors in the next administrative review.[2] This argument ignores the cash deposit rate's essential function as a surety against nonpayment and pretends that the Department need not concern itself with improving the effectiveness of such function. Indeed, the fact that importers will eventually have the opportunity for a full accounting of actual duties owed, based on the actual dumping margin during the period of review, shows that a decision to use combination rates will not subject importers to any cognizable harm or additional risk. The deposit paid at the time of entry by these importers is held in trust by the United States Government and, if in excess of the final assessment, will be refunded with interest.

III. EXISTING PRACTICES DO NOT PROVIDE ADEQUATE SURETY AGAINST NONPAYMENT AND HAVE PERMITTED RAMPANT CIRCUMVENTION OF ANTIDUMPING ORDERS

The current method of assigning rates to NME exporters has failed to provide adequate surety against nonpayment of final antidumping duty assessments. In the case against imports of freshwater crawfish tail meat from China, for example, only about 10% of the final assessments owed have actually been collected, due primarily to the inability of the U.S. Bureau of Customs and Border Protection ("Customs") to collect final assessments in excess of the deposit paid at the time of entry. With such rampant abuse of the current NME cash deposit system, there is a real and immediate need to reform the process by limiting cash deposit rates to specified producer-exporter combinations.

The final assessment rates imposed by the Department in administrative reviews under the crawfish antidumping order have been generally high, often exceeding 200%. However, it is

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[2] *See* Comments of the Government of the People's Republic of China, June 1, 2004, at 32; Comments of CCPC, May 27, 2004, at 2.

up to Customs to collect such assessments, and Customs, for the most part, has been unable to do so. Based on Customs' own public statements, Customs has collected the following duties pursuant to the antidumping order:

- FY2002: $64.5 million owed; only $7.5 million (11.6%) collected.
- FY2003: $94.7 million owed; only $9.7 million (10.2%) collected.
- FY2004: Specific amount owed unknown; only $2.5 million collected as of April 30, 2004.[3]

In a letter from Customs dated January 15, 2004, Customs states:

> CBP {*i.e.*, Customs} has encountered serious problems in collecting additional duties on this case from crawfish importers. As of October 1, 2003, CBP had issued bills to these importers in excess of $135 million.... {H}owever, many of them have gone out of business without paying the duties owed CBP.... While I assure you that CBP will continue to make its best effort to collect the outstanding duty bills, it appears that a significant portion of the $135 million may have to be written off by the Government as uncollectable.

Letter from R. Quinn to Sen. J. Breaux, January 15, 2004, at 1 (emphasis added), *reproduced in* Exhibit 1. Customs' colossal failure to collect final duty assessments against imports from China has been widely reported in the press. The attached article from *Inside U.S.-China Trade* provides further details of the enforcement problems. *See* Exhibit 2.

Although Customs has not provided a full accounting of its failures in collecting

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[3] The figures for FY2002 and FY2003 are taken from Customs' annual reports under the Continued Dumping and Subsidy Offset Act, which are posted on Customs' website (http://www.customs.gov/xp/cgov/import/add_cvd/cont_dump, visited Oct. 15, 2004). The figure of $2.5 million for FY2004 is unpublished. Despite repeated inquiries by CPA, LDAF, and numerous members of Louisiana's Congressional delegation, Customs has thus far refused to release the figure for total collections during FY2004.

antidumping duties, it appears that almost all of the duties collected thus far were obtained solely from cash deposits and that Customs has collected little or none of final duty assessments in excess of the cash deposit posted at the time of entry. Accordingly, it is crucial to proper enforcement of the crawfish antidumping duty order that cash deposits be more closely tailored to the likely amount of the final duty assessment. Combination rates would be only a partial remedy to the problems just described, but they would nonetheless be an important step in the right direction.

IV. MERCHANDISE FROM A SUPPLIER FOR WHICH THE DEPARTMENT HAS NOT ESTABLISHED A COMBINATION RATE SHOULD BE SUBJECT TO THE COUNTRY-WIDE CASH DEPOSIT RATE

As noted above, every separate rate in an NME case is the product of a calculation based on both (a) the U.S. sale price, normally presumed to have been determined by the exporter, and (b) the producer's factors of production, appraised on the basis of surrogate values. One exporter's past pattern of pricing in the United States cannot validly be assumed to be the same as another exporter's future pattern of U.S. pricing, nor can one NME producer's previous factors of production be presumed to be the same as a different NME producer's future factors. Accordingly, except where the Department has already determined a cash deposit rate based on both elements of the NME dumping margin calculation, an entry of subject merchandise should attract the country-wide rate for cash deposits at the time of entry.

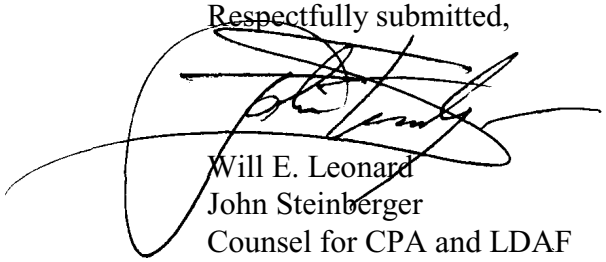
For example, assume that the Department has assigned a rate of 25% to ABC Corporation, an NME producer which also acted as the exporter for some of its own merchandise during the period of review in which the 25% rate was calculated. Assume further that, during

the same period of review, some of ABC Corporation's output was sold to an NME trading company, XYZ Export Company, and that the Department calculated a rate of 10% for such exports -- a rate that differs from ABC's rate because XYZ had a different pattern of U.S. pricing. If XYZ subsequently exports merchandise produced by ABC, the 10% rate should be applied for cash deposits because it is based on the same factors and the same exporter on which the 10% rate was originally calculated. This reflects an assumption that ABC's factors, and XYZ's decisions regarding the U.S. price, will be similar in the future to what they were in the past. Similarly, if ABC exports its own merchandise, the 25% cash deposit rate should apply, reflecting an assumption that ABC's factors, and ABC's decisions regarding the U.S. price, will be similar in the future to what the Department has already found in the past.

However, if ABC exports the merchandise of QRS, another NME producer, a situation will thus be presented with which the Department has no previous knowledge or experience -- *i.e.*, there is no basis for assuming that ABC's factors are the same as QRS's or that ABC will sell QRS's merchandise in the United States at the same price as its own. This remains true even if the Department has previously examined and assigned a separate rate to QRS, since that rate reflects QRS's decisions on the U.S. price, not ABC's. Similarly, if XYZ, the trading company, begins shipping merchandise produced by QRS, the Department again has no basis for assuming that the actual dumping margin for such shipments will resemble the 10% margin previously found, because again there is no basis for assuming that QRS's factors will be the same as ABC's or that XYZ will sell QRS's merchandise in the United States at the same price previously used for ABC's merchandise. Thus, in both instances, the merchandise should be entered at the country-wide cash deposit rate in order to provide the necessary surety against nonpayment of

final antidumping duty assessments.

Respectfully submitted,



Will E. Leonard
John Steinberger
Counsel for CPA and LDAF

EXHIBIT 1

U.S. CUSTOMS AND BORDER PROTECTION
Department of Homeland Security
1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229

04 JAN 29 PM 2:59

January 15, 2004

The Honorable John Breaux
United States Senate
Washington, D.C. 20510

Dear Senator Breaux:

Thank you for your letter of August 21, 2003, on behalf of your constituents, the Louisiana crawfish industry, concerning the collection of antidumping duties on crawfish from China (case number A-570-848). We apologize for the delay in our response.

The U.S. Customs and Border Protection (CBP) has just completed the issuance of Fiscal Year 2003 (FY) disbursements to affected domestic crawfish producers under the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). For FY 2003, 25 qualified domestic crawfish producers have received over $9.7 million dollars. The CBP also disbursed over $7.5 million to affected domestic crawfish producers last year, bringing total disbursements to Louisiana crawfish producers under this program to over $17 million. In terms of percentage of claims offset, the crawfish case disbursements have provided the highest offset of any of the 400 dumping and countervailing duty cases administered by CBP.

However, as you know, CBP has encountered serious problems in collecting additional duties on this case from crawfish importers. As of October 1, 2003, CBP had issued bills to these importers in excess of $135 million. We are aggressively pursuing collection actions against the importers; however, many of them have gone out of business without paying the duties owed CBP. In those instances where the importer has gone out of business, we have initiated collection actions against the surety companies that underwrote the bonds to CBP covering these importations. Unfortunately, we are now facing the bankruptcy of one or more of these surety companies. While I assure you that CBP will continue to make its best effort to collect the outstanding duty bills, it appears that a significant portion of the $135 million may have to be written off by the Government as uncollectable.

We are also pursuing possible criminal and civil actions against several parties for fraudulent importations. Department policy precludes us from providing any specific information to you on these fraud cases until the cases have concluded.

The CBP is currently holding over $23 million in cash deposits of dumping duties in connection with other imports of crawfish from China. We are working closely with the Department of Commerce on these importations to see if they are eligible for liquidation, which will have the effect of transferring the funds to the CDSOA disbursement account for FY 2004.

I appreciate your interest in Customs and Border Protection. If we may offer further assistance, please contact me at (202) 927-1760.

Yours truly,

Gloria J. Bryant

for Richard F. Quinn
Acting Assistant Commissioner
Office of Congressional Affairs

EXHIBIT 2

from the publishers of Inside U.S. Trade

Inside US-China Trade

the exclusive weekly news service of ChinaTradeExtra.com

Vol. 4, No. 12 - March 24, 2004

U.S. CLAIMS CHINA VIOLATES GATT, GATS, WTO PROTOCOL IN CHALLENGE OF CHIP TAX

The Bush Administration last week claimed that China's value-added tax (VAT) on semiconductors violates basic World Trade Organization rules on most-favored nation treatment and national treatment, as well as language in China's protocol on its accession to the WTO. The U.S. formally outlined its arguments against the VAT for the first time in its written request for WTO consultations with China, which were made under the WTO's Dispute Settlement Understanding.

Specifically, the March 18 U.S. request for consultations said the VAT violates Articles I and III of the General Agreement on Tariffs and Trade (GATT), which cover most-favored nation treatment and national treatment for goods. These citations were expected, as the U.S. has long argued that China's policy of rebating portions of a 17 percent VAT on semiconductors that are made and designed in China is a clear violation of these basic WTO commitments.

Article I holds that members must give products originating in one WTO members the same treatment as like products from other countries, while Article III requires members not to distort competition with internal taxes and regulations and to refrain from imposing taxes on foreign products to protect a domestic industry.

The U.S. also argued in its request that the VAT violates Article XVII of the General Agreement on Trade in Services (GATS), which deals with national treatment for those services for which members have taken on commitments. The request said it cited this as a violation because

continued on page 7

MASSIVE CUSTOMS PROBLEMS, LIKELY CHINESE FRAUD REVEALED IN BYRD LAW REPORT

A March 19 release from U.S. Customs and Border Protection reveals that the agency continues to have massive problems collecting millions of dollars worth of duties from trade remedy cases, particularly those levied on Chinese products. This is raising what some sources say is the unsettling prospect that only a fraction of assigned antidumping duties on major categories of Chinese imports are actually being collected.

According to informed sources, the report indicates that Customs last year essentially forfeited more than $100 million worth of duties on a wide range of Chinese imports in fiscal year 2003. They added that it is unclear whether Customs has taken any real steps to address its pervasive problems with collecting duties imposed in trade remedy cases as it said it would do two years ago.

As a result, sources said the issue could be referred to the General Accounting Office or the Homeland Security Inspector General for further investigation. In addition, Customs and Border Protection Commissioner Robert Bonner is expected to be pressed on the matter when he testifies on March 30 before the Senate Appropriations Committee subcommittee on Homeland Security.

At issue is Customs' March 19 report detailing the distribution of anti-dumping and countervailing duties to U.S. petitioners in trade remedy cases under the Continued Dumping and Subsidy Offset Act, also known as the Byrd law. The law requires Customs to take duties collected in antidumping and subsidy cases and distribute them to petitioners in these cases.

According to Customs' own figures, the U.S. government did not collect about $103 million worth of antidumping duties from Chinese imports, a

continued on page 4

SENATORS THWARTED IN EFFORT TO ADD CHINA CVD AMENDMENT TO FSC BILL

Senators Evan Bayh (D-IN) and Susan Collins (R-ME) this week failed to amend a bill repealing the foreign sales corporation (FSC) and its successor regime in a way that would allow the Commerce Department to impose countervailing duties on Chinese imports, as they were unable to convince Senate leaders to include this amendment in the FSC repeal bill. Commerce now maintains that it cannot impose countervailing duties on the exports of a non-market economy because it is impossible to measure the effect of subsidies in a distorted market, and thus China can only be subject to antidumping duties or safeguard actions.

The Bayh-Collins amendment was not included in a new version of a bill to repeal FSC and the Extraterritorial Income Act unveiled on March 23 that Senate leadership wants to offer for a potential final vote this week. Senate GOP leaders hope to use two procedural steps to bring this new bill to the floor as a substitute for the pending bill so that controversial trade amendments cannot be raised. If the GOP procedural moves are successful, Senate debate would be limited and amendments not specific to the FSC repeal bill could not be raised.

continued on page 6

ensure multilateral support to improve China's WTO compliance.

In other areas, the Commission said the U.S. needs to do more to improve the transitional review mechanism (TRM), which was established in the WTO in order to provide for an annual review of China's compliance efforts. At last month's hearing, commissioners said they were disappointed in how the TRM has been downgraded into a process in which China has offered minimal responses to the issues presented by trading partners. China has refused to respond in writing to questions about compliance, as well as to any criticism that it is not living up to its obligations (*Inside US-China Trade*, Feb. 11).

Commissioners asked that the U.S. try to improve the TRM process, but that if it cannot, the U.S. and other major WTO members should produce their own "unified annual report" that can be used to accurately measure China's progress or lack thereof. "This measurement and evaluation should be provided in detail to Congress as part of USTR's annual report on China's WTO compliance," the Commission suggested.

In terms of U.S. laws that can be used, the Commission said the U.S. must make "optimal use" of Section 421 of the Trade Act of 1974 to help guard against a surge of Chinese imports. The recommendations derided the fact that the Bush Administration has so far rejected three of these cases, even after the U.S. International Trade Commission recommended a trade remedy.

"This puts private sector U.S. firms seeking implementation of the safeguards at a disadvantage and may have the effect of nullifying important safeguards Congress relied on in approving PNTR for China," they wrote.

Also, the Commission recommended allowing the use of countervailing duty laws against non-market economies. This issue is one that is gaining in popularity, and has support from several industry associations that are hoping for the chance to apply duties to Chinese imports that benefit from government subsidies (see separate story).

Finally, the Commission said the U.S. needs to ensure that the Chinese government no longer requires the transfer of technology as a condition of winning a sales contract.

Please go to ChinaTradeExtra.com for a copy of:

■ *The Commission's recommendations and transcript from its February hearing*

BYRD REPORT REVEALS PROBLEMS WITH CHINA . . . begins on page one

figure that accounts for nearly 80 percent of all uncollected duties in 2003. Informed sources said this huge figure of uncollected duties is a strong indication that U.S. importers with links to China do not appear to be complying with U.S. law, and could be evidence of an organized effort on the part of China to avoid U.S. duties altogether.

"If it's not orchestrated by China, it seems clear that China's way of doing business is not to comply with U.S. legal requirements," one informed source said, adding that the figures could have some "fraud implications" for China.

Specifically, informed sources said there is growing evidence that Chinese owned or operated importers in the U.S. are actively working to avoid paying duties. These sources pointed to anecdotal examples in which these importers rush to import product from China, and then file for bankruptcy in order to avoid paying duties.

However, these informed sources stressed that the figures released by Customs also reflect the failure of that agency to require single-entry bonds for all Chinese imports from entities that are subject to new shipper reviews. These single entry bonds are considered less risky than a continuous entry bond because each shipment is covered by a different bond.

While Customs claims to have corrected this problem in 2002, sources said the results of this policy change will likely lag by a few years, and that Customs' failure to require these bonds on imports from new shippers appears to be causing spikes in the amount of uncollected duties from Chinese imports in fiscal year 2003.

According to these sources, U.S. industry representatives began pressuring Customs as early as 2001 to ask that a single-entry bond system be used for new shippers that are being reviewed by Commerce for the purpose of assigning a specific antidumping duty. These representatives argued that a 1985 Memorandum of Understanding between Customs and Commerce required Customs to use this system, under which each shipment requires the posting of a separate bond. Under this methodology, the risk that the U.S. government will not ultimately be able to collect the assessed duties is much reduced.

In contrast, Customs had been allowing new shippers being reviewed by Commerce to export to the U.S. under a continuous entry bond covering multiple shipments. Under this system, the importer in the U.S. pays a much smaller amount for the bond, even though the total amount of duties ultimately owed can grow quickly after Commerce calculates a duty rate for the new shipper.

According to these sources, Customs finally agreed to require single-entry bonds after industry pressure and at least one phone call from the office of House Ways & Means Committee Chairman Bill Thomas (R-CA).

Because the total time needed to complete a new shipper review can often take up to 18 months, the fiscal year 2003 report on the funds distributed by the Byrd law is very likely to include amounts that Commerce only recently decided it was owed on imports that were entering under a continuous entry bond. This, in combination with the

apparent efforts of importers owned or operated by Chinese companies to avoid the payment of duties, appears to be a large part of the problem Customs has with uncollected duties.

In addition, sources said it leads to the conclusion that importers of Chinese products are clearly avoiding the bulk of many assessed duties on imports, even when they are appearing to comply by posting bonds to cover them.

The extent of Customs' duty collection problems related to China is most quickly seen by examining just a handful of Chinese products, which represent a large majority of Customs' uncollected duties as well as duties owned under a bond requirement that might never be repaid.

Regarding uncollected duties, Customs reported that $103 million of the $130 million in uncollected duties relate to antidumping cases involving products from China. A full $85 million of that $103 million are uncollected duties on crawfish from China. Other Chinese imports that still have more than $1 million in uncollected duties include paint brushes, iron castings, roller bearings, silicon metal, brake rotors, and honey.

A separate section of the Customs report outlines the amount of money, in cash and in bonds, that Customs is holding relating to each case. That section shows that for all listed accounts, $283 million worth of duties are still owed to the U.S. in connection with outstanding bonds, virtually all of which are related to exports from new shippers. Just five products from China – garlic, crawfish, canned mushrooms, honey and metal tables and chairs – account for $254 million of these owed duties under bond.

According to informed sources, these figures show that imports from China in particular are coming into the U.S. under bonds, and it is completely unclear which portion is coming in under the single-entry bonds that would make it easier for Customs to collect the money. In contrast, duties on most imports from other countries are paid in cash deposit, and very few owe any outstanding duties in bonds.

Sources added that industry representatives still have problems getting Customs to clarify whether these large outstanding bonds are single-entry bonds or continuing entry bonds, which makes it difficult to tell whether Customs has in fact switched over to the less-risky single-entry bond system. In addition, one source noted that Customs just last year sent out a notice to border officials insisting that they use the single-entry bond system, which is a possible sign that it is still not a common practice despite Customs' agreement to make this switch in early 2002.

On a related point, some sources have suggested that Customs may be inadvertently accepting false bonds as a condition of allowing Chinese imports into the country. These sources said that some bond issuers – which are liable for the full duty amount if the import defaults on the final duty owed to the U.S. – have gone bankrupt or warned of impending bankruptcy because they cannot cover the duty owed after importers with ties to Chinese companies default on the duties. As a result, these sources doubt that any bond issuer would cover Chinese imports with new bonds.

In other areas, sources noted that many of Customs' problems that were outlined in a June 17 report from the Treasury Department's Inspector General appear to still be present. Among other things, the IG report said Customs' computer system has a glitch that counts duties as being collected when they are assessed (*Inside US-China Trade*, Sept. 4).

Sources said evidence that this problem has not been corrected can be seen by comparing Customs' last summer estimate of what it would distribute under the Byrd law for fiscal year 2003, and what it actually distributed. As an example, Customs last summer estimated it would distribute $32 million to petitioners in the antidumping case against Chinese crawfish. However, last week Customs said it had only distributed about $9 million to these petitioners, and that $85 million was still uncollected.

Customs' pervasive problems in administering the Byrd law distributions likely accounts for the fact that distributions made in fiscal year 2003 were much lower than those made in 2002. Customs reported that $190 million was distributed to U.S. petitioners in antidumping and subsidy cases in 2003, which is much lower than the 2002 distribution of $330 million. In 2002, $97 million worth of the distributed duties involved China cases, but in 2003, only about $20 million of the distribution was related to China.

If the $130 million in uncollected duties were added, Customs would have been able to distribute $320 million in 2003. In addition, Customs acknowledged that another $50 million has so far not been distributed pending litigation by companies that are claiming the right to this additional sum because they bought out or otherwise merged with original petitioners. While Customs in 2002 distributed Byrd law funds to duly authorized successor companies, it took the position last year that it could no longer do this, a move that is prompting at least two lawsuits.

If Customs were able to distribute the additional $50 million, it would total $370 million for 2003, which exceeds the $330 million distribution total in 2002.

One source said that one irony of the Byrd law is that, even if it faces some opposition in light of the successful World Trade Organization challenge brought by the European Union and other trading partners to the law, it is the only reason Customs' various problems have been revealed at all. This is because the law forced Customs to keep antidumping and countervailing duty cases in separate accounts so they could be distributed to petitioners, as

opposed to simply collecting all the duties into a single account and handing it over to the U.S. Treasury.

"If it weren't for the Byrd amendment, all of these problems would not be coming up," one source said.

By Pete Kasperowicz

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- *Customs and Border Protection's announcement on Byrd law distributions*
- *The 1985 MOU between Customs and Commerce on the single-entry bond requirement*

FSC REPEAL BILL EXCLUDES CHINA CVD AMENDMENT . . . begins on page one

The Bayh-Collins amendment is similar to a House bill that would alter the Tariff Act of 1930 and give Commerce the statutory authority necessary to impose CVD orders against NME countries, such as China. This would reverse a long-held Commerce position that the U.S. cannot launch anti-subsidy cases against non-market economies (*Inside US-China Trade*, Feb. 4).

Collins on March 12 introduced a bill, S. 2212, that would grant Commerce the necessary authority to include non-market economies in CVD investigations after Bayh had already filed similar language as an amendment to the original Senate FSC-ETI repeal bill, a Senate source said. Senate leadership is trying to pass the bill to end European Union sanctions against U.S. exports, which were imposed after the World Trade Organization declared FSC and its successor regime, the Extraterritorial Income Act, prohibited export subsidies for industrial goods. As such, it has more chances to pass this year than other trade bills, sources say.

Prior to Senate leadership floating the substitute FSC bill, Bayh and Collins had not received any commitment from leadership on whether their amendment would be voted on, if at all, the Senate source said.

The source said it is unclear whether another route can be found that would allow the CVD amendment to be attached to the FSC bill, and Collins has yet to identify another vehicle to which her bill could be added, the Senate source said. Aside from Bayh, this bill is also co-sponsored by Sens. Elizabeth Dole (R-NC) and Lindsay Graham (R-SC).

The change in CVD law being pushed by Collins and Bayh is identical to a House bill offered by House Ways and Means Committee member Phil English (R-PA). However, English has yet to settle on a plan for moving forward with the bill, including identifying possible vehicles to which the bill could be attached, a House source said.

Instead, English is in the process of securing as many co-sponsors for the bill as possible and determining "how broad support for the bill is" before moving forward, said the source.

When English introduced the bill in late January it was co-sponsored by Reps. Melissa Hart (R-PA) and Artur Davis (D-AL), but since then another 17 House members, 10 Republicans and seven Democrats, have signed on as co-sponsors.

Joining the list of co-sponsors are Reps. Cass Ballenger (R-NC), Rob Bishop (R-UT), Sanford Bishop (D-GA), Marion Berry (D-AR), Jo Bonner (R-AL), Richard Burr (R-NC), Martin Frost (D-TX), Robin Hayes (R-NC), William Lipinski (D-IL), John McHugh (R-NY), Sue Myrick (R-NC), Robert Ney (R-OH), Ralph Regula (R-OH), Tim Ryan (D-OH), Mark Souder (R-IN), Bart Stupak (D-MI) and Jim Turner (D-TX).

English in late February circulated a dear colleague letter seeking support for his bill that did not make any specific reference to China. Instead, the letter said the change was necessary because of the continued existence of state-owned enterprises in non-market economies and because "certain critical inputs are state controlled," and that "the provision of export subsidies provides countries with an unfair market advantage in a wide range of products."

However, in a fact sheet circulated with the letter, English said the provision of such export subsidies provides "NME countries and China with an unfair market advantage in a wide range of products and agricultural goods."

Separately, a variety of U.S. industries, including steel and textile producers, have weighed into the issue urging members of Congress to back legislation forcing Commerce to back down from its position on CVDs not being applicable to non-market economies.

A March 12 letter from the American Textile Manufacturers Institute (ATMI) called on House members to back the English bill complaining that China "can provide direct support to its textile and apparel sector without triggering this important U.S. trade law," and that "China is free to subsidize its textile and apparel manufacturers without fear of reprisal."

A March 11 letter from the American Iron and Steel Institute called on House members to support the English bill, citing among other reasons the continued movement of manufacturing facilities "particularly to China." A March 16 letter to Collins from the Printing Industries of America complained of "information that significant financial incentives have been provided by the Chinese government to encourage local print production." The group pledged to do whatever it could to ensure passage of the Collins bill.

Please go to ChinaTradeExtra.com for copies of:

- *The English dear colleague letter and fact sheet*
- *Letters from U.S. textile, steel and printing groups*
- *Text of the English and Collins bills*