

Comments on Commerce's Report to Congress on
Prospective Versus Retrospective Antidumping and Countervailing Duty Systems
(75 Fed. Reg. 16079, March 31, 2010)

Submitted by
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Maritime Products International (MPI) is a family owned and operated company based in Virginia and with its roots in the seafood industry for four generations - over 100 years. My great-grandfather began in the industry as an oysterman in Portsmouth, Virginia and this developed over the years into one the largest fresh fish operations along the Eastern Seaboard along with a locally owned fleet of fishing boats and even a chain of seafood restaurants. The industry has changed over the years with domestic production holding steady at sustainable levels and imported products forming the majority of U.S. consumption and growth. The focus of MPI today is on importing frozen seafood from all over the world for U.S. distribution. We are a very hands-on company working directly with production facilities on the ground all over the world. We work to distribute product across the spectrum of U.S. customers including retailers, restaurants and value-added processors. While not a majority of our sales, we also have several U.S. export sales each year.

As both a direct importer and distributor to major foodservice and retail partners in an industry with ongoing antidumping actions, we have extensive firsthand experience with the current U.S. system of retrospective duty application. It is with this personal background and the effects I have seen in our company and industry that I express my views.

I believe that our retrospective system represents one of the most problematic and harmful aspects of our system of trade remedies. It does not serve the goals for which it was created and based on the way it functions in reality and the incentives it creates - it actually creates situations that represent the exact opposite of its intentions. The retrospective system makes it impossible for the experienced and credible importers and distributors to function in their normal supply chain roles and leads to market situations that are harmful for every interested party in the system - including the domestic producers for whom the system is supposed to be beneficial.

The following are comments related to the specific topics raised in the Federal Register notice:

Effectively targeting high risk importers; Reducing incentives and opportunity for duty evasion; Minimizing uncollected duties

These issues are related as it is high risk importers who are the most likely to try and evade duties resulting in what are then uncollected duties. I cannot think of any benefit from a retrospective system in terms of this system being particularly effective targeting high risk importers or importers who may be working to engage in inappropriate behavior.

A retrospective system may sound good in theory under the premise that the administrative reviews will uncover inappropriate activity or other "errors" with prior imports and allow the best recourse by adjusting the duty levels of

prior imports. However, in reality - because of the inherent lag time involved with any retrospective system - such a system allows the highest risk importers and those least likely or able to pay backward looking duties the time and means necessary to evade the system. Such purposeful duty evasion is illegal and unethical and unfortunately serves to paint a misleading picture of the general importing community. However, a system that does not set the final cost of an item until long after it has been sold and allows for such a vast range of duties between producers in the same country with the same product is a system that creates maximum incentives for the worst type of behavior and with it realistically impossible to remedy improper activity with any regularity. In addition to the issues related to improper importing behavior, it can easily be an importer who has acted with complete integrity and professional diligence but has perhaps been dealing with an unethical exporter or caught up in complex retroactive duty adjustments having nothing to do with their own activity (such as changes in surrogate value in cases dealing with non-market economies) that are the ones punished in this type of retroactive system.

In terms of uncollected duties - there appear to be unending examples of uncollected and uncollectable duties under the current system. The money is simply not there to be collected from importing companies when an importer is told that a product imported with zero or low duties is now being liquidated at 50, 100 or 200 percent. This issue of "uncollected duties" should essentially disappear with a prospective system. There may still be ongoing battles over appropriate duty levels, but they would be set, paid in full upon importation, and there should be little if any uncollected duty. To the extent that some would still work to evade duties, all of the same legal tools would still exist to uncover fraud or improper activity. In theory, without some of the heavy administrative burden of the retrospective system - more resources could actually be devoted to better targeting the problems and both the domestic and importing community would be better served.

Impact of retrospective rate increases on importers and their employees

Anything other than the most insignificant increase can easily devastate a major importing company and its employees, to the point of bankrupting a company overnight. All one must do is look at the numbers involved to understand the validity of this statement.

At least in the seafood industry, it is the norm rather than the exception to have duty rates vary between shippers by as much as 50, 100, even 200+ percent (as is the case with crawfish tail meat from China). If an importer buys from a crawfish supplier with a zero or low duty rate but is then told years later that the proper duties were in fact 200+ percent higher, this becomes an immediate multi-million dollar liability that would likely bankrupt any significant importer of crawfish in the United States. The product (in any circumstance, but definitely with perishable seafood) will have long since been sold and while I am sure any business would love to work on profit margins of 200 percent, historical margins of importers and distributors in our industry and I would guess many industries is in the single digits.

It is simply not a realistic business model for any size company to take on business with this economic reality. There are instances of companies not understanding the retrospective aspect of the duties and being forced out of business literally overnight. However, it is common for those in the importing community who do understand the nature of the duties to simply stop importing the product. Without question - this has served to depress businesses and employee opportunities. For many items, product still makes its way to U.S. markets but through means other than the normal supply chain. Therefore, the ultimate result is that businesses with the most experience working on specialized product and market development are hurt through the loss of direct access to an item. Yet, for those who support the goal of completely chilling the import activity (which is not a stated goal and should

not be a proper policy goal of import duties) - even this goal is not accomplished and most commonly, the product still makes its way to U.S. markets through various other channels. Therefore, all that is being accomplished by the retrospective duties is hurting the most experienced and professional importers and distributors and the type of market development that tends to lead to less long-term dumping of any particular item.

Creating minimal administrative burden

If the goal is to create the highest administrative burden possible - then it will be worth maintaining the current retrospective system. It is hard to imagine a system with more costly administrative requirements. Although I am importer so not privy to the exact cost borne by the government each year, it has to be enormous given the overseas administrative reviews inherently required in our current retrospective system. While there would still be a need for ongoing administrative work with any kind of prospective system, it would be far less if the imports were liquidated at the time of entry.

I cannot suggest strongly enough the value that could be derived shifting at least some of the resources from the heavy administrative burden associated with our retrospective duties to things such as better enforcement of duty evasion.

Remedying injurious dumping to the United States

This is a complicated concept in that it involves the subjective work of defining in specific terms exactly what the "fair market value" of an item from any specific country and producer should be at any given time. Reasonable and well-meaning people spend entire careers it seems arguing over exact dumping percentages producer-by-producer for things like Chinese crawfish tail meat and Vietnamese swai values.

While calculating the exact percentage producer-by-producer and analyzing surrogate values in non-market-economy cases are not my area of expertise, I do feel qualified to offer the following opinion: it simply makes no sense that the best system to remedy actual dumping that the United States can devise is one that tells a U.S. importer that they cannot know their actual cost on that product until sometime long after the product has been bought and sold --- and further to have this retroactive remedy based on reasons ranging from new third-country surrogate values applied retroactively to poor exporter communication during an onsite review. No business can operate in this type of completely uncertain environment and it is hard to see how this type of system is the best we can devise to actually remedy injurious dumping and serve as a benefit to domestic producers.

We are the only country in the world that employs such a system and although this alone is not an argument to change our system - my belief is that other countries are not experiencing higher levels of injurious dumping or claiming that their prospective systems do not address the issues. If our system was in fact so effective at remedying injurious dumping, one would think - especially during the recent environment of higher tensions related to global trade - other countries would be racing to change their prospective systems to something "more effective." An unpredictable retrospective system is simply not an effective way to properly and efficiently remedy injurious dumping.

Tying together all of these points in the big picture is the view that whatever its theoretical goals - in reality, the retrospective system freezes the experienced and professional importers in any given industry out of their normal role in the supply chain and often brings in an element who is less concerned (if concerned at all) about long-term product development but rather is focused on ways to profit in what becomes very opaque and volatile market situations. People often speak of "unintended consequences", but it should not be considered unintended or unforeseeable to have some of the issues we do

with a system where a business cannot know the cost of their goods until long after sales. If the goal of our retrospective system is to severely chill activity and even incentivize chaos, then perhaps the system is working. However, if the goal is to truly address injurious dumping in an efficient and logical manner and serve the long term needs of a range of U.S. interests including domestic industries, then a prospective system should be considered.

I am not an expert on exactly what form a prospective system should take and in the complicated world of global trade - nothing can be absolutely perfect. However, I am confident that a prospective system would better serve every interested party. Perhaps most importantly- I believe the domestic industries would be better served as duties would be collected on a much smoother and steady basis and with much lower administrative and legal costs that currently go to the battles over retrospective issues. There would still be a myriad of remedies that still exist to address evasion issues and a prospective system should allow more focus in this area. Markets would become more stable and predictable - a situation that over time and especially with agricultural items often leads to increased market development, less likelihood for dumping and better markets for all manufacturers.

Respectfully Submitted,
Matthew Fass