



Leo W. Gerard
International President

April 19, 2010

Honorable Ronald K. Lorentzen
Deputy Assistant Secretary for Import Administration
Room 1870
Department of Commerce
14th Street and Constitution Ave., NW,
Washington, D.C. 20230

Attention: Kelly Parkhill, Supervisory Import Policy Analyst

Re: Report to Congress: Retrospective Versus Prospective Antidumping and
Countervailing Duty Systems; Request for Comment and Notice of a Public
Hearing; Comments of the Committee to Support U.S. Trade Laws

Dear Deputy Assistant Secretary Lorentzen:

These comments are submitted on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”) in response to the Department’s March 31, 2010 *Federal Register* notice inviting comments regarding the above-captioned matter. *See* 75 Fed. Reg. 16079. The USW is largest industrial union in North America and represents workers across a broad range of the American industrial manufacturing base. Our members have disproportionately borne the brunt of unfair import competition for far too long and thus are always in strong support of enforcing and strengthening trade remedies to counter the damage done by such anticompetitive behavior to the nation’s manufacturing base and our manufacturing workers. With the loss of over 2.1 million manufacturing jobs since the beginning of the great economic contraction in December 2007, and the further loss of 5.5 million manufacturing jobs in the last decade, rest assured that the USW is not complacent when it comes to ensuring that the relief provided under our trade

remedy laws is not undermined or diminished in any way, in particular by those with interests directly adverse to the interests these laws are designed to protect. Consequently, the issue that is the subject of these comments is of great concern to the USW.

As noted in the Department's *Federal Register* notice, the conference committee report that accompanied the 2010 Consolidated Appropriations Act directed the Secretary of Commerce to work with the Departments of Homeland Security and the Treasury to analyze the relative advantages and disadvantages of prospective and retrospective antidumping and countervailing duty systems. In particular, the committee report identified six discrete issues for the analysis to address:

- (1) remedying injurious dumping or subsidized exports to the United States;
- (2) minimizing uncollected duties;
- (3) reducing incentives and opportunities for importers to evade antidumping and countervailing duties;
- (4) effectively targeting high-risk importers;
- (5) addressing the impact of retrospective rate increases on U.S. importers and their employees; and
- (6) creating minimal administrative burden.

See 75 Fed. Reg. 16079.

We address these issues in turn.

Remedying injurious dumping or subsidization: A retrospective antidumping and countervailing duty assessment is by far the best system for ensuring that the trade remedy laws work as intended to fully counter unfairly traded imports and thus provide the domestic industry and workers with the relief intended. Under the retrospective system, the extent of the unfair

trade – either dumping or subsidization – can be measured most accurately and under or over-collections can be fully accounted for and adjusted accordingly. This is the case because in a retrospective system regular, periodic reviews can be conducted to examine the extent of dumping or subsidization with regard to specific entries subject to an order. Such administrative reviews are required by law and may be requested by domestic interested parties, the foreign producer or exporter, or the U.S. importer. In an administrative review, the Department is required to collect information to determine the extent of the actual dumping or subsidization on the specific entries for that particular review period. If the dumping or subsidization exceeds the amount of cash deposits paid by the importer, the importer is liable for the additional duties (with interest). Conversely, if the actual level of dumping or subsidization is revealed to be less than the deposits paid, the importer is entitled to a full refund of the excess paid with interest. Upon completion of the review, the Department sets new cash deposit rates which will be applicable to entries that that post-date the review period.

The retrospective system is therefore a much better system for administering and enforcing the unfair trade laws. It provides interested parties with the opportunity to obtain determinations regarding the extent of their dumping or subsidization (or lack thereof) based on the most recent information provided, in the main, from importers and foreign producer and exporters of the goods subject to review. Certainly, this provides for the most accurate measurement of dumping or subsidization for goods that have entered and are subject to the particular review..

Moreover, the retrospective system reduces the chances that continued dumping and/or subsidization will go un-redressed, which is of critical importance to the U.S. industries and

workers, such as our members, which must continue to compete against these imports in the U.S. market.

Likewise, the retrospective system also helps to minimize the likelihood that the foreign producers and exporters, as well as U.S. importers, would be compelled to pay duties in excess of the actual extent of the dumping or subsidization. Rather, with the actual data gathered in reviews, overpayments are minimized and, of course, returned with interest, as required by law. Further, by providing for periodic reviews, which often include verification of the information collected by the Department, the system improves the ability of the Department and interested parties to monitor effectively compliance with antidumping and countervailing duty orders, which effectuates the paramount purpose of reducing incentives and opportunities for importers to evade anti-dumping and countervailing duties.

By contrast, a prospective system does not accurately assess the extent of dumping or subsidization. This is because prospective systems have not been designed to provide for the ability to accurately counter the extent of the unfair trade.¹ For example, some systems, like the European Union, can essentially reward behavior that is contrary to encouraging a return to fair pricing (and thus contrary to encouraging a return to a level playing field upon which domestic producers and workers can have the opportunity to compete fairly). Other prospective systems utilize reference prices which offer, at best, only an estimate of fair price conditions. This often results in either over or under collection of duties, as actual levels of dumping or subsidies are not measured.

¹ The GAO recognized that “[u]nder a prospective system, the amount of duties assessed may not match the amount of dumping or subsidization.” GAO-08-391, Report to Congressional Requesters, *Antidumping and Countervailing Duties, Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, March 2008, summary.

The glaring flaw in the prospective systems is that, although they provide for refunds of overpayments, as administered they have not permitted the correction of underpayments. This severely undermines the corrective effect of antidumping or countervailing duty orders. Where dumping or subsidization increases, prospective systems have (to date) not provided a method for increasing the amount of duties to be paid. In short, the understanding of the USW with respect to prospective systems in place today is that they operate in one direction only -- to reduce liability where dumping or subsidization has been reduced. Consequently, a prospective system does not remedy injurious dumping or subsidized exports, nor could it possibly reduce incentives and opportunities for importers to evade anti-dumping and countervailing duties - just the opposite.

Minimize collection difficulties: The conferees who issued the report show concern for difficulties that the U.S. Customs and Border Protection Service has encountered in the last several years in collecting duties in certain cases. According to a report by the General Accountability Office, however, these collection difficulties have occurred primarily in the collection of antidumping duties (not countervailing duties) covering imports of certain agriculture and aquaculture goods from China.² Therefore, the USW does not believe that these particular difficulties, although real and troubling, provide any real insight into the relative benefits or disadvantages of the current system as a whole, the benefits of retrospective assessment versus the prospective assessment in particular, or the potential benefits and disadvantages of applying any system-wide changes. Stated differently, one cannot (and should not) generalize broadly here from a very narrow particular. Indeed, the collection difficulties

² Nearly 100% of the uncollected duties are dumping duties. GAO-08-391 at 13. Agriculture or aquaculture goods account for 87 percent. *Id.* at 14. Imports from China account for 90 percent of uncollected duties. *Id.* 84 percent of the uncollected AD/CV duties is associated with four products, all from China: crawfish tail meat, garlic, honey, and mushrooms. *Id.*

associated with these particular orders (involving large numbers of small foreign producers and exporters of certain agricultural products) would not have been prevented or avoided were a prospective system in place.

Proponents of prospective assessment systems contend that such systems provide for greater certainty in the collection of duties. As discussed, prospective systems are not geared towards accurately assessing the extent of dumping or subsidization and have not permitted for the correction of underpayments of duties, but solely for refunds of overpayments. The problem regarding collection difficulties encountered by Customs is not, however, that cash deposits have not been deposited in the first instance. Rather, the problem is that, in certain cases, the foreign producers and importers significantly increase the amount of dumping and then walk away from their liability – essentially vanishing. This is the real problem in trying to collect additional duties to correct for the underpayments. A prospective system would only correct for this problem by not addressing increases in dumping other than prospectively. Therefore, if additional dumping or subsidization were occurring, it would not be captured and essentially the trade remedy laws would be misapplied, as the full extent of the remedy would not be possible to achieve. This would entirely contradict the purpose and intent of the laws and cannot be allowed.

Reduction of incentives and opportunities for importers to evade anti-dumping and countervailing duties and targeting of high-risk importers: As discussed, prospective systems as administered do not identify or correct for the underpayment of duties on imports that have already entered the country under a prospective system. Instead, prospective systems only permit refunds of excess duties and modification of duty rates on future imports. Certainly, in such circumstances the incentive is skewed towards avoiding liability for dumping and

subsidizing imports. Prospective systems thus are far less effective as compared to the U.S. retrospective system, which is designed to ensure accurate measurement of unfair trade through periodic administrative reviews and to ensure that the playing field remains level for the domestic industries and workers who have been harmed – often quite severely (as the USW knows only too well) – while the orders are in place. Under the retrospective system foreign producers, on the other hand, also have the opportunity to provide information periodically to obtain an accurate assessment of their dumping or subsidization (or lack thereof) and the importers can receive refunds with interest for overpayment thus providing the proper incentive for them to correct anti-competitive behavior harmful to our workers and industries

It logically follows that a prospective system also would not be effective at targeting high-risk importers. To the contrary, it would encourage high-risk importers to increase the amount of dumping and/or subsidization, safe in the knowledge that there would not be any means for correcting under-payment of duties on previously entered merchandise. A retrospective system, by contrast, appropriately discourages such behavior in accordance with the intent and purpose of the trade remedy laws.

Impact of retrospective duty increases on importers and their employees: It is often the case that importers have the pricing power vis-à-vis foreign producers or exporters. Under a retrospective system, as described above, foreign producers/exporters are discouraged from engaging in dumping or subsidization and U.S. importers are discouraged from paying dumped or subsidized prices that cause harm to domestic producers and workers who must compete against such unfairly traded imports in the U.S. market. The fact that many importers likely benefit from dumped or subsidized imports (and thus in their own limited self interest would prefer a prospective system so that they might better evade the full effect of the law) is entirely

irrelevant to the application of the trade remedy laws, which are intended to counter such unfair and anti-competitive behavior. There is no place for any balancing of competing interests in this regard.

Having the ability to evade the full effect of the trade remedy laws (and get the competitive advantage of relying on dumped and subsidized imports) is precisely the reason why proponents desire a change to a prospective system. As noted, a prospective system certainly reduces the pressure on foreign producers and importers to change their behavior by making their conduct not redressable beyond the duty paid at entry. So, it is not out of an altruistic motive to ensure that some narrow problems with collections might be resolved (which they won't be, as discussed above), but merely to earn a greater profit at the expense of our manufacturers and workers who created the goods, the jobs and the revenues for our nation. That is not a valid reason to upend a system that is fully compliant with U.S. and international law and which best effectuates the purpose and intent of the laws. One might legitimately ask why some apparently are in fear of periodic reviews using company specific data to determine if dumping or subsidization is continuing.

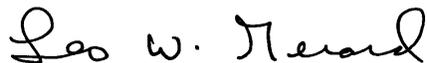
Achieving minimal administrative burden: In assessing the administrative burdens imposed by any system for assessing antidumping and countervailing duties, it is important to view such burdens in the context of whether the system accomplishes the statutory goal of fully offsetting unfair trade practices and their injurious effects on domestic industries and workers. As reviewed, the retrospective system currently in effect in the United States accomplishes that goal through the use of administrative reviews of entries of merchandise that take into account the most recent information on prices and costs (in the case of antidumping duties) and subsidies (in the case of countervailing duties). Thus, the system works to discourage foreign producers

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and their U.S. importers from attempting to evade duties while also not penalizing them when they have changed their pricing behavior or use of subsidies such that dumping or subsidization is either reduced or eliminated altogether. It provides domestic interested parties with confidence that injurious dumping and subsidization is actually being addressed fully. A prospective system simply does not work nearly as effectively to fully address unfair pricing and subsidies associated with imported merchandise. Prospective systems reduce administrative burden only if administrative reviews are not freely available and/or only where addressing problems of under-collection where dumping or subsidization has increased are not permitted to be addressed.

We appreciate this opportunity to share the views of the USW on this very important matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Leo W. Gerard". The signature is written in a cursive, flowing style.

Leo W. Gerard
International President

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