

Importers' Compliance with U.S. Laws – When a Dusting of Flour Could Save Your Business

By Akana K.J. Ma March 2005

I. The Irony - Hurting U.S. Jobs to Save U.S. Jobs

On February 1, 2005, the U.S. International Trade Commission (“ITC”) issued an Order imposing higher import duties on frozen shrimp from six countries, an act that jeopardizes the jobs of thousands of Americans working in the U.S. seafood industry. Why was this done? To save American jobs in the U.S. seafood industry. Ironic? Yes, and such unilateral action by U.S. federal agencies happens weekly and is an important aspect of international trade.

This recent action by the ITC was the final act in a wide-ranging, two year investigation by the Import Administration of the U.S. Department of Commerce (“IADC”). Its goal was to determine whether frozen shrimp has been imported from six countries at below fair market prices, thereby injuring U.S. shrimp producers. The U.S. government’s shrimp study was initiated in January 2004, in response to an Antidumping Petition by a coalition of U.S. Gulf-coast businesses under the trade association umbrella of the Ad Hoc Shrimp Trade Action Committee. The six countries targeted were Brazil, Ecuador, India, Thailand, the People’s Republic of China and Vietnam (“Target Countries”).

II. The Goal – Market Awareness and Proactive Positioning

This article: (1) describes for owners and managers of U.S. businesses the interplay between “industry interest groups” and the U.S. government and the Machiavellian effects on their business that can result; and (2) urges business managers to position their companies to anticipate and profit from any resulting adjustments in the markets for their products. Although this story involves a Northwest importer of shrimp from China, it could apply just as easily to countless other commodities clearing U.S. customs every day from anywhere in the world.

III. The U.S. Antidumping Laws – Protection and Jeopardy for U.S. Business

Throughout 2004, the IADC investigated operations and pricing practices of companies that exported frozen warmwater shrimp to the U.S. from the Target Countries. The IADC sent a voluminous multi-part questionnaire to dozens of foreign processing and exporting companies that shipped frozen shrimp to the U.S. between April 1 and September 30, 2003 (the chosen period of investigation).

The investigators also interviewed dozens of foreign shrimp producing companies' employees, analyzed thousands of pages of supporting documentation and arguments filed by foreign producers, U.S. producers, and interested parties, and held public hearings. In the end, the U.S. government, via its Import Administration and the ITC, determined that nearly all investigated foreign producers of shrimp were dumping their product on the U.S. market at less than fair market prices. As a consequence, the U.S. government assessed higher import duties on the vast majority of foreign producers. These higher import duties, also called dumping margins, are in some instances only a few percentage points, but in other cases, amounted to over 100% of the import price. Such is the case with China.

IV. China Viewed as the Primary Culprit

The higher import duties resulting from the China shrimp investigation are strikingly higher than those assessed companies in the five other countries. Approximately 38 of 39 Chinese exporting companies were assessed U.S. import duties ranging from roughly 55% to 85%, which meant that only 1 out of 39 Chinese shrimp exporters was found to sell at so-called fair market prices.

For imported shrimp from 38 Chinese suppliers to be much more expensive is bad enough for U.S. buyers. What's even worse is that all other Chinese shrimp imports, from ANY source whatsoever, are now subject to a "PRC-Wide Rate" of import duty equaling 112%.

V. The Effect on a Northwest Importer

The simplistic view of antidumping cases is that they keep out low-priced foreign product and help domestic producers. However, this is only half the story. The U.S. imports far more than it exports, however, and many thousands of American businesses depend on imports. Sheltering a small number of U.S. shrimp producers by raising the price of imports to prohibitive levels, for example, cripples shrimp importing businesses and makes shrimp more costly for U.S. consumers. Such protectionism is rarely effective policy.

The implementation of protectiveness often hurts U.S. importers as much as it protects U.S. producers. First, few U.S. importers are even aware that antidumping investigations are happening or don't become aware until after legal proceedings are finished (and thus their opportunity to make their voice heard has passed). Second, a common complaint about antidumping cases is that these proceedings are sometimes monopolized by domestic producers who are often well organized to lobby for their interests. In contrast, small domestic buyers may not have the resources to make their free trade voices heard. Third, small domestic buyers who depend on imported products, and who are unaware, may suddenly find themselves facing towering import duties that threaten to put them out of business. And fourth, in the case of imported Chinese shrimp, it is even worse for the U.S. buyer if its source of supply was not a participant in the antidumping case.

In this instance, the 112% PRC-Wide Rate of duty is imposed by the U.S. Import Administration and collected by U.S. Customs on ALL imports of frozen shrimp covered by

the antidumping case that arrive from shippers not specifically investigated during the case. So, how many Northwest shrimp importers do you think can afford to buy shrimp at that cost? Few, if any.

VI. So What's An Importer To Do?

One Northwest seafood importer recently opened a joint venture factory to process and export frozen shrimp from China. The factory just received its U.S. FDA health and safety certification a few months ago. But it was too late for this small Northwest seafood distributor – the higher import duties on shrimp had already gone into effect. And paying the 112% import duty rate on future imports of shrimp from its new factory in China was simply out of the question. For companies facing prohibitive costs and bankruptcy, are there any solutions? Yes, but it takes a long-term strategy.

Solving this dilemma requires looking at both alternate sources of supply, and considering new markets, as well as re-examining the antidumping Final Order. In our case, the small Northwest seafood importer had just established its China joint venture and really didn't want to abandon it for other suppliers. If it had, other less expensive shrimp suppliers could have been identified in China, as well as other countries. As to new markets, the Northwest importer could have also solicited new buyers in other markets rather than the U.S. For example, Canada and Mexico are both large consumers of imported shrimp that, more importantly, do not have excessive import duties on Chinese shrimp. But establishing new markets and soliciting orders from new customers takes time and causes a disruptive reallocation of personnel and marketing resources, especially for a small U.S. seafood distributor.

The most cost effective solution for our Northwest seafood company actually derived from the Antidumping case itself. A closer examination of the Final Order revealed that during the course of the proceedings in 2004, the Import Administration had excluded certain types of processed frozen shrimp from the scope of its investigation. One such exclusion, granted in November 2004, was for "dusted shrimp." Dusted shrimp are peeled shrimp that are lightly dusted with a layer of rice or wheat flour prior to being frozen. Even though the culinary uses of dusted shrimp may not be quite as varied as plain frozen shrimp, the market for such product could be large enough to avoid the new antidumping duties on Chinese shrimp as well as to substantially preserve the Northwest company's domestic sales business.

Thus, the U.S. government's recently completed antidumping case involving shrimp from China provides two prominent lessons for U.S. importers: 1) be aware of events in your industry and don't assume that events in Washington DC won't effect you; and 2) business solutions to legal and regulatory issues are usually available if a company takes a long-term strategy and is flexible in its business operations.

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