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**International Agricultural Trade and Policy Center**

**PRODUCER AND PROCESSOR RENTS UNDER THE BYRD  
AMENDMENT**

**By**

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**PBTC 04-03**

**June 2004**

**POLICY BRIEF SERIES**



**UNIVERSITY OF  
FLORIDA**

**Institute of Food and Agricultural Sciences**

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The International Agricultural Trade and Policy Center (IATPC) was established in 1990 in the Food & Resource Economics Department (FRED) of the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida. Its mission is to provide information, education, and research directed to immediate and long-term enhancement and sustainability of international trade and natural resource use. Its scope includes not only trade and related policy issues, but also agricultural, rural, resource, environmental, food, state, national and international policies, regulations, and issues that influence trade and development.

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Programs in the IATPC have been organized around five key program areas.

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# **Producer and Processor Rents Under the Byrd Amendment**

Andrew Schmitz, Troy Schmitz, and James Seale<sup>\*</sup>

## **I. Introduction**

The *Continued Dumping and Subsidy Offset Act* (CDSOA) of 2000 allows producers and processors who successfully petition the U.S. government to impose antidumping (AD) or countervailing (CV) tariffs on competing imports to keep the proceeds of those tariffs. Also known as the Byrd Amendment, it has already provided benefits to a variety of producers and processors in the United States, including more than \$7 million<sup>1</sup> to Louisiana crayfish producers and processors and \$65 million to U.S. candle makers. These benefits originated from AD duties imposed on U.S. imports of Chinese products (King 2002). One U.S. candle company, Candle-Lite, received \$38 million in fiscal year 2002, while a ball-bearings company, Torrington, received \$37 million in 2002 (U.S. Customs Service, 2003). The Byrd Amendment also has financial implications for commodities, including citrus, steel, rubber, pencils, pineapple, and pasta (King, 2002). In fiscal year 2002 alone, the U.S. government wrote checks totaling nearly \$320 million to companies that could prove they were involved in any AD or CV duty case that eventually led to imposed tariffs (U.S. Department of Treasury, 2002).

The Byrd Amendment effectively allows U.S. producers and processors to collect the resulting import-tariff revenue that would otherwise accrue to the U.S. government. Furthermore, even though CDSOA was passed in 2000, there is a grandfather clause that allows U.S. producer and processor groups to collect tariff revenues from certain AD and

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<sup>1</sup> All dollar amounts are given in U.S. dollars.

CV duties that were implemented prior to the CDSOA. The CDSOA has serious present and future welfare implications in terms of transfers of Ricardian rent among consumers, producers, and taxpayers. It also provides an even greater incentive for a proliferation of future AD lawsuits.

## **II. The Byrd Amendment**

The *Continued Dumping and Subsidy Offset Act* of 2000, also called the CDSOA or Byrd Amendment, was enacted on October 28, 2000, as Title X of the 2001 *Agriculture, Rural Development, Food and Drug Appropriations Act* (Act), Public Law 106-387.<sup>2</sup> The CDSOA modified Title VII of the *Tariff Act* of 1930 by instructing U.S. Customs to put all collected AD and CV tariffs into special accounts, one for each case, and to pay out these collected revenues directly to companies that successfully petition the U.S. Government for these monies (U.S. Department of the Treasury, 2002). Previously, the collected tariff revenues accrued to the general U.S. Treasury. In order for a company to be eligible for payouts, it must prove that it successfully litigated an AD- or CV-duty case against a specific industry in a specific country. If a company is eligible, it shares all past and future collected AD and CV duties with the other original litigating companies. Companies that did not participate in the original AD- or CV-duty case do not receive any of the collected funds (eBearing.com, 2000).

The CDSOA went into effect in 2001 and was controversial from its inception. President Clinton signed the Act but asked Congress to revisit and repeal the CDSOA before adjournment. Congress, however, neither revisited nor repealed the Act. In industries that receive protection from imports under U.S. AD- and/or CV-duty laws,

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<sup>2</sup> Senator DeWine (Ohio) was the original author of the CDSOA, but it was Senator Byrd (West Virginia) who added the CDSOA to the Agriculture Spending Bill of 2000.

ineligible companies for CDSOA payouts complain that eligible companies receive an unfair advantage derived from these subsidies. Small companies complain that their industry is harmed by unfair imports, but they do not have the money to hire expensive lawyers to litigate AD and/or CV cases. The budget report of the U.S. Treasury Department states that the CDSOA allows ‘double dipping’ because eligible companies not only receive protection from imports through increased import prices due to AD and/or CV tariffs, but now they also receive corporate subsidies from the collected AD and/or CV revenues (Thomas, 2003).

U.S. trading partners have also reacted vigorously against the CDSOA. Eleven World Trade Organization (WTO) member countries asked the WTO to form a panel to investigate the CDSOA with respect to U.S. obligations under the *WTO Antidumping Agreement* and the *WTO Subsidies Agreement*. The WTO formed a panel on September 10, 2001. On September 16, 2002, that panel ruled against the United States on the CDSOA payments and recommended that the CDSOA be repealed (U.S. Department of State, 2003). On October 18, 2002, the United States appealed the ruling to the WTO Appellate Body. On January 16, 2003, the Appellate Body confirmed that the CDSOA was incompatible with WTO rules (Lamy, 2003).

President Bush’s budget for fiscal year 2004 also calls for a repeal of the CDSOA. In spite of this repeal and the ruling of the WTO, as of February 4, 2003, 67 U.S. senators had signed a letter to the U.S. President requesting that he resist the WTO action and maintain the CDSOA. With such strong support in the U.S. Senate for the CDSOA, it is still not clear that the law will be repealed.

In fiscal year 2001, which was the first year of U.S. government CDSOA payouts, 900 claimants received \$230 million dollars (Table 1). For the second year of payouts in 2002, more than 1,200 claimants received approximately \$330 million. Although most of the payouts went to non-food companies, food companies received more than \$22 million in 2001 and nearly \$20 million in 2002. In 2001, there were 9 food-industry AD cases and 4 food-industry CV cases for which companies received tariff revenues under the CDSOA; whereas in 2002, there were 12 food-industry AD cases and 4 food-industry CV cases for which companies received payouts.

Table 1. *Continued Dumping and Subsidy Offset Act*, fiscal years 2001 and 2002 disbursements for food products.

Case Number	Case Name	FY <sup>a</sup> 2001 1,000 US\$	FY <sup>a</sup> 2002 1,000 US\$
A-570-848	Crawfish tail meat/China	0	7,469
A-475-818	Pasta/Italy	17,533	4,674
C-475-819	Pasta/Italy	2,480	2,528
A-533-813	Preserved mushrooms/India	171	2,155
A-351-605	Frozen concentrated orange juice/Brazil	0	1,175
A-570-831	Fresh garlic/China	25	536
A-549-813	Canned pineapple/Thailand	1,792	531
A-560-802	Preserved mushrooms/Indonesia	83	443
A-337-803	Fresh Atlantic salmon/Chile	0	173
A-403-801	Fresh and chilled Atlantic salmon/Norway	46	59
C-403-802	Fresh and chilled Atlantic salmon/Norway	18	29
A-570-851	Preserved mushrooms/China	0	20
C-408-046	Sugar/European Union	8	17
C-489-806	Pasta/Turkey	7	9
A-489-805	Pasta/Turkey	11	4
A-570-855	Non-frozen apple juice concentrate/China	0	1
A-301-602	Fresh cut flowers/Columbia	33	0
	Food Total	22,209	19,824
	Grand Total for all Products	231,202	329,871

<sup>a</sup>Fiscal Year

Source: U.S. Customs Service.(2003).

In some cases, the same company that received payouts under an AD-duty case also received payouts under a CV-duty case. As an example, eligible U.S. pasta firms

shared \$17.5 million and \$4.7 million under AD case #A-475-818 in 2001 and 2002, respectively. They also shared \$2.5 million under CV-duty case #C-475-810 in both 2001 and 2002. In another AD case (#A-540-843), Maui Pineapple received the entire portion of the \$1.8 million in 2001 and \$0.5 million in 2002 that originated from duties collected on canned pineapple imports from Thailand.

In fiscal year 2002, crayfish firms received the largest food-industry CDSOA payouts (Table 2). Of the 27 eligible firms, Atchafalaya Crawfish Processors received payouts of \$800,000. Four companies received payouts of over \$500,000, and another 17 firms received over \$100,000. On average, the 27 crayfish firms received \$300,000. In total, CDSOA payouts (Column 3) amounted to 21 percent of the total production and operating costs (Column 4) of these firms. Also, in fiscal year 2002, three citrus processors received \$1.18 million in CDSOA payouts. Citrus World received 67 percent of the payouts for a total of \$800,000 (Table 3).



Table 2. *Continued Dumping and Subsidy Offset Act*, Disbursements for Crawfish Tail Meat from China, Fiscal Year 2002

Claimant	Claim Filed 1,000 US\$	Amount Paid 1,000 US\$	Allocation Percentage
Atchafalaya Crawfish Processors	3,758	793	10.6
Seafood International Distributors	3,347	707	9.5
Catahoula Crawfish	2,937	620	8.3
Prairie Cajun Wholesale Seafood Dist.	2,449	517	6.9
Bayou Land Seafood	1,990	420	5.6
Crawfish Enterprises, Inc. (CPA) <sup>a</sup>	1,892	399	5.3
C.J.'s Seafood & Purged Crawfish	1,773	374	5.0
Riceland Crawfish	1,517	320	4.3
Cajun Seafood Distributors	1,511	319	4.3
Acadiana Fishermen's Co-Op	1,508	318	4.3
Bonanza Crawfish Farm	1,482	313	4.2
Randol's Seafood & Restaurant (CPA) <sup>a</sup>	1,445	305	4.1
L.T. West	1,126	238	3.2
Sylvester's Processors	1,036	219	2.9
Carl's Seafood	1,037	219	2.9
Choplin Seafood	999	211	2.8
Blanchard Seafood, Inc (CPA) <sup>a</sup>	990	209	2.8
Louisiana Seafood	947	200	2.7
Harvey's Seafood	783	165	2.2
Louisiana Premium Seafoods	771	163	2.2
Bellard's Poultry & Crawfish	502	106	1.4
Phillips Seafood	450	95	1.3
A&S Crawfish	330	70	0.9
Becnel's Meat & Seafood	324	68	0.9
Teche Valley Seafood	225	48	0.6
Arnaudville Seaford	171	36	0.5
Lawtell Crawfish Processors	80	17	0.2
<b>Total for Case #A-570-848</b>	<b>35,380</b>	<b>7,469</b>	<b>100.00</b>

<sup>a</sup>CPA indicates member of the Crawfish Processors Alliance.

Source: U. S. Customs Service. (2003).

Table 3. *Continued Dumping and Subsidy Offset Act*, Disbursements for Frozen Concentrated Orange Juice from Brazil, Fiscal Year 2002.

Claimant	Claim Filed 1,000 US\$	Amount Paid 1,000 US\$	Allocation Percentage
Citrus World	277,335	784	66.7
A. Duda & Sons <i>dba</i> Citrus Belle	75,817	214	18.2
LD Citrus, Inc.	62,553	177	15.0
<b>Total for Case #A-351-605</b>	<b>414,705</b>	<b>1,175</b>	<b>100.00</b>

Source: U.S. Customs Service. (2003).

### **III. Implications**

Under the Byrd Amendment, producers of import competing commodities gain from an antidumping duty in two ways. First, internal prices rise from the tariff. Second, they obtain the tariff revenue, which normally would go to the government. This provides extra money to lobby governments for protection. Interestingly, when the processor collects the duty, not only is the processor better off than under free trade, but so are the domestic competing producers with whom the processor deals. In the absence of the Byrd Amendment, processors usually lobby for free trade.

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