

United States Senate

WASHINGTON, DC 20510-1804

September 09, 2014

The Honorable R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Dear Commissioner Kerlikowske:

It has come to my attention that Customs and Border Protection (CBP) apparently plans to follow procedures in distributing duties collected on dumped crawfish imports under the Continued Dumping and Subsidy Offset Act (CDSOA) that greatly concern me.

The crawfish industry is made up of small producers and processors that operate almost exclusively in Louisiana. Since the late 1990s, they have faced severe dumping from Chinese producers that has made it nearly impossible to earn a living in the crawfish industry. The U.S. government agreed that the Chinese imports were unfairly traded and imposed high duties on Chinese crawfish.

Unfortunately, Chinese companies circumvented these orders and the duties which were secured by bonds in many cases are only being collected today.

Seeking to assist industries like the crawfish industry to recover from the severe dumping and subsidies they faced from foreign competition, Congress put in place the CDSOA for imports from late 2000 until 2007. CDSOA returned the duties and interest collected on the duties to the producers and processors to help them rebuild.

At a recent hearing of the Appropriations Subcommittee on Homeland Security, which I chaired on July 16th, Acting Assistant Commissioner Richard DiNucci informed crawfish producers that one large insurer agreed to pay \$14 million of bonds on Chinese crawfish imports. Additionally, the Acting Assistant Commissioner stated that CBP had prevailed in litigation with two other insurance companies and won \$6.1 million to pay duties on Chinese crawfish imports.

However, CBP officials then indicated to my staff and representatives of the crawfish industry that they planned to deduct 93 percent of the \$6.1 million dollars to pay government fees, leaving only 7 percent of the total for distribution. The Department of Justice has discretion to deduct 3 percent of such judgments to cover some of its costs, though this deduction appears unseemly in this case in that it was the government's delays in collection actions that delayed this collection for a decade.

I am also concerned that CBP was planning to follow its "long-standing interpretation of CDSOA distributions" and deduct all post-liquidation interest or interest charges under 19 U.S.C. § 1505(d) from the judgment before distribution. It is difficult to comprehend the logic of deducting interest from distributions to crawfish producers for delays that may be blamed on the

insurance companies or CBP, but certainly cannot be blamed on the producers who have been begging CBP to act for years.

More troublingly, this “long-standing” CBP interpretation seems directly counter to the statute [19 U.S.C. § 1675c(3)] which clearly states: “The Commissioner shall distribute **all** funds (including **all interest** earned on the funds) from assessed duties received in the preceding fiscal year to affected domestic producers.(emphasis added)” CBP’s decision to follow its “long-standing” interpretation is at odds with the clear language of the statute – neither the domestic industry nor their legal counsel were aware of that interpretation, as it is not stated in either the rules to implement CDSOA or in any public source they have been able to locate. When Congress directed distribution of “all interest,” it did not foresee CBP deducting 1505(d) interest – or any other kind of interest – from distributions to producers.

I respectfully request that you turn your personal attention to this issue and ensure that Louisiana crawfish producers receive the funds that they are entitled to under the law.

With kind regards, I am

Sincerely,



Mary L. Landrieu
United States Senator