

**TESTIMONY OF MICHAEL J. COURSEY
BEFORE THE U.S.-CHINA ECONOMIC AND
SECURITY REVIEW COMMISSION**

**Hearing on China and the WTO:
Assessing And Enforcing Compliance**

February 4, 2005

Panel VII: Strategies For Enforcement -- Agriculture

Good morning. My name is Michael Coursey, and I am a partner with Collier Shannon Scott, where I specialize in representing U.S. agricultural producers in international trade disputes. I have over 20 years experience in trade matters, including my service in the second term of the Reagan Administration as the head of Commerce's office of antidumping and countervailing duty investigations. I am honored to be testifying before the Commission.

There are only two trade laws U.S. producers can use to fight unfairly traded agricultural imports from China. The first is the Section 421 action, which authorizes the President to impose quotas or other remedies on Chinese imports that are causing market disruption. All but one of the domestic industries that have tried to win relief under Section 421 have been turned down by the President, and the one industry that was not was turned down by the International Trade Commission. Section 421 is currently viewed as a dead letter for *all* domestic producers being injured by Chinese imports, including all agricultural producers.

The second potential remedy is the antidumping law. Virtually all Chinese agricultural imports to this country are sold here at prices that are far below what it would cost to produce the same products in a comparable market economy country, such as India. Such activity constitutes dumping.

Nevertheless, the dumping remedy is *not* available at this time to U.S. agricultural producers. This is because many Chinese exporters are exploiting an unfortunate loophole in the dumping law that allows them to ship enormous amounts of products to this country, and to sell them at ruinous prices, without ever paying any dumping duty. This is the case even where Commerce has found the exporters to be dumping at huge margins.

This destructive loophole is buried in the procedures Commerce uses to conduct so-called “new shipper” administrative reviews of existing dumping orders. Normally, a U.S. importer of a product subject to a dumping order must post with U.S. Customs a cash deposit equal to the declared value of the import times the dumping rate of the relevant foreign exporter. For example, if a covered import had a value of \$100, and the exporter’s dumping margin were 50%, the importer would have to deposit \$50 in cash with Customs before Customs would release the import.

One or two years later, Commerce would determine in a regular administrative review of the dumping order the exact amount by which the import was dumped. If the amount of duties calculated by Commerce equaled \$50, Customs would take the previously deposited \$50 as full payment. If the amount were greater or less than \$50, Customs would either bill the importer for the difference, or send it a refund.

The point is that a cash duty deposit serves as security for the U.S. Government against an importer’s potential inability or unwillingness to pay the assessed dumping duty.

However, an importer is not required to post cash deposits on imports from any exporter that qualifies as a “new shipper.” The importer instead may post a bond equal to the cash deposit that otherwise would be required.

There currently are five dumping orders against Chinese agricultural products – fresh garlic, honey, canned mushrooms, fresh crawfish tailmeat, and frozen concentrated apple juice. My firm represents the domestic producers of the first three products. Our clients uniformly believe that the orders they fought for and won currently offer them zero protection against dumped Chinese imports. These orders have been eviscerated by the new shipper bonding privilege.

Here is what happens. A newly-created exporter in China makes a single low quantity, high priced sale to the United States, and then asks Commerce to subject that sale to a “new shipper” administrative review. During the pendency of the review, which typically lasts from 10 to 18 months, the new shipper exports millions of pounds of product to the United States, where its U.S. importers don’t have to post any cash deposits on these imports. While the importers are instead supposed to post bonds, Customs for years did not require importers to do so. It is still not clear whether Customs is doing so today.

The bonding privilege ends when Commerce completes the new shipper review. But Commerce will not calculate the amount of dumping duties owed on the imports that entered during the review for two to three years. When Customs finally issues the bill for the dumping duties calculated by Commerce, it typically finds that the importer has disappeared. Where Customs has, in fact, obtained a bond, the issuing surety company typically balks at fulfilling its obligation, given the huge amount at stake, and begins an extended protest and litigation process designed to forever postpone its day of reckoning.

The bottom line is that millions of pounds of dumped Chinese agricultural product have been sold into the U.S. market, but the dumping duties owed on those imports are never paid.

Consider the dumping order on fresh garlic from China. My first chart shows that Chinese imports spiked from virtually nothing in the early '90s to 54 million pounds in 1993. Commerce initiated its dumping investigation in January '94; imposed a 376% duty on all Chinese exporters in May of that year; and entered a final order against the imports in November '94. Imports quickly fell back to less than a million pounds a year through 2000.

In January 2001, Commerce initiated its first new shipper review under the Chinese garlic order. That exporter by itself shipped over seven million pounds of garlic to the United States that year. In 2002, there were three new shipper reviews in process. Those three exporters collectively shipped 42 million pounds of fresh garlic to the United States.

Imports increased to 54 million pounds in 2003 – the same amount that was shipped ten years earlier, that then caused the domestic producers to seek protection under the dumping law. Imports in 2004 are estimated to have been an incredible 80 million pounds. This surge of imports keeps increasing despite Commerce's continued findings that the Chinese exporters are engaging in massive dumping.

The new shipper bonding privilege is also allowing unscrupulous importers to avoid paying the huge amounts of dumping duties that Commerce ultimately determines are owed on imports from new shippers. According to Customs' report on its Byrd Amendment activities for FY '04, Customs last year failed to collect \$24.6 million in assessed dumping duties billed to importers under the China garlic order. Further, Customs actually collected only \$175,000 in assessed duties under

that order. In other words, for every dollar of assessed duties Customs failed to collect, it collected only one-seventh of one cent.

The same distressing pattern exists for the canned mushroom and crawfish tailmeat dumping orders, as my Chart 2 demonstrates. In FY '04, Customs collected only \$353,000 in duties under the canned mushroom order, but failed to collect \$18.1 million. For crawfish tailmeat, Customs last year collected \$8.2 million in duties, but failed to collect a staggering \$170.1 million. Adding in the \$2 million Customs failed to collect on the honey and apple juice orders brings last year's uncollected duties total for the five dumping orders on Chinese agricultural imports to \$215 million. This is 95% of the \$244 million in uncollected duties on all China orders, and 83% of the \$260 million in uncollected duties on all trade orders from all countries.

When Congress added the new shipper bonding privilege to the dumping law in 1995, it mistakenly believed that this was required by the WTO. This means that the bonding privilege now can be repealed without fear of China successfully prosecuting the United States at the WTO. The supreme irony is that China itself does not offer the bonding privilege in new shipper reviews under its dumping law; China instead requires that all security against potential dumping liability be posted in cash. China thus would be in no position to pursue a WTO claim against the United States for repeal of the bonding privilege.

During the past year, the domestic agricultural industries mentioned above almost succeeded in convincing Congress to harness the new shipper bonding privilege. Late in the session, the Senate passed by unanimous consent a bill which would have suspended the bonding privilege for three years while Commerce, Customs and the USTR prepared a report on the issue for Congress. The bill, however, died when the House Ways & Means Committee failed to move it to the floor.

The bottom line is that no domestic producer will get meaningful relief under the dumping law from unfairly-traded agricultural imports from China until the new shipper bonding privilege is repealed. My extremely discouraged clients have all but given up on their hard-won dumping orders, which they will likely walk away from unless a legislative correction is made very soon.

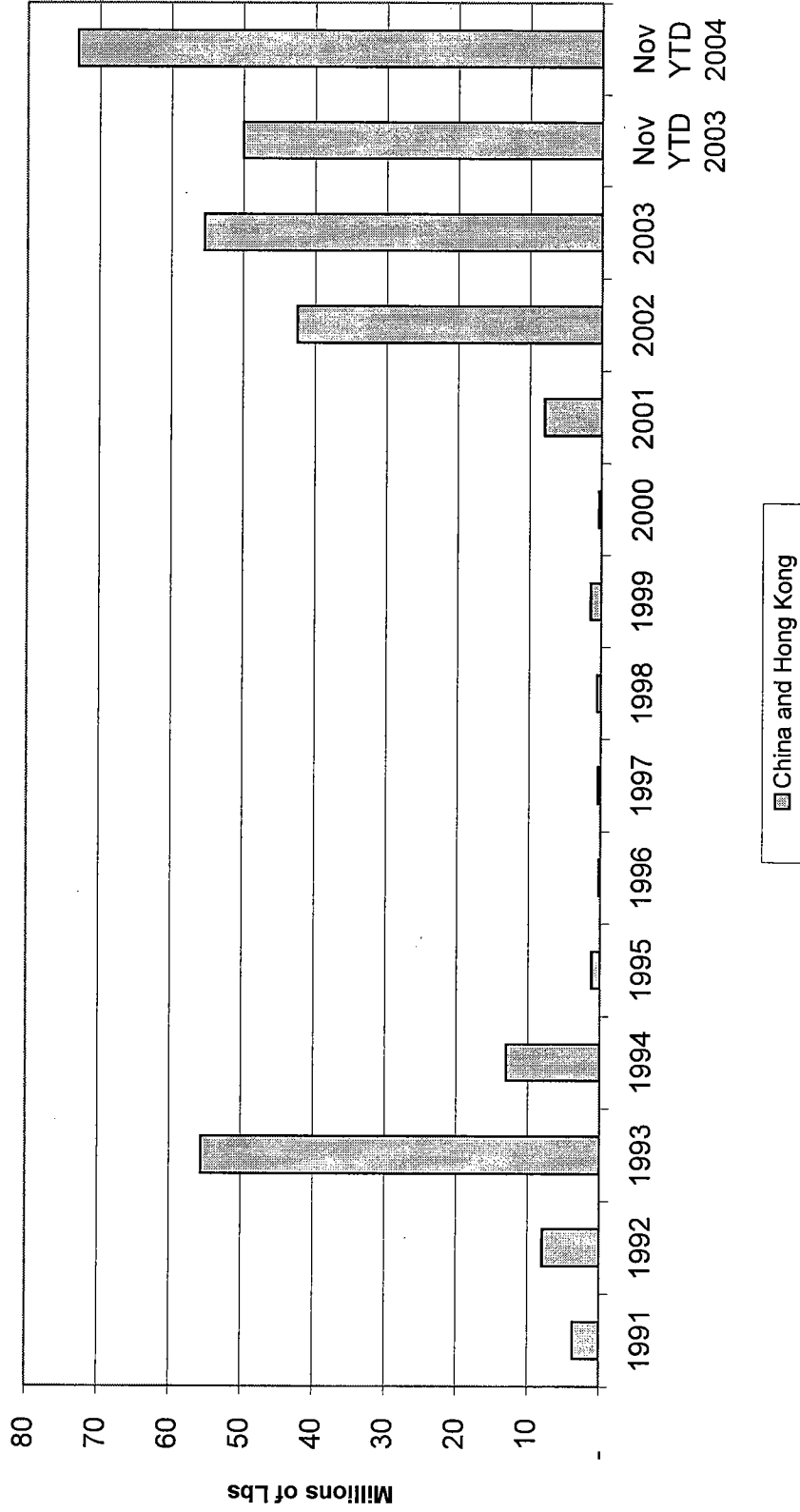
Thank you.

CHART 1

U.S. Imports of All Fresh or Chilled Garlic

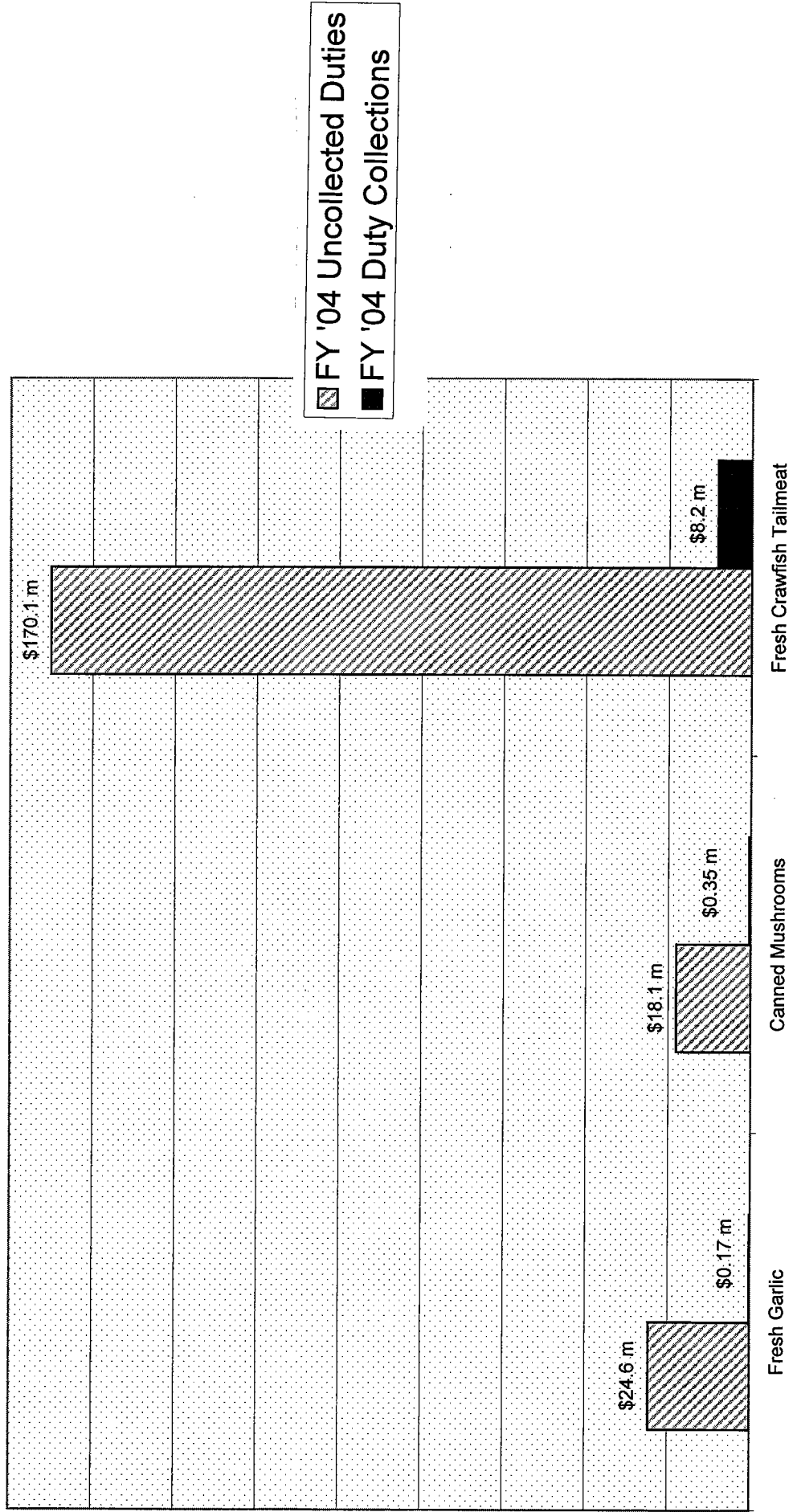
Annual 1991-2003 and November Year-to-Date 2003, 2004

Quantity in Millions of Pounds



Source: U.S. Commerce Department Import Statistics

FY '04: CUSTOMS COLLECTED AND UNCOLLECTED DUTIES ON CHINA ANTIDUMPING ORDERS
(millions of dollars)



Source: U.S. Customs & Border Protection, CD SOA FY '04 Annual Report, Sections I and II