Coalition for Enforcement of Antidumping and Countervailing Duty Orders

COMMENTS REGARDING THE PARTICIPATION OF MALAYSIA IN THE TRANS-PACIFIC PARTNERSHIP TRADE NEGOTIATIONS

The Coalition for Enforcement of Antidumping and Countervailing Duty Orders (the "*Coalition*") welcomes the opportunity to comment on Malaysia's participation in the Trans-Pacific Partnership ("*TPP*") Trade Agreement negotiations, pursuant to the Office of the United States Trade Representative's ("*USTR*") request for comments. The Coalition's comments specifically address the pervasive use of Malaysia as a transshipment locale for manufacturers, exporters and importers of products seeking to evade antidumping ("*AD*") and/or countervailing duty ("*CVD*") orders. Many products subject to active AD/CVD orders are shipped to the United States as products of Malaysia, but they are NOT products of Malaysia. The potential benefits of the TPP to U.S. workers, manufacturers, and exporters will be severely diminished if imports from non-TPP countries receive preferential treatment simply because they are illegally transshipped through a TPP country. The Coalition believes the participation of Malaysian companies in illegal evasion of AD/CVD orders is relevant to the inclusion of Malaysia in the proposed TPP agreement and respectfully requests that the USTR take meaningful steps to ensure that Malaysia is not a hub for these illegal activities prior to allowing Malaysia's entry in the proposed TPP.

Moreover, consistent with USTR's stated goal of negotiating "a high-standard, 21st century agreement", the Coalition also urges USTR to include specific commitments and obligations in the TPP that address AD/CVD evasion, including information-sharing and on-site verification of country of origin claims (including for goods that are not seeking preferential treatment).

Other trading partners have recognized the pervasive problem caused by the transshipment of goods through Malaysia in order to evade applicable AD/CVD duties, and some have already taken cooperative action with Malaysian authorities. For example, in October 2010, the European Union ("*EU*") initiated an investigation to determine whether Chinese-origin steel screws and bolts – subject to antidumping measures in the EU – are being transshipped through Malaysia in order to evade duties. *See Attachment 1*. It has also been reported that Brazilian authorities received evidence that shoes from China, which are subject to antidumping proceedings, have been transshipped to Brazil through several countries, including Malaysia. *See Attachment 2*. Moreover, there has been widespread press coverage in Malaysia regarding transshipment schemes involving goods made in China. *See Attachment 3*.

Such illegal transshipment and related schemes not only damage U.S. industries by denying them the remedial effect of our AD/CVD laws, but also adversely affect legitimate Malaysian companies. As noted in the press reports in Attachment 3, Malaysian goods may themselves be targeted by AD cases because producers in the United States or elsewhere are not able to distinguish between legitimate Malaysian exports and transshipped Chinese-origin merchandise. Further, the presence of illegally transshipped Chinese products in foreign markets will drive down prices and crowd out legitimate producers in other countries, such as Malaysia. Therefore, it is as much in Malaysia's interest as in that of the United States to eliminate the illegal activities involved in transshipment.

The Coalition understands that Malaysian authorities have been cooperating with other countries to address the transshipment problem. The European Anti-Fraud Office ("*OLAF*") has reported working closely with Malaysian Ministry of Trade and Industry, Malaysian customs, and local

Malaysian port authorities to identify offenders and take enforcement actions. *See Attachment 3.* The Coalition respectfully urges the USTR to incorporate, in the TPP, commitments by the appropriate Malaysian governmental authorities to undertake similar cooperative activities with their U.S. counterparts, including U.S. Immigration and Customs Enforcement ("*ICE*") and U.S. Customs and Border Protection ("*CBP*").

Correlatively, on November 8, 2010, Senator Ron Wyden released a report, entitled "Duty Evasion: Harming U.S. Industry and American Workers" (the "*Wyden Report*"), detailing multiple examples of duty evasion schemes that are being used to undermine U.S. trade laws. The public version of the Wyden Report details several instances of proposed transshipment through Malaysia and is available at: http://wyden.senate.gov/download/?id=ab312b37-d16b-495c-a103-c1887afb37af.

Manufacturing companies contacted by Wyden's staff in the concrete, steel nail, lined paper products and steel wire garment hanger industries all proposed transshipping merchandise subject to AD/CVD orders through Malaysia to illegally evade the U.S. duties. Ten separate logistics companies mentioned in the Wyden Report advertise an option to illegally transship goods through Malaysia to evade AD/CVD duties.

Several domestic industries represented in our Coalition are continuing to compete with unfairly priced Chinese products subject to AD/CVD orders because they are transshipped through Malaysia, then falsely indentified to CBP as products of Malaysia, and, therefore, not subject to the applicable dumping order.

UNCOVERED INNERSPRING UNITS

The AD order on innerspring units was entered by the U.S. Department of Commerce ("*DOC*") in February 2009, announcing duty rates of 164 percent for separate rate Chinese manufacturers and 234 percent for all other Chinese innerspring manufacturers. Innerspring units from Malaysia first appeared in the US International Trade Commission ("*ITC*") import statistics in May 2009; however, we believe there to be very little legitimate innerspring manufacturing in Malaysia.

MALAYSIA

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	**Total**
2008	-	-	-	-	-	-	-	-	-	-	-	-	**-**
2009	-	-	-	-	11,436	23,426	27,970	37,736	25,676	29,001	21,386	9,286	**185,917**
2010	15,154	28,766	7,124	17,988	30,951	32,246	42,254	-	-	-	-	-	**174,483**

It is important to note that these ITC statistics understate the actual volume of Chinese innersprings being transshipped through Malaysia. Innersprings carry their own unique HTS code (9404.29.9010); however, many of the innersprings shipped through Malaysia enter into the U.S. as "hairsprings." Using the Zepol data service, we estimate that the Malaysian import volumes are understated as follows: May 2010 by 21,000 units, June 2010 by 18,000 units, and July 2010 by 23,000 units.

Employees of innerspring manufacturer Leggett & Platt, Incorporated ("*Leggett*"), a member company of the Coalition, were contacted by a small Asian innerspring manufacturer located outside of China who had been approached by Foshan Jingxin, one of the mandatory respondents in the innerspring antidumping case, about receiving Chinese-made innersprings and relabeling them as a product of their country. Foshan Jingxin told this company that they have a similar relationship with Reztec in Malaysia and that it works very well. As the table above demonstrates, innersprings from Malaysia appeared overnight in large quantities.

Leggett's customers also have been approached with blatant proposals to transship Chinese-made innersprings through Malaysia. The following example is taken from an actual email:

> Date: Thu, 18 Mar 2010 09:11:27 -0700
> From: markmaryea@yahoo.com
> Subject: World Sleep Products Spring Unit Quotation
> To: [redacted]
> CC: markmaryea@yahoo.com
>
> Hello [redacted],
>
> Today John Ding is en route to China. When he arrives at our factory, he is going to verify pricing on the 364 unit. Once we do that we will forward that pricing to you also. **Your attached pricing is FOB Port of Malaysia.** To get a pretty accurate price of each spring unit delivered to your dock in Billerica, add about $4.50 per spring unit. This is based on a regular standard mix of Twin, Full, Queen, King spring units. A standard mix of these sizes will yield approx. 900-1,000 spring units per 40' container. (Total cost of freight and port charges and other fees is about $4,500 per container). We can get you a firm and specific freight estimate from one of our freight forwarders whenever necessary. We can ship either into Port of Boston or Port of NY. [redacted]
>
> I will send the 364 pricing to you in a few days. Contact me at your convenience and I can meet with you to discuss in better detail. Also, due to your volume, we can look into warehousing as well. That will add something to the quote, but it may be beneficial for you to have a "buffer stock" of spring units nearby that you can draw from while you are in between containers....
>
> I look forward to speaking with you. Thank You very much for the opportunity; I am confident we can save you some money and add to your profit margins.
>
> Sincerely,
>
> Mark Maryea & John Ding
> Lexington Captial Holdings Inc
> Mobile: 603.553.6890
> E-Mail: markmaryea@yahoo.com

STEEL WIRE GARMENT HANGERS

Like uncovered innerspring units, shipments of steel wire garment hangers ("*hangers*") from Malaysia first materialized after an antidumping proceeding was initiated against hangers from China. The AD order was issued on October 6, 2008, with margins for virtually all Chinese producers ranging from 55 to over 180 percent. Transshipped Chinese-origin hangers began to appear from a number of countries, including Vietnam, Taiwan, Mexico, and Canada as well as Malaysia.

In the case of Malaysia, there were no imports of hangers – not one – prior to 2009. However, in 2009, following the imposition of dumping duties on China, the official import statistics reported the entry of 10,727,500 hangers from Malaysia, followed by 57,448,444 hangers during the first nine months of 2010. In fact, hanger shipments from Malaysia increased by an extraordinary 1,126 percent from January—September 2009 to January—September 2010.

These are hangers made in China and transshipped through Malaysia to evade the assessment of dumping duties. Malaysia does not have an indigenous garment hanger industry.

The largest U.S. hanger producer, M&B Metal Products Co., Inc. of Leeds, Alabama, has received information from customers about the schemes to transship Chinese-made hangers to the United States via Malaysia. The following is one of many examples.

From: "mdlhanger@hotmail.com" <mdlhanger@hotmail.com>
To: [redacted]
Sent: Thu, January 14, 2010 11:57:59 PM
Subject: Re: MDL
Dear [redacted],

Attachment is our price list (FOB Shanghai) , please find it. We have two ways to ship containers to US. One is from Taiwan, the transport charge is $4200.00 per container. Another is from Malaysia, the transport charge is $3200 per container, but the shipping date will be much longer than from Taiwan.

Please check the price, if it's ok, please let me know.

Best regards,

Eunice
SHAOXING MEIDELI METAL HANGER CO.LTD.
ADD.: NO.32 EAST TUSHAN ROAD DEVELOPMENT AREA SHAOXING CITY ZHEJIANG PROVINCE CHINA
Tel: 0086-575-88122380
Fax: 0086-575-88207699
E-mail:mdlhanger@hotmail.com
http://www.mdlhanger.com.cn
http://sxmdljsyj.cn.alibaba.com/
http://www.mdlhanger.com

STEEL THREADED ROD

Imports of steel threaded rod from Malaysia have also surged since the initiation of an antidumping investigation against China in April 2008. The dumping margins on Chinese-made threaded rod are substantial – from 55 to 206 percent.

There were no shipments of threaded rod from Malaysia in 2006 or 2007 – prior to the filing of the antidumping petition in March 2008. However, starting in August 2008, transshipped products from China began to enter the United States via Malaysia, growing from approximately 250,000 kilograms during the remainder of 2008 to more than 1,500,000 kilograms in 2009 and 2,200,000 kilograms during January—September 2010. These transshipments through Malaysia unlawfully deprive the U.S. Government of significant revenue and deny the American industry the remedial effect of the antidumping order.

STEEL NAILS

As with threaded rod, imports of steel nails from Malaysia have increased significantly since the original antidumping duty investigation was initiated in 2007. From 2006, the last full year prior to the investigation, to 2008, when AD duties of up to 118 percent went into effect on Chinese imports, imports of steel nails from Malaysia jumped by over 33 percent, from 8.7 million kilograms to over 12 million kilograms, and have remained at elevated levels since.

This sudden surge of Malaysian nail exports to the United States is explained, at least in part, by a documented willingness of Chinese exporters to transship steel nails through Malaysia. As shown in the Wyden Report, Malaysia was specifically identified by two out of three Chinese exporters as a transshipment route that could be used to evade antidumping duties on Chinese steel nails. One company proposed to send the nails to Malaysia and repack them into new boxes. The other proposed to use a shipping agent that would issue a false “original” certification when the goods were in Malaysia, identifying the Chinese steel nails as “Malaysian.”

These two transshipment scenarios are typical of the challenges facing many U.S. industries, and demand measures to ensure that Malaysia makes an immediate and serious commitment to ending the use of its country’s ports to evade lawfully owed duties.

Respectfully Submitted,

Coalition for Enforcement of Antidumping and Countervailing Duty Orders

Member companies and associations of the Coalition include:

American Spring Wire Corporation	Bedford Heights, OH
GEO Specialty Chemicals	Lafayette, IN
Insteel Industries	Mt. Airy, NC
JMC Steel Group	Beachwood, OH
Leggett & Platt, Incorporated	Carthage, MO
M&B Metal Products	Leeds, AL
Mid Continent Nail	Poplar Bluff, MO
SSW Holdings	Elizabethtown, KY
Southern Shrimp Alliance	Tarpon Springs, FL
True Source Honey, LLC	Washington, DC
Vulcan Threaded Products	Pelham, AL

Each of these companies or associations is (or represents) a U.S. manufacturer of products in industries found to have suffered material injury, or threat of material injury, from products manufactured abroad and sold in the U.S. at less than fair value. In some cases, these imports have also been found to be subsidized by the applicable government. In each case, the products are subject to antidumping and/or countervailing duty orders.

Please address any comments or questions for the Coalition to:

Wendy March Watson
Associate General Counsel
Leggett & Platt, Incorporated
No. 1 Leggett Road
Carthage, MO 64836
(417) 358-8131, ext. 2441
Fax: (417) 358-8449
Email: wendy.watson@leggett.com

Attachment 1

REUTERS

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EU investigates Chinese screw exports via Malaysia

Thu Oct 28, 2010 8:37am GMT

BRUSSELS Oct 28 (Reuters) - The European Union's executive has started an investigation into whether Chinese exporters are using Malaysia as an illegal transhipment hub to evade EU import duties on steel screws and bolts, the EU said on Thursday.

"The (EU executive) Commission has at its disposal sufficient prima facie evidence that the anti-dumping measures on imports of the product concerned are being circumvented by means of the transhipment via Malaysia," the EU said in its regulatory register. (Reporting by Juliane von Reppert-Bismarck, Editing by John O'Donnell)

Attachment 2

International Trade

Citing China, Brazil Moves to Retaliate In Cases of Triangular Export Operations

RIO DE JANEIRO—Brazil's Foreign Trade Chamber (Camex) Aug. 18 approved a measure permitting Brazil to retaliate against countries that export products facing dumping charges that have been imported from third countries.

The object of the measure is to combat triangular operations where companies avoid dumping charges by exporting to another country first in order to disguise the origin of their products. In Brazil, it takes an average of 18 months to approve punitive measures against countries accused of dumping. According to Camex executive secretary Helder Chaves, the new measure will cut this time period significantly.

The main target, Chaves said, is China where shoe manufacturers are suspected of re-directing their exports to Brazil through other Asian countries to avoid dumping charges that were applied last September.

According to the Brazilian Association of Footwear Manufacturers, between January and July, shoe imports from China fell 60 percent compared with the same period in 2009, but imports from Indonesia jumped 77 percent and from Vietnam they soared 127 percent. The most impressive increase came from Malaysia whose shoe exports to Brazil went from 12,000 pairs in January-July 2009 to 3 million pairs in 2010.

"There was a major increase in the sales of domestic firms until March. But the Chinese exporters were very agile and rapidly we started receiving shoe imports from other countries," said the footwear association's president Heitor Klein.

Attachment 3

The Malaysian Insider
Tuesday, February 23, 2010

Chinese firms use Malaysia to evade anti-dumping laws
By Lee Wei Lian

KUALA LUMPUR, Feb 8 — Malaysian firms could be at risk of being penalised for a surge of China-made products that are being exported to the European Union (EU) as Malaysian goods to evade anti-dumping laws and duties.

The European Anti-Fraud Office (Olaf) said millions of euros worth of China-made goods are being fraudulently passed off as Malaysian by using the Port Klang Free Zone trans-shipment hub, where imported Chinese goods are transferred to another container and re-exported using the invoice of a Malaysian company.

Some firms also use false documents to obtain what is known as a certificate of origin, which declares that the goods are of Malaysian origin.

Olaf said that they are working closely with the Ministry of International Trade and Industry (Miti) to tackle the problem that also exists at other major trans-shipment hubs such as the Jebel Ali free zone in Dubai and Singapore where "it is easy to be lost in the volume."

"We're working closely with Miti, the Malaysian customs department and the port authorities," David Murphy, head of the customs unit at Olaf told The Malaysian Insider.

"They will use fictitious companies or forged documents to show that the goods are coming from Malaysia. To make it look more bona fide, they get a certificate of origin," said Murphy.

Murphy said that the real risk to the country is that the China-made products would flood into the EU via Malaysia resulting in commercial action being taken by the EU against Malaysian companies.

"It would affect legitimate Malaysian manufacturers," he said.

Murphy stressed however that he is happy with the cooperation from Miti.

Among the products identified by Olaf as being involved in country of origin fraud cases include rope wire, energy saving lamps, bicycles, shoes and pipe fittings.

According to Miti, other products that were prone to trans-shipment from China to the EU via Malaysia include stainless steel fasteners.

"Miti persistently cooperates with local authorities such as Customs, Port Authorities and others to ensure such activity is being monitored and prevented accordingly," said Miti when contacted by The Malaysian Insider.

"In addition, Miti and these relevant agencies will always work hand in hand and cooperate with its European Commission counterparts including Olaf to prevent fraud activities related to trade in Malaysia."

China, dubbed the factory of the world in recent decades, is one of Malaysia's top trading partners. It has recently set up another bank and is lending money for infrastructural projects in Malaysia.

The (Malaysia) Star-Online
Monday March 15, 2010

China shipping fasteners to Europe via M'sia to avoid duty
By DAVID TAN

GEORGE TOWN: Domestic mild-steel (or carbon-steel) fastener manufacturers are facing intense competition in Europe from China-made mild-steel fasteners shipped via Malaysia to avoid an anti-dumping duty imposed by the European Union (EU).

China-made fasteners have been slapped with an anti-dumping duty rate of an average 87.3% imposed by the EU since February 2009.

Chin Well Holdings Bhd senior manager Richard Yeap Soon Thong told StarBiz that since then, the selling price of Chin Well's mild-steel fasteners in Europe had to be lowered by at least 20% to compete against China-made fasteners.

"This eats into our profit margin. Otherwise, we could have marked up our pricing by 20% to 30% per tonne. The competition from Chinese fasteners has pressured Chin Well to lower its selling price of fasteners per tonne to RM4,000 and RM5,000," he said.

Some local and foreign manufacturing companies are providing re-packing services for China-made fasteners and shipping them out with their generalised system of preferences (GSP) and made-in-Malaysia certificate of origin documents which enable them to enter Europe with respective duties of 1.2% and 3.7%.

"The profit to be obtained from such re-packing and shipping services is high, about 7% of the invoice for each shipment of container, which is about US$20,000 or about RM80,000.

"In the country presently, there are only six major steel fastener producers, of which four specialises in manufacturing mild-steel fasteners, producing collectively 4,000 tonnes to 5,000 tonnes of fasteners monthly.

"Since China was hit by the anti-dumping duty from EU, Malaysia's monthly export of fasteners to the EU has increased substantially by about four to five times.

"This is the feedback we got from our distributors and wholesalers in Europe," Yeap said.

In 2009 Malaysia exported 99,000 tonnes of all types of fasteners, comprising screws, bolts, nuts, coach screws, screw hooks, rivets, and cotter-pins, compared to 55,000 tonnes in 2008, according to data obtained from the Ministry of International Trade and Industry (Miti).

"We have informed and updated Miti on the matter, lest Malaysia is also slapped with anti-dumping duty from the EU. The Miti office from Penang has recently informed us that they are working with the EU Anti-Fraud Office (OLAF), the port authorities, and the customs to check the abuse," he added.

ED Fastening Sdn Bhd managing director T.W. Teh said as a result of the situation, the company had suffered a sizable loss of market share in Europe.

"Our revenue for 2009, due to price competition and loss of market share in Europe, has dropped to about RM5mil, otherwise the it could easily be 50% more," he said, adding that Europe generated about 35% of the company's revenue.

The European Anti-Fraud Office (OLAF) customs unit head, David Murphy, said in an on-line news report on Feb 9 that millions of euros worth of China-made goods were being fraudulently passed off as Malaysian-made by using the Port Klang Free Zone trans-shipment hub, where imported Chinese goods were transferred to another container and re-exported using the invoice of a Malaysian company.

"Some firms also use false documents to obtain certificate of origin, which declares that the goods are of Malaysian origin. OLAF is working closely with Miti to tackle the problem that also exists at other major trans-shipment hubs such as the Jebel Ali free zone in Dubai and Singapore," Murphy said.

He added that the real risk to Malaysia was that commercial action might be taken by the EU against Malaysian companies, thereby affecting legitimate manufacturers.

When contacted, Miti, in a statement, said the ministry was scrutinising the applications for the export of fasteners to the EU.

"All exporters were required to provide additional documentation including letter of indemnity from the exporter for non involvement in transhipment or import-export activity using GSP form A in the Free Trade and Industrial Zone.

"The ministry also carried out on-site verification visits to the fasteners' manufacturers premises to verify their capability and capacity of producing fasteners for export market.

"We are also work closely with other Malaysian authorities such as customs, port authorities, and free zone authorities to ensure there is no transhipment of fasteners from China," it said.

The Miti statement also noted that "in a statement dated Feb 9, OLAF said it was highly satisfied with the cooperation from Miti and other government authorities relating to the evasion of anti-dumping duties."

Malaysian Iron and Steel Industry Federation (Misif) president, Chow Chong Long, acknowledges the occurance of such transhipment cases due to the liberalisation of trade.

"We have tried in the past to obtain the monthly figures of steel products coming in and going out of the country from the Department of Statistics Malaysia. The figures would help us detect whether there is excess of steel products being brought in and leaving the country given our present capacity and allow us to follow up with the Government to take timely and appropriate action.

Chow added that "the Government should look into ways on how it can get Misif access quickly the latest data on the export and import of steel products into Malaysia."

"The problem is that the Department of Statistics Malaysia is always three months late with its data," he said.

The Federation of Malaysian Manufacturers' northern region chairman, Datuk O.K. Lee, said Malaysian manufacturers should tap into their capabilities to produce high-value added products to compete against China-made goods and not resort to providing such re-packing and transhipment services that could undermine the country's image.