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Plaintiff's First Amended Complaint, Dus & Derrick, Inc. v. United States Secretary of Agriculture, Docket No. 1:05-cv-00346 (Court of International Trade May 06, 2005)

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UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: THE HONORABLE RICHARD K. EATON, JUDGE

_____)	
DUS & DERRICK, INC.,)	
)	
Plaintiff,)	
)	
v.)	Court No. 05-00346
)	
UNITED STATES)	
SECRETARY OF AGRICULTURE,)	
)	
Defendant.)	
_____)	

PLAINTIFF’S FIRST AMENDED COMPLAINT

NOW COMES PLAINTIFF DUS & DERRICK, INC., through undersigned counsel, with its First Amended Complaint, pursuant to Court of International Trade Rule 15(a), and states as follows:

Jurisdiction

1. The Plaintiff seeks review of the Defendant Secretary of Agriculture’s decision denying cash benefits under the Trade Adjustment Assistance for Farmers program, pursuant to 19 U.S.C. § 2401b and 7 C.F.R. § 1580.401(e).
2. This Court possesses jurisdiction over Plaintiff’s First Amended Complaint pursuant to 19 U.S.C. § 2395(a).

Factual Allegations

3. Plaintiff Dus & Derrick, Inc., has operated fishing vessels as a small, family-owned business since the early 1970s. Plaintiff Dus & Derrick, Inc., currently operates a single fishing boat, the Oriental Visitor, out of Rockport, Texas, and Aransas Pass, Texas; it has operated this vessel since 1998. Plaintiff Dus & Derrick, Inc., catches and sells shrimp.

4. As a result of price pressures from relatively inexpensive, farm-raised, imported shrimp, Plaintiff's fresh shrimp prices declined between 2001 and 2003.

5. Plaintiff's operational costs—most notably fuel and insurance costs, but also other costs—did not decline between 2001 and 2003.

6. Plaintiff's income figure for 2001, a net \$17,750.00 loss, was distorted by a \$17,000 payment from Plaintiff's bank account for past and current expenses.

7. Plaintiff's income figure for 2002, a net \$16,003.00 loss, was distorted by a \$16,000 loan to Plaintiff by a stockholder.

8. Plaintiff's income figure for 2002, a net \$16,003.00 loss, was also distorted by mechanical downtime and reduced sales.

9. Plaintiff's income figure for 2003, a net \$9,044.00 gain, was based on gross sales less operating expenses. Plaintiff's income figure for 2003 was not affected by payments or loans.

10. Other operational and accounting variables also contributed to Plaintiff's income figures between 2001 and 2003.

11. On the basis of its declining sales prices, its operating expenses, and adjustments to its income described in paragraphs 6 through 10, above, Plaintiff Dus & Derrick, Inc., applied for cash benefits under the Trade Adjustment Assistance for Farmers program on February 16, 2005.

12. On March 7, 2005, the Defendant Secretary of Agriculture, through the Deputy Director, Import Policies and Program Division, denied Plaintiff's application on the basis that Plaintiff "failed to meet the net income requirement, in accordance with 7 CFR Part

1580.401(e).” The Deputy Director wrote, “An applicant’s net income for 2003 must be less than their net income for 2001.”

13. On May 6, 2005, Plaintiff timely filed its initial Complaint to this Court.

14. Defendant Secretary of Agriculture has not filed an Answer or other responsive pleading to Plaintiff’s initial Complaint.

First Claim

15. Plaintiff incorporates the allegations in Paragraphs 1 through 14 of Plaintiff’s First Amended Complaint.

16. Plaintiff’s “net income” between 2001 and 2003 satisfies the “net income” requirements under the Trade Adjustment Assistance for Farmers program, Chapter 12 of the Trade Act of 1974, implementing regulations, agency guidelines, and any other applicable rules, regulations, or laws.

Second Claim

17. Plaintiff incorporates the allegations in Paragraphs 1 through 16 of Plaintiff’s First Amended Complaint.

18. Defendant Secretary of Agriculture failed to engage in reasonable inquiry, with the utmost respect for Plaintiff’s interests, in evaluating Plaintiff’s application for cash benefits under the Trade Adjustment Assistance for Farmers program.

Third Claim

19. Plaintiff incorporates the allegations in Paragraphs 1 through 18 of Plaintiff’s First Amended Complaint.

20. Defendant Secretary of Agriculture’s findings of fact in denying Plaintiff’s application are not supported by substantial evidence.

Prayer for Relief

21. Plaintiff incorporates the allegations in Paragraphs 1 through 20 of Plaintiff's First Amended Complaint.

22. Plaintiff Dus & Derrick, Inc., respectfully request that this Court set aside the Defendant's denial of cash benefits under the Trade Adjustment Assistance for Farmers program, pursuant to 19 U.S.C. § 2395(c), and direct or order the Defendant Secretary of Agriculture to award cash benefits to Plaintiff Dus & Derrick, Inc., under the Trade Adjustment Assistance for Farmers program.

23. Alternatively, Plaintiff Dus & Derrick, Inc., respectfully request that this Court remand Plaintiff's application to the Defendant Secretary of Agriculture to take further evidence, pursuant to 19 U.S.C. § 2395(b).

Respectfully Submitted,

/s

STEVEN D. SCHWINN
Counsel for Plaintiff Dus & Derrick, Inc.

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CERTIFICATE OF SERVICE

I, Steven D. Schwinn, hereby certify under penalty of perjury that on this 10th day of February 2006 I caused to be placed in the United States Mail, postage pre-paid, copy of this PLAINTIFF'S FIRST AMENDED COMPLAINT to

Delfa Castillo
Trial Attorney
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
1100 L Street, N.W.
Attn: Class Unit, 8th Floor
Washington, D.C. 20530

s/
STEVEN D. SCHWINN