

UNITED STATES COURT OF INTERNATIONAL TRADE

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ZHANJIANG GUOLIAN AQUATIC	:	
PRODUCTS CO., LTD.,	:	
	:	
<b>Plaintiff,</b>	:	
	:	
v.	:	
	:	
UNITED STATES,	:	<b>Before: Gregory W. Carman, Judge</b>
	:	
<b>Defendant,</b>	:	<b>Court No. 13-00388</b>
	:	
<b>and</b>	:	
	:	
COALITION OF GULF SHRIMP	:	
INDUSTRIES,	:	
	:	
<b>Defendant-Intervenor.</b>	:	
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OPINION & ORDER

[Defendant-Intervenor’s motion to dismiss is granted.]

*Robert G. Gosselink and Jonathan M. Freed*, Trade Pacific, PLLC, of Washington, DC, for Plaintiff.

*Robin Lynn Turner*, Attorney, Office of the General Counsel, United States International Trade Commission, of Washington, DC, for Defendant. With her on the brief were *Dominic L. Bianchi*, General Counsel, and *Neal J. Reynolds*, Assistant General Counsel.

*Terence P. Stewart, Elizabeth J. Drake, and Jennifer M. Smith*, Stewart and Stewart, of Washington, DC, and *Edward T. Hayes*, Leake & Andersson, LLP, of New Orleans, LA, for Defendant-Intervenor.

June 26, 2014

**CARMAN, JUDGE:** Before the Court is Defendant-Intervenor Coalition of Gulf Shrimp Industries' ("Defendant-Intervenor" or "COGSI") Motion to Dismiss ("MTD") (ECF No. 16) for lack of case or controversy under Article III of the Constitution and accordingly lack of subject matter jurisdiction in this court. Defendant the United States supports COGSI's motion to dismiss. ECF No. 20. For the reasons set forth below, the Court grants Defendant-Intervenor's motion to dismiss.

#### BACKGROUND

This action is one of many challenging the final negative countervailing duty ("CVD") determination of certain frozen warmwater shrimp from various countries. *See Frozen Warmwater Shrimp From China, Ecuador, India, Malaysia, and Vietnam*, 78 Fed. Reg. 64,009 (Int'l Trade Comm'n Oct. 25, 2013) (final determination). The International Trade Commission ("ITC")'s final determination was that the domestic industry "was not injured by reason of imports." Pl.'s Opp'n to Def.-Int.'s Mot. to Dismiss ("Pl.'s Opp'n") at 3. In its preliminary determination, the ITC "concluded that negligibility was not an issue in the investigations because the subject imports from all countries investigated were not negligible." Compl. ¶ 7 (internal quotations omitted). Plaintiff argued to the agency that the ITC's negligibility conclusion was not accurate for imports from China because the ITC used data that "included imports of nonsubject merchandise." Compl. ¶ 9. The ITC continued to find Plaintiff's imports non-negligible in its final determination. Compl. ¶ 10. Plaintiff prays for a declaration that the

ITC's conclusion "on negligibility with respect to China" is erroneous and requests a remand to the ITC regarding negligibility. Compl. ¶ 15.

Defendant-Intervenor COGSI moves to dismiss Plaintiff's Complaint because "[t]he ITC determined the U.S. industry was not injured, and thus no countervailing duty order issued as a result of the ITC's determination." MTD at 2. Defendant-Intervenor argues that Plaintiff "suffered no harm and has no standing, and the Court has no jurisdiction since there exists no true case or controversy." MTD at 3. Defendant-Intervenor points out that "[s]tanding is one of the essential elements of the case-or-controversy requirement" and "[u]nder the United States Constitution, the jurisdiction of federal courts is limited to actual cases or controversies." *Id.* at 2 (internal quotations and citations omitted). Accordingly, Defendant-Intervenor asserts that the Court lacks subject matter jurisdiction to hear Plaintiff's case. *Id.* at 4.

In a parallel case challenging ITC's final injury determination, Plaintiff is the defendant-intervenor and Defendant-Intervenor is the plaintiff. *See COGSI v. United States*, Ct. No. 13-00386 (CIT filed Nov. 22, 2013).<sup>1</sup>

### JURISDICTION

Plaintiff carries the burden of establishing that jurisdiction lies. *See McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). In this action, Plaintiff claims jurisdiction is proper pursuant to section 516A(a)(2)(A)(i)(I) of the Tariff Act of 1930, as amended ("the Act"), codified at 19 U.S.C. § 1516a(a)(2)(A)(i)(I). Compl. ¶ 1. Plaintiff brings its claim under

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<sup>1</sup> *COGSI v. United States*, Court No. 13-00386, is the lead case in a batch of challenges to this investigation. The court has stayed the balance of the related cases pending the outcome of this lead case.

the propositions that it already suffered injury “during the provisional measure period” and may “suffer future harm if defendant-intervenor COGSI is successful in its separate appeal” of the ITC’s final negative injury CVD determination. Pl.’s Opp’n at 6.

### DISCUSSION

Jurisdiction is at the heart of this action. The jurisdiction of federal courts is constitutionally limited to actions that involve actual cases or controversies. *Royal Thai Gov’t v. United States*, 38 CIT \_\_\_, \_\_\_, 978 F. Supp. 2d 1330, 1332-33 (2014) (“*Royal Thai*”)<sup>2</sup> (citing *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976)). A key component of a case or controversy is standing. See U.S. Const. art. III, § 2, cl. 1; see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (“[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.”). To establish standing, a plaintiff must demonstrate an “injury in fact” that is “concrete and particularized” as well as “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. A further requirement to establish standing is that the injury is “fairly traceable to the challenged action.” *Id.*

It is well-settled in this court that “when a respondent challenges an administrative proceeding in which it has prevailed there is no case or controversy, and thus no jurisdiction lies.” *Royal Thai*, 978 F. Supp. 2d at 1333 (citing *Freeport Minerals Co. v. United States*, 758

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<sup>2</sup> The *Royal Thai* case was recently decided at the Court of International Trade. While *Royal Thai* challenged the Department of Commerce’s duty determination rather than the ITC’s injury determination, the arguments of both plaintiffs are strikingly similar. See generally *Royal Thai*, 978 F. Supp. 2d at 1330.

F.2d 629, 634 (Fed. Cir. 1985)). Similar to the prevailing plaintiff in *Royal Thai*, Plaintiff in this action prevailed at the administrative level but alleges that a live case or controversy exists because it wishes to challenge subsidiary issues from the ITC's determination on which it did not prevail. *See* Pl.'s Opp'n at 7. However, the fact that no CVD order has been issued means that Plaintiff is not suffering any injury due to the errors it alleges the ITC committed. *See Royal Thai*, 978 F. Supp. 2d at 1333 (*citing Lujan*, 504 U.S. at 560). The fact that Plaintiff paid cash deposits while the administrative review was pending does not create an injury sufficient to confer standing under the Constitution or the Court's jurisdictional statute. *See MacMillan Bloedel Ltd. v. United States*, 16 CIT 331, 332-33 (1992) (stating that paying deposits [during a countervailing duty investigation] pending court review is an ordinary consequence of the statutory scheme and cannot be addressed while the investigation is pending). The statute requires that the cash deposits be returned. *See* 19 U.S.C. § 1671d(c)(2)(B); *see also Royal Thai*, 978 F. Supp. 2d at 1333 (finding no case or controversy where cash deposits are returned to a prevailing party). Because no cash deposits are due at this time, and all previously paid deposits either have been or will be returned to the subject producers pursuant to statute, Plaintiff cannot claim monetary injury. Without injury, there is no standing and thus no case or controversy.

The mere fact that Defendant-Intervenor appealed the ITC's final negative injury determination in a parallel case, creating the possibility of a future reversal of the ITC's negative injury determination, does not create standing in this case. Speculation of an administrative reversal is hypothetical, and hypothetical harm cannot provide jurisdiction. *See Royal Thai*, 978 F. Supp. 2d at 1333 (*citing Asahi Seiko Co., Ltd. v. United States*, 35 CIT \_\_\_, \_\_\_, 755 F. Supp. 2d 1316, 1322 (2011)).

Plaintiff alleges that dismissing this case while hearing “COGSI’s claims in Court No. 13-00386” would “defy notions of fairness.” Pl.’s Opp’n at 8 n.3. This same argument was made by the plaintiff in *Royal Thai* and failed:

Plaintiff’s concerns are misplaced. In the event that COGSI succeeds in its appeal of Commerce’s determination, Commerce will be required to publish a redetermination on remand. If this occurs, plaintiff will still have a right to challenge that redetermination, either during the course of any remand or in a new suit, even if this case is dismissed at this juncture.

*Royal Thai*, 978 F. Supp. 2d at 1334 (citation omitted). Plaintiff in the instant case would have the same right to challenge the redetermination as the plaintiff in *Royal Thai*.

Defendant-Intervenor argues that Plaintiff “asks this Court to issue an advisory opinion on a subsidiary issue when it has suffered no real injury due to [the negligibility] issue and when the relief requested would not redress any such injury.” Def.-Int.’s Reply at 5. The Court agrees. The United States Supreme Court has made it clear that the United States Constitution does not permit courts to issue advisory opinions. *See Camreta v. Greene*, 131 S.Ct. 2020, 2038 (2011) (“judicial Power is one to render dispositive judgments, not advisory opinions”) (quotations and citations omitted).

Because it has suffered no injury, Plaintiff has no standing and no case or controversy exists. Therefore this Court lacks jurisdiction. Accordingly, the Court grants Defendant-Intervenor’s motion to dismiss.

**CONCLUSION**

For the foregoing reasons, it is hereby

**ORDERED** that Defendant-Intervenor's motion to dismiss is granted without prejudice.

Judgment to enter accordingly.

/s/Gregory W. Carman

Gregory W. Carman, Judge

Dated: June 26, 2014  
New York, NY