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June 2, 2004

James J. Jochum  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Avenue and 14th Street N.W.  
Washington, DC 20230

## PUBLIC DOCUMENT

Total Pages: 4

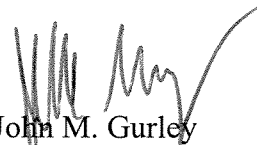
**Re: Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries; Comments of Coudert Brothers LLP**

Dear Assistant Secretary Jochum:

Enclosed for filing please find an original and six copies of Comments by Coudert Brothers LLP to the Department of Commerce's notice in the Federal Register on May 3, 2004 regarding Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries (69 Fed. Reg. 24119). Due to the fact that the Department was closed on Tuesday, June 1, 2004, we are filing our Comments today, Wednesday, June 2, 2004.

Please contact us if you should have any questions regarding this submission.

Respectfully submitted,



John M. Gurley  
Matthew J. McConkey

Enclosures

**BEFORE THE UNITED STATES DEPARTMENT OF COMMERCE  
INTERNATIONAL TRADE ADMINISTRATION  
WASHINGTON, D.C.**

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**COMMENTS OF COUDERT BROTHERS LLP  
IN RESPONSE TO THE MAY 3, 2004 FEDERAL REGISTER NOTICE  
(69 FED. REG. 24119) PUBLISHED BY THE DEPARTMENT OF COMMERCE  
REGARDING SEPARATE RATES PRACTICE IN ANTIDUMPING  
PROCEEDINGS INVOLVING NON-MARKET ECONOMY COUNTRIES**

Coudert Brothers LLP (“Coudert Brothers”) hereby submits the following comments in response to the notice published by the Department of Commerce (the “Department”) in the Federal Register on May 3, 2004 regarding Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries.<sup>1</sup> The Department proposes to discontinue its practice of calculating a separate weighted average rate for Section A respondents in non-market economy (“NME”) countries. Coudert Brothers appears before the Department’s International Trade Administration on behalf of numerous clients serving as respondents in the Department’s antidumping proceedings involving non-market economy countries.<sup>2</sup> Coudert Brothers believes these comments will assist the Department in considering whether to change its current NME policy and practice.

Coudert Brothers believes that the proposed modification is inconsistent with Section 777A(c) of the Tariff Act of 1930 (the “Act”), which instructs the Department to calculate individual dumping margins for “each known exporter and producer” of the subject merchandise,<sup>3</sup> except where doing so would be impractical.<sup>4</sup> By eliminating the entire category of Section A respondents in NME countries from receiving a separate rate and instead giving them the country-wide rate, the Department would essentially be acting contrary to the Act.

In support of its proposal, the Department cites the concerns of certain parties that the government lacks the resources to evaluate the large numbers of Section A respondents who request a separate rate. However, the Act includes a provision specifically designed to help the Department manage investigations involving a large number of producers and exporters. Section 777A(c)(2) allows the Department to limit its antidumping investigation to a reasonable number of exporters if it determines that it

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<sup>1</sup> 69 Fed. Reg. 24,119 (Dep’t Commerce May 3, 2004) (request for comments).

<sup>2</sup> The following comments do not represent the views of any particular client of the firm.

<sup>3</sup> 19 U.S.C. § 1677f-1(c)(1).

<sup>4</sup> 19 U.S. C. § 1677f-1(c)(2).

is impractical to investigate them all.<sup>5</sup> Indeed, the Department currently complies with the Act by assigning separate rates for Section A respondents. Doing so permits the calculation of separate rates for a larger number of exporters and producers, but does not require the Department to expend the scarce resources required to conduct full investigations of the same respondents.<sup>6</sup> Given that the Act already provides the Department the discretion to decide whether to limit the number of exporters and producers investigated, it is contrary to the Act to take the additional step of completely eliminating the category for Section A respondents.

Moreover, the Department's established precedent for calculating separate weighted average rates for Section A respondents in NME countries properly requires that respondents request a separate rate, present complete and timely responses, and be found free of government control.<sup>7</sup> Through its practice, these requirements have served to limit certain Section A respondents who fail to file in a timely manner and thus have reduced the amount of work involved.<sup>8</sup> The fact that the Department is currently involved in two investigations involving NME countries in which it is receiving an exceptionally large number of requests for separate rates from Section A respondents,<sup>9</sup> does not mean that it should abandon a historically effective practice. The complete elimination of the separate rates treatment of Section A respondents is unwarranted.

Finally, the Department's proposed modification of the separate rates practice may be a violation of the United States' obligations under the Anti-Dumping Agreement of the World Trade Organization ("WTO").<sup>10</sup> Article 6.10.2 of the WTO Antidumping

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<sup>5</sup> 19 U.S.C. § 1677f-1(c)(2).

<sup>6</sup> See, e.g., Certain Color Television Receivers From the People's Republic of China, 69 Fed. Reg. 20,594 (Dep't Commerce April 16, 2004) (final determ.) (where the Department selected four mandatory respondents for its full investigation and assigned a weighted-average rate for twelve Section A respondents).

<sup>7</sup> See, e.g., Petroleum Wax Candles from the People's Republic of China, 69 Fed. Reg. 12,121 (Dep't Commerce March 15, 2004) (final determ.) (where the Department calculated separate rates for Section A respondents that had requested separate rates and presented complete and timely responses); and Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 Fed. Reg. 33,911 (Dep't Commerce June 6, 2003) (prelim. determ.) (where the Department calculated separate rates for Section A respondents that had requested separate rates and presented complete and timely responses).

<sup>8</sup> See, e.g., Bicycles From the People's Republic of China, 69 Fed. Reg. 19,026 (Dep't Commerce April 16, 2004) (where the Department rejected improperly filed Section A responses from certain companies and therefore did not consider those responses for purposes of the proceeding).

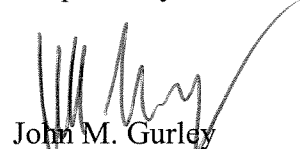
<sup>9</sup> See Initiation of Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China, and the Socialist Republic of Vietnam, 69 Fed. Reg. 3876 (Dep't Commerce January 27, 2004); and Initiation of Wooden Bedroom Furniture from the People's Republic of China 68 Fed. Reg. 70,228 (Dep't Commerce December 17, 2003).

<sup>10</sup> Agreement on the Implementation of Article VI of the General Agreement on Tariff and Trade, April 15, 1994, Marakesh Agreement establishing the World Trade Organization, Annex IA, Legal Instruments – Results of the Uruguay Round (hereinafter Antidumping Agreement) reprinted in John H. Jackson et. all, Legal Problems of International Economic Relations 174 (3d ed. Supp. 1995); Agreement on the Implementation of Article VI, June 30, 1967, 659 U.N.T.S. 320 (hereinafter GATT Antidumping Code).

Agreement states that “voluntary responses shall not be discouraged.”<sup>11</sup> The complete elimination of a separate rates category for Section A respondents clearly discourages the voluntary submission of responses.

In sum, the Department should not eliminate the separate rates category for Section A respondents in NME countries, because taking such action would be contrary to U.S. law, international agreements, and to the Department’s long-standing precedent.

Respectfully submitted,



John M. Gurley  
Matthew J. McConkey

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June 1, 2004

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<sup>11</sup> Antidumping Agreement, art. 6.