



# 中国食品土畜进出口商会

CHINA CHAMBER OF COMMERCE FOR IMP. & EXP. OF FOODSTUFFS, NATIVE PRODUCE & ANIMAL BY-PRODUCTS

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June 21, 2007

The Honorable David Spooner  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Avenue and 14<sup>th</sup> Street NW  
Washington, DC 20230

Re: **Comments on Granting Market-Economy Treatment To individual Respondents in Antidumping Proceedings Involving China**

Dear Mr. Spooner:

Aiming at making comments on USDOC's notice of granting market-economy treatment to individual respondents in antidumping proceeding involving Chinese companies published on May 25, 2007, we hereby submit our opinions as follows:

The U.S. government has not granted China's market economy status. Although there was MOI test to decide whether a Chinese industry is market oriented, the standards are so strict that none of Chinese industries has been granted MOI treatment up to the present. Under this circumstance, it is acceptable and reasonable for the DOC to

consider granting MOE treatment to individual respondent. Besides, now the US government has already started the countervailing investigation against China, granting Chinese respondents the MOE treatment may avoid double counting in the countervailing and antidumping cases.

In specific, we advise that the DOC to presume all the Chinese respondents as the MOE.

We have sufficient reasons. In fact, the function of the Chinese government, the Chinese economic system and the related policies and legislation have already met the standards of market economy. Here we will not say more than is need. In the field of agricultural products and foodstuff, the principal exporters have experienced radical changes. Private companies have become the main incentive of the export. The proportion of the export total amount of the state owned exporters has declined from 81.4% in 1995 to 21.7% in 2006; The proportion of the export total amount of the private exporters has increased from 18.6% in 1995 to 78.3% in 2006. Thereinto, foreign-invested enterprises in all have increased from 17.5% to 43.3%. The individual proprietorship enterprises and the public enterprises have increased from 1.1% to 35%. The proportion of the individual proprietorship enterprises and foreign invested enterprises is rising every year. Especially in some new industries, the proportion of the individual proprietorship enterprises and foreign invested enterprises has already amounted to 100%, realizing high marketability.

We certainly realized the reason why the U.S. Government has not granted China market economy status because it still believes some Chinese companies or industries don't operate as the companies in the market economy. But it should be the applicants' responsibility to prove that the Chinese exporters have been intervened by the government, as well as it is not market oriented. If the applicants can provide sufficient evidence to prove that the Chinese exporters are not market oriented, the DOC can treat the Chinese respondents the same way as the companies in the non market-economy countries. Otherwise, the Chinese respondents should be treated as the market oriented companies. Or we can only get into the conclusion that the purpose of the DOC is protectionism.

1. For the mandatory respondents qualified the MOE test, the calculation of the cost and dumping margin should be based on their own cost. The surrogate value is no longer an option for the calculation of any direct or indirect production factors.

2. For the non-selected respondents qualified the MOE test, they should be treated according to those in the market economy countries. It should be noted that in market economy antidumping investigations, exporters that are not selected as mandatory respondents automatically are assigned an "all others" rate that is based upon the weighted average dumping rate of the mandatory respondents. These non-selected companies don't even have to submit a partial response to the dumping questionnaire. Ordinarily, this policy would apply to China. However, since China is treated as a non market economy, the DOC has developed a presumption that all companies that do

not respond to Section A of the questionnaire, are in fact controlled by the Chinese Government and, therefore, not entitled to a separate rate. This presumption can only be overcome if the non-selected respondent provides a response to Section A of the questionnaire and proves that it operates its business without Chinese Government's intervention. In the previous cases, for example in the warm water shrimp case, DOC sometimes abused their discretion on whether granting Chinese Section A respondents separate rate qualification. The reasons DOC explained why they denied their separate rate qualification were unreasonable. That is apparently unfair.

If DOC takes the presumption that all related enterprises in China are market oriented enterprises, these enterprises should automatically be assigned an "all others" rate that is based upon the weighted average dumping rate of the mandatory respondents. This method will not only ensure the fairness but also avoid double test – separate rate test and MOE test, which will probably reduce the extra burden both of DOC and the respondents caused by the double test as well. Otherwise, if DOC has difficulty in handling great amount of information in the tests, the MOE test will be nothing but an empty shell.

3. Last but not the least, if a Chinese mandatory respondent is qualified with market oriented enterprise, we can safely draw the conclusion that the respondent has been determined by DOC that this respondent has no substantial difference with the mandatory respondent in market economy countries. Thus, when locating and

determining surrogate value, DOC should use the cost of Chinese MOE mandatory respondent directly, instead of the surrogate value in third country, to calculate the normal value of the mandatory respondent who is not qualified MOE. This will undoubtedly lead to more accurate calculation. In the past, for various reasons, DOC's determinations on surrogate country sometimes were unreasonable, resulting in unbelievable high dumping margin for Chinese respondents. In addition, it will reduce the burden on the DOC created by the additional process of locating and determining surrogate values, as well as cut down on litigation which occurs now in many cases.

Granting Chinese companies "company specific" market economy treatment is a first step in granting market economy status to an entire industry and to China. We appeal that U.S. government will treat whole China as a market economy soon.

Sincerely yours,



Ou Meng

China Chamber of Commerce for I/E of Foodstuff,  
Native Produce & Animal By-Products (CFNA)