

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

Jan. 21st, 2005.

Re: Comments on Separate-Rate Practice in Anti-Dumping Proceedings
Involving Non-Market Economy Countries.

Dear Assistant Secretary Jochum,

On behalf of China's metals, minerals and chemicals industries, we submit the following comments in response to the Department of Commerce's proposed Separate-Rate Practice in Anti-Dumping Proceedings Involving Non-Market Economy Countries.

An original and six copies of our comments are attached. Please contact the undersigned if you or your staff has any questions regarding these comments.

I. The Application Process.

We think the separate rate application process appears to be clear and "streamlined to focus on the issues most relevant to separate rate eligibility", but in fact it is more like a trap to Chinese respondents. Without any word on how the Department would interpret the answers, the whole proposal only focused on the obligations that Chinese respondents should fulfill in order to be qualified for a separate rate treatment. And as indicated by the Department, "completing the application and submitting the supporting documentation do not guarantee receipt of separate rate". So the standard of a "complete answer" and a "qualifying answer" becomes a vague definition to Chinese respondents. Chinese respondents are very concerned that their application will be exposed to unlimited discretion of the

Department and the proposed application process will only serve the purpose of time-saving and convenience for the Department at the price of the due right, predictability and certainty of Chinese respondents.

And as a practical matter, we would like to know if the Department would also use this application process in administrative review.

II. Combination Rates.

We think that the proposed practice will result in even more complicated and self-contradictory situations both in original investigation and administrative review.

In original investigation, the justification of the Department is “since the Department margin calculations are based on the factors of production of the producer that supplied the exporter during the period of investigation or review, the rates the Department assigns should only apply to those suppliers.” According to this reasoning, the calculation of the rate of an exporter from the export price and the weighted average factors of productions of different suppliers within the exporter-producer combination should not be applied to the exporter when the exporter sources subject merchandise from any of the suppliers because the rate is not calculated on the factors of production of each individual suppliers and it neglects the real operation status of different suppliers of the same exporters. It would be precisely reasonable if each producer-exporter combination be assigned a separate rate calculated on the export price and the factors of productions of each supplier of the same exporter.

Let’s take the example in the notice for illustration.

“Exporter A seeks a separate rate during the investigation and supplies the Department with the necessary certification and documentation to obtain separate rates status. Further, Exporter A certifies that it sourced 20 percent of its subject merchandise for export to the United States during the period of investigation from Producer B, 30 percent from Producer C, and 50 percent from Producer D. It makes no difference if Exporter A is affiliated with its producers or not. Exporter A demonstrates its independence from the government in its export activities, and receives a separate rate for cash deposit in the preliminary determination based on the firm's sales to the United States, and on the weighted factors of production of its three suppliers.”

In this example, the final result should be three different combination rates which are combinations of AB, AC and AD calculated from the factors of production of Producer B, C and D respectively, instead of one rate calculated from the weighted

average of the three producers.

In administrative review, we think the proposed change on the combination rates is self-contradictory.

Let's also take the example in the notice to illustrate:

“For the administrative review, Exporter A would have the option to request that it be reviewed. During the review, the Department would again collect factors information from Producers B, C, and D.”

But if in the period of investigation of the review, Exporter A sourced the merchandise exclusively from Producer B, will the factors information from Producer C and D be collected? And will the margin still be calculated on the weighted average of the three producers? If Producer C or D doesn't cooperate in the review for some reason, how to use the way of weighted average calculation? In that case it is unfair for B. But if the factors information of C and D are not collected and the margin is not calculated on the weighted average basis, then the next question is if the combination of dumping duty will still include C and D?

In conclusion, the proposed change on the practice will create more troubles and confusions to Chinese respondents, the Department and the Customs.

Respectfully submitted,

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Vice Chairman

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