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January 24, 2005

BY HAND DELIVERY AND E-MAIL

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

Re: Separate-Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 69 Fed. Reg. 77722 (December 28, 2004); Public Comments of International Steel Group Inc.

Dear Acting Assistant Secretary:

These comments are submitted on behalf of International Steel Group Inc. ("ISG") in response to the above-referenced request for comments from the Department. ISG is one of the largest integrated steel producers in the United States. ISG produces, among other steel products, hot-rolled flat-rolled carbon steel sheet and cut-to-length carbon steel plate, both of which are products that are subject to antidumping duty orders on imports from a non-market economy country (i.e., China). Accordingly, ISG has a vested interest in ensuring that the Department's policies and procedures for administering the antidumping law with respect to imports from NME countries such as China provide fair and effective relief from unfair imports.

ISG applauds the Department's decision to re-examine its separate-rates practice in antidumping proceedings involving NME countries. There has been increasing concern about NME producers whose merchandise either was not investigated or reviewed by the

Department or received high dumping margins shifting to exporters with dumping margins that are the lowest among respondents that receive company-specific rates in an investigation or administrative review. While this concern to date has largely focused on orders covering non-steel products, steel is obviously not immune from such potential gaming. At the same time, ISG believes that the antidumping law should be administered equitably and without imposing unnecessary costs or burdens on parties. Hence, a proposal to revise the Department's separate rate practice that would ensure the antidumping order is enforced as effectively as possible as well as reduce the burdens on the Department and respondents in establishing what companies are properly entitled to separate rate treatment is laudable.

1. Combination Rates: ISG is generally supportive of the proposal to adopt "combination rates," such that exporters qualifying for a separate rate would have the separate rate apply only to the merchandise supplied by a producer that had supplied subject merchandise which was exported by the exporter to the united States during the period of investigation or review. *See* 69 Fed. Reg. 77722, 77725. Only the producer-exporter combination that was actually investigated or reviewed would receive the calculated rate for establishing the cash deposit rate for estimated antidumping duties. *Id.* Merchandise produced by other suppliers that was not investigated or reviewed and exported by the respondent would be subject to the country-wide rate until the next administrative review when those suppliers' factors could be examined. *Id.*

The Department's proposal, however, raises a question as to what kind of information the exporter/shipper should be required to supply to the U.S. importer to ensure that the cash deposits are being posted. In this regard, where the respondent exporter is not the

manufacturer of the merchandise, the U.S. importer may not be aware of the manufacturer's identity. For example, Customs' regulations concerning invoice requirements require the importer to supply a commercial invoice or other acceptable documentation which contains, *inter alia*, "the name and complete address of the foreign individual or firm who is responsible for invoicing the merchandise, ordinarily the manufacturer/seller, but where the manufacturer is not the seller, the party who sold the merchandise for export to the U.S., or made the merchandise available for sale." 19 C.F.R. §142.6(a)(5) (emphasis added). To address this issue, ISG proposes that the Department require exporters who seek separate rates and who are not themselves the manufacturer of the merchandise they are exporting to supply the name and address of the supplier of the merchandise in a shipment to the U.S. purchaser/importer and instruct Customs to collect that information from the importer together with other import documentation. This will help to ensure that the combination rate calculated for a particular exporter-producer combination will in fact be applied only to that exporter-producer combination.

2. Information to be collected in application process to identify qualified separate rates applicants: The application the Department has crafted should be revised to require applicants to provide additional information and evidence to establish that they are in fact free of *de jure* or *de facto* government control. First, the draft application form requires the applicant to certify that its export prices are not set by, subject to approval of, a governmental authority. This requirement should be expanded to require the applicant to also certify that its export prices are not set by, reviewed or influenced by local, regional or national chambers of commerce or quasi-governmental authorities.

Second, applicants should be required to provide evidence that their decisions concerning the hiring and firing of employees are free of government control. Freedom over the hiring and dismissal of workers is a fundamental element of true independence from government control or influence. Applicants can do so by providing a list of the names of hired and fired employees over a suitable period of time (e.g., one or more years prior to the filing of the petition) and documentation regarding their discharge.[1] As well, the Department should require applicants to provide copies of notices of dismissal for the some suitable number (e.g., 10-15) employees that have been most recently dismissed.

Third, applicants should be required to provide information regarding any union(s) to which their employees belong. In the case of China, applicants should be required to state whether the union(s) is affiliated with the All China Federation of Trade Unions. The ACFTU takes the position that the function of Chinese trade unions is the development of the "socialist market economy."[2] Consequently, evidence of a workforce that belongs to a union affiliated with the ACFTU would indicate that the applicant's company is, in fact, subject to government control or influence.

Finally, applicants should be required to provide information concerning their source of capital and whether such source is a state-owned bank. Much of the banking industry in China, for example, is still state-owned. State-owned banks that control loans can influence investment and production decisions.

3. Procedural Considerations Regarding an Application Process:

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[1] We note in this regard that the application requires the applicant to indicate whether any of the firm's managers worked for the government in the past three years.

[2] *See* ACFTU website at http://www.acftu.org.cn/about.htm.

The proposal to shift to an application process for separate rate applicants raises some procedural questions. First, as the Department indicates in its notice, the current process has proved burdensome and strained the Department's resources in cases where there are hundreds of exporters seeking separate rates treatment because the Section A responses are often incomplete and require supplemental responses. The purpose of moving to an application process is to provide increased guidance to prospective applicants as to the type of information the Department requires to make a separate rates determination. What is not clear from the Department's notice, however, is whether the Department will impose specific deadlines at the beginning of an antidumping investigation for applications to be submitted and what the consequences are if an application is incomplete.

ISG suggests that the Department provide notice that companies who wish to apply for a separate rate submit their application by a date certain and that an incomplete application will disqualify that applicant from consideration for separate rate treatment for the rest of the investigation. This is analogous to the Department's procedures to address industry support for a petition at the beginning of an investigation. The statute provides the Department with specific deadlines for addressing that issue. Once decided, the issue is not revisited. In a similar vein, the issue of separate rate eligibility should be decided early in the investigation. Where an applicant does not satisfactorily complete the form by the deadline, that applicant is disqualified for separate rate treatment for the remainder of the investigation, but would have an opportunity to have its status considered in the subsequent administrative review if it is desired by requesting review. Assuming sufficient notice of this requirement is provided, it would act as an incentive to ensure that applicants submit complete forms, and

would also enable the Department to address the issue only once and not revisit it again later in the investigation.

A second procedural issue concerns verification of separate rates applications. ISG understands the Department's notice as indicating that the separate rate applicants will be subject to separate verification apart from the mandatory respondents' questionnaire responses. The Department states, "Because adequate substantiation of a separate rates claim will be required and subject to verification, the application will be a meaningful test of a firm's eligibility for a separate rate." *See* 69 Fed. Reg. 77722, 77724.

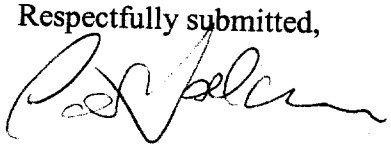
The Department does not specify, however, what the consequences of failure of verification are. In cases where there are tens or even hundreds of separate rates applicants, the fact that one or two of those claims may be verified is unlikely to dissuade numerous applicants from gambling that their separate rates claims will not be verified. To avoid this type of gaming, the Department should consider some alternative approaches. For example, in a case involving numerous separate rates applicants, the Department could conduct verification in Washington, DC at an early stage in the investigation of a sample of the applicants to test the *bona fides* of their applications. If a certain percentage of the applicants fail verification, (e.g., 10%), that would suggest that numerous applicants do not qualify for separate rates. The Department could conclude from that that no separate rate applicants who are not mandatory respondents will qualify for a separate rate at the conclusion of the investigation, and require them to reapply in a subsequent administrative review.

Another approach would be to select one applicant for on-site verification at the same time that mandatory respondents' questionnaire responses are verified. If that applicant fails

verification, that would create a presumption that all separate rate applicants do not qualify for separate rate treatment. The Department has the authority to adopt such a policy under its 19 U.S.C. 1677f-1 authority on its experience with one such non-mandatory respondent as representative of all applicants for a separate rate. Of course, other applicants who submitted separate rates claims will have the opportunity to obtain a company-specific rate in an administrative review.

ISG appreciates this opportunity to submit comments on this important issue.

Respectfully submitted,



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