February 28, 2007
BY HAND DELIVERY
David M. Spooner
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: Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures; Proposed Rule

Dear Secretary Spooner:

We submit these comments in response to the U.S. Department of Commerce's ("the Department") request for comments on the above-referenced proposed rule, published in the *Federal Register* on January 8, 2007. 72 Fed. Reg. 680 (Jan. 8, 2007). We generally support the Department's proposed rule, which updates the Department's regulations and streamlines some of the Department's procedures. However, we oppose the proposed Subsection 351.305(d) to be added to the Department's regulations because it would impose new burdens on interested parties on a discriminatory basis.

The Department proposes to add a new subsection (d) that would require administrative protective order applicants who represent importers to submit documentation proving their client imported subject merchandise. No such requirement is being imposed on applicants claiming to represent any other class of interested parties. There can be no justification for imposing this discriminatory extra burden on applicants representing importers, and only importers.

The antidumping and countervailing duty statute makes no distinctions among interested parties when it comes to being granted access to proprietary information pursuant to an administrative protective order. *See* 19 U.S.C. § 1677f(c). Thus, administrative protective order applicants representing importers are similarly situated vis-à-vis applicants representing all other interested parties and must be treated the same way under the statute.

The Supreme Court has long held that the Fifth Amendment to the U.S. Constitution prohibits the Federal Government from discriminating against similarly situated persons without at least a rational basis connecting the differential treatment to a legitimate government interest. *See, e.g., U.S. R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 167 (1980)("When social and economic legislation enacted by Congress is challenged on equal protection grounds as being violative of the Fifth Amendment, the rational-basis standard is the appropriate standard of judicial review."); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 (1975)("This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment."). The Department's discussion of its proposed addition of subsection 351.305(d) to its regulations explains that there may be a need in certain circumstances to confirm that a party applying for APO access is indeed an interested party. However, that explanation fails to provide any rational basis for imposing a discriminatory regulatory burden on importers alone.

A concern about whether an applicant actually represents a *bona fide* interested party could arise just as easily with respect to an applicant purporting to represent a manufacturer of a domestic like product, a union, an association, or any other category of "interested party." Should the Department have reason in a particular case to question whether an applicant represents a *bona fide* interested party, then the Department could seek additional information in that particular case. However, there is no reason to impose new regulatory burdens on one class of interested parties, particularly when there is no rational basis for singling out that class alone for the additional burden.

The Department should drop its proposal to add subsection 351.305(d) to its regulations because the proposed regulatory language is discriminatory on its face and would fail to survive constitutional scrutiny.

Respectfully submitted,
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