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

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January 20, 2005

The Honorable James. J. Jochum
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: Comments on Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries

Dear Mr. Jochum,

Aiming at making comments on USDOC's notice of Separate-Rates Practice in Antidumping Proceedings involving Non-Market Economy Countries published on 28 November 2004, we hereby submit our opinions as follows:

First of all, we appreciate the efforts USDOC has made. Generally speaking, the new application process is really more effective than section A response to get the information proving the respondent is absence of both de jure and de facto control over its export activities.

However, the new application process has a problem still. That is, the discretion of USDOC officials is still overfull. The reasons USDOC raised in the old application process to reject the respondent's separate margin qualification, some of which are inequitable to the respondents, will probably still be raised in the new process.

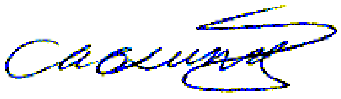
For example, in the anti-dumping investigation against Chinese shrimp, your reasons are mainly as follows: 1. They didn't demonstrate with evidence that they have the authority to negotiate and sign the contracts and other agreement, thus failed to prove their absence of de facto government control. USDOC's foundation of this argument is that these companies didn't provide document evidence of price negotiation process, thus failed to prove they have authority to negotiate and sign contracts independently. I cannot understand why the USDOC turned a blind eye to the legal contracts and agreements of the exportation in the POI. 2. USDOC has revealed that 8 companies were rejected because they do not have an expiration date on their submitted business licenses, thus cannot demonstrate the validity of their licenses. Enterprises' business licenses are officially issued and are sealed by the Chinese Administration of Industry and Commerce. How can DOC deny the validity of a license just because of the lack of expiration date? It is the Chinese government who has issued those business licenses; thus it is the Chinese government who can judge the validity of those business licenses. For a long time, WTO has its corresponding principles on this point--- in accordance with paragraph 6.13, International Antidumping Code, the United States, as well as other WTO members must take *due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.* It is also clearly stated in the Agreement on Implementation of Article □ of the General Agreement on Tariffs and Trade 1994: *Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability*. Against those principles, DOC not only failed to fulfill its duty of offering possible help, but also placed obstacles

deliberately. That artificial unfairness has imposed more difficulties on Chinese shrimp industry.

In the same way, the same situation may appear on the standard of so called "separate rate application process", which will make the "qualification" itself an artificially imposed obstacle for the non-mandatory respondents to obtain a separate rate which they are well qualified to get. The American government has always been regarding China as non-market economy country in anti-dumping case investigations and this is really unfair for Chinese companies. Therefore, DOC should not go further; and should not ignore, and even lose the principle of equity and fairness, which it should observe primarily on formulating the standard of the qualification for Chinese non-mandatory respondents to obtain separate rates, just in order to release DOC's administrative burden.

We look forward to seeing that in future antidumping proceedings the non-mandatory respondents may obtain separate rates if they can demonstrate absences of both *de jure* and *de facto* control over their export activities. What's more, the ways of this demonstration should be impartial, reasonable and feasible.

Sincerely yours,



Cao Xumin

President

China Chamber of commerce for I/E of Foodstuff,
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