

January 11, 2005

The Honorable Jame. 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,

We, China Chamber of Commerce for Import & Export of Machinery and Electronic Products (CCCME), hereby submit these comments (including one original one and six copies) on USDOC's notice of Separate-Rates Practice in Antidumping Proceedings involving Non-Market Economy Countries published on 28 December, 2004. This is our third comment on this topic following our comments in May and October, 2004. To the two parts of USDOC's new separate-rates practice, our comments are as follows:

I Change if Section A to an application procedure

First, we agree the change of Section A to an application procedure as long as the application could sufficiently reflect the respondents' absence of De Jure and De Facto of government control.

Second, we don't agree some points in the procedure mentioned in Appendix (1) of this Notice. According to the content in Appendix (1), "firms submitting incomplete applications will be rejected for separate rates status without supplementary questionnaires", however, that does not mean the USDOC will not submit supplementary questionnaires, "the Department reserves the right to issue supplemental questionnaires and verify applicants, such questionnaires and verifications function as further confirmation of firms' export independence". In this part, there are several points incompatible with Article VI of WTO agreement:

1. According to Article 6.1, respondent has "ample opportunity to present in writing all evidence". The respondent has clearly notified its participating in the investigation and its willingness of cooperation by submitting the application—albeit an incomplete one, the investigating agency should give the respondent ample opportunity to present evidence. If the investigation agency thinks the application is incomplete, it should give the respondent some reasonable time to submit supplementary ones.

2. According to Article 6.2, the respondents "have a full opportunity for the defense of their interests". But in USDOC's new procedure, all the materials of the respondents will be disregarded if it is considered incomplete by USDOC. That means, the respondent could only wait for the nation-wide rate and lost any opportunities to defend its interests.

3. Whether the respondents' application is complete or not and whether USDOC will submit supplementary questionnaire are all determined by USDOC, that looks like that the rights are all on the USDOC's side and responsibilities are all on the

respondents' side.

The similar opinion will be found in the WTO DSB panelists' report and the appeal body decision in the case—DS268, Sunset review of anti-dumping measures on oil country tubular goods from Argentina, in which case, US failed.

II Combination rates

We understand that the use of combination rates can help to prevent circumvention. But it will bring some problems in practice.

First, an exporter may be connected with even more than three suppliers in POI, if combination rates are based on the weighted factors of production of all these suppliers, it will pose more burden on the respondents and the Department.

Second, in some industries, suppliers appear and disappear very fast, the combination rates retard exporters' ability to find proper suppliers to some extent.

So, we suggest combination rates can still be used in the current three exceptional circumstances, but not in new investigations. If the Department found circumvention actions through those low-rate exporters, it can adjust the rate in administrative review or put some punishment according to circumvention regulation.

Sincerely yours,

Liu Mei Kun

Vice president, CCCME