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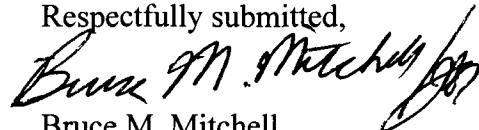
Attention: David Spooner
Assistant Secretary for Import Administration

Re: Surrogate Country Selection in Proceedings Involving Non-Market
Economy Countries: – Additional Comments
Our Reference: 10512

Dear Assistant Secretary Spooner:

These comments are filed on behalf of the Government of the People's Republic of China ("China"), Ministry of Commerce ("MOFCOM"), in response to the U.S. Department of Commerce's Request for Comments on Surrogate Country Selection in Proceedings Involving Non-Market Economy Countries, as published in 72 Fed. Reg. 40,842 (July 25, 2007). An original and six copies of China's comments are attached and an electronic version has been sent via email to the webmaster. Please contact the undersigned if you or your staff has any questions regarding these comments.

Respectfully submitted,



Bruce M. Mitchell
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SUBMISSION OF

**THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA,
MINISTRY OF COMMERCE**

ON

**SURROGATE COUNTRY SELECTION IN PROCEEDINGS INVOLVING NON-MARKET ECONOMY
COUNTRIES**

AUGUST 24, 2007

SUBMISSION OF THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA ("CHINA"),
MINISTRY OF COMMERCE

The Government of the People's Republic of China ("China"), Ministry of Commerce ("MOFCOM"), hereby responds to the United States Department of Commerce's ("Commerce" or "Department") Request for Comments on Surrogate Country Selection in Proceedings Involving Non-Market Economy Countries, published in 72 Fed. Reg. 40,842 (July 25, 2007).

In its Notice, the Department asks for advice on three specific issues relating to the selection of appropriate surrogate countries. In analyzing the comments submitted, and in deciding whether to modify its current practice, the Department should not lose sight of its ultimate responsibility: to calculate antidumping duty ("ADD") margins as accurately as possible. In this regard, and as MOFCOM discussed in detail in its Comments filed on April 20, 2007, in response to the Department's initial notice on surrogate country selection, the choice of surrogate country should not be limited only to comparisons of level of economic development and whether such countries are significant producers of the subject merchandise. The Department should also consider the availability and quality of surrogate value data from the countries under consideration. Therefore, MOFCOM urges the Department to keep the following principles in mind, as they should be closely linked to the choice of surrogate country: (1) The surrogate values which the Department ultimately selects cannot produce less accurate results than the potential surrogate values the Department did not select; (2) Commerce can only determine which surrogate values produce the most accurate results by comparing the relative merits of competing surrogate values, weighing all relevant characteristics; (3) Commerce is

required to discard as unreliable proposed surrogate market values that are aberrational compared to other market values on the record; (4) To avoid reliance on anomalous data, Commerce should compare surrogate values to benchmark prices, even if those benchmark prices themselves are not useable as surrogate values; and (5) Commerce should rely on as broad and representative data as is available and reliable, rather than limit its selection of surrogate values to information obtained from a single producer or a single region in a surrogate country.

In short, the Department should always recognize that the accuracy of the result is the ultimate goal of the selection process. Selection of the surrogate country based upon consideration of comparability of economic development is merely one step towards achieving the most accurate result.

Based on these basic principles, MOFCOM comments on the Department's specific questions.

DEPARTMENT QUESTION

Therefore, the Department is particularly interested in comments and suggestions on specific guidelines the Department should follow in determining the economic comparability of countries in a given case. Under the Department's established sequential process for selecting a surrogate country (as described in Policy Bulletin 04.1), the Department first determines a list of countries that are economically comparable and then analyzes each of these countries for production of comparable merchandise, whether there is significant production, and availability of data. The Department invites comments on this process. In particular, it welcomes suggestions on how it should construct the initial list of economically comparable countries, how this set of countries should be balanced, and how many countries it should contain.

MOFCOM RESPONSE

As MOFCOM stated in its Comments, dated April 20, 2007, because of the difficulty of evaluating at the outset of an investigation which country ultimately will qualify as the primary surrogate country, the Department initially should publish a full list of countries and GNI per

capita figures, without expressing an opinion as to which ones should be considered economically comparable. After this list is published, the Department should request comments on the appropriate primary surrogate country. By proceeding in this manner, the Department would avoid the issue of potentially choosing as a surrogate those countries that are left off the list.

This process is particularly important for Respondents in an Initial Investigation. When they file a Petition, Domestic Producers already have expended considerable time and effort in determining which potential surrogate country would lead to use of surrogate values that produce the highest dumping margins. Respondents do not maintain surrogate value information in the normal course of business and, at the outset of an investigation, do not know which countries have sufficiently reliable, publicly available, contemporaneous information to use as a surrogate for Chinese costs. By limiting primary surrogate countries at the beginning of the process, the Department exacerbates Petitioners' natural advantage in the surrogate value selection process. Thus, in order to level the playing field, and to allow Respondents to participate in a meaningful manner in an ADD investigation, the Department should not limit potential primary surrogate countries at the beginning of an investigation.

MOFCOM notes that the April 20, 2007 Comments filed by representatives of Domestic Producers¹ uniformly suggest that the Department's initial list of potential surrogate countries should include countries whose GNI is higher than that of the NME in issue. MOFCOM agrees with the suggestion that the Department's initial list of surrogates should be broad (MOFCOM believes this list should include all countries); however, the Department should never select a

¹ Comments were filed by the law firms of King & Spalding ("K&S"), Wiley Rein ("WR"), Stewart and Stewart ("S&S") and Kelley Drye Collier Shannon ("KDCS"), on behalf of various American companies (WR on behalf of Nucor), and industries (K&S on behalf of the Polyethylene Retail Carrier Bag Committee and the American Manufactures Committee for Legal Trade) or without identifying a representative company (KDCS and S&S).

primary surrogate based on the “results oriented – margin maximizing” position advocated by Domestic Producers. Instead, the Department should adopt a policy designed to allow all parties to participate meaningfully in the surrogate country selection process, in order to calculate the most accurate margins as possibly can be calculated when relying on surrogate values.

DEPARTMENT QUESTION

As a second matter, the Department is also interested in inviting comment on whether certain comparable countries should be excluded, at least initially, from the Department's analysis of which country is the best possible surrogate in a given proceeding on the basis of a general lack of country specific data. With regard to this issue, if the Department were able to determine that a group of countries does not generally offer the data necessary to conduct an antidumping proceeding, both the Department and parties would be relieved of the burden of examining those countries as potential surrogates in every proceeding. Please note, however, that parties would retain the ability to advocate the consideration of a country that would otherwise not be considered if they determined that there were case-specific arguments for doing so.

MOFCOM RESPONSE

As noted above, at the beginning of the investigation, the Department should not exclude any countries from the potential list of primary surrogate countries. In selecting the appropriate primary surrogate country, the Department should recognize that the ultimate determination as to appropriate surrogate values should be based on conditions of competition and the availability of reliable, publicly available, contemporaneous data in the particular industry under examination, rather than overall general country-wide conditions. Thus, the fact that a group of countries do not generally offer the data necessary to conduct an antidumping proceeding, does not necessarily mean that a member of that group does not offer the necessary data in a particular proceeding.

Petitioners presumably already have examined potential surrogates before they have filed a petition. Respondents will not commence this analysis until after a petition is filed, and will do so based on their knowledge (and their customers' knowledge) as to which countries produce competitive products. By limiting potential surrogates at the commencement of an investigation, the Department creates an additional unnecessary barrier to ultimately selecting the most appropriate primary surrogate country. Respondents should not be required to overcome this additional, unnecessary hurdle.

Alternatively, the Department could require that Petitioners in an NME investigation include, in their Petition, a list of potential comparable surrogate countries from which they believe the Department would be able to obtain data necessary to conduct an investigation, as well as a list of comparable countries from which data is not readily available. With respect to this second list, Petitioners should be required to specify the steps they have taken to obtain such data and the results of their analysis. The Department then could require that Respondents demonstrate that data is available from these excluded countries in order that they be placed back on the list of potential surrogates. By proceeding in this manner, the Department could reduce the number of countries subject to examination, while at the same time providing Respondents with the opportunity to participate in a meaningful way in the surrogate country selection process.

DEPARTMENT QUESTION

Finally, the Department requests comment on how it should evaluate and weigh the production experiences and data availability of countries in cases where there may be more than one potential surrogate country with reliable data and significant production of comparable merchandise.

MOFCOM RESPONSE

As MOFCOM previously advised, in selecting a primary surrogate country, the Department should consider a variety of relevant factors in addition to per capita GNI, including, but not necessarily limited to: (1) whether the country is a significant producer of the product; (2) whether the country's industry is similar to that of China in terms of production process; (3) whether the country has upstream production of inputs (where the Chinese industry purchases primarily domestic materials); (4) whether average labor costs are similar to labor costs in China; and (5) whether the average export values of finished products are comparable to NME values (particularly where the surrogate country is not the subject of a parallel dumping investigation).

Thus, as MOFCOM noted in its previous comments, the critical selection criteria may differ for materials, labor and financial ratios. For example, the most accurate data for financial ratios may be found in a surrogate country in which publicly traded companies produce subject merchandise, rather than a country with the most comparable GNI to China, but in which financial ratios of comparable companies are not publicly available. For packing material, the most accurate data may be found in product specific export data, or from databases reflecting accurate costs in countries with GNI's different from the NME. For major inputs, accurate data may not always be publicly available in a GNI comparable country; in these cases, the Department should look elsewhere for "necessary data," rather than relying on data which leads to inaccurate, unfair and anomalous results.

At the same time, however, the Department should not completely discount the importance of GNI comparability between the surrogate country and the NME, since this is one of many factors which will provide the most accurate margins.

Moreover, the April 20, 2007 Comments filed by counsel for Domestic Producers raise two important issues relevant to the surrogate country selection process. First, K&S suggests that the Department “should use the availability, reliability and accuracy of import statistics as the primary measure of a country’s data quality,” since this approach is “consistent with the Department’s established preference for the use of import statistics to calculate surrogate values.” In contrast, KDCS warns that the Department should not take the reliability of import statistics “for granted,” and “should carefully consider whether official import data. . . can be reliably used for surrogate valuation.” MOFCOM agrees with KDCS that the Department’s reliance on import data often leads to skewed results – especially when the import data is not identical to the input in issue in a particular investigation (e.g., comparing a basket category of imports with a specific product in the basket) or when the import data does not accurately measure actual sales prices for the input in the surrogate country. Thus, while reliance on import data may promote “predictability and reliability,” such data should never be used as an excuse to ignore the fundamental goal of an ADD investigation – to calculate accurate margins.

A second major issue highlighted by the Domestic Producers’ Comments is the frequent decision by the Department to select India as its primary surrogate for Chinese costs. See S&S Comments at 7 – 8 (“{We} support the Department’s continued reliance on India for surrogate values until such time as a significant change makes such values inappropriate.”); K&S at 7 (India “remains economically comparable to China, . . . it has proven to have reliable import data for numerous raw material inputs, . . . continued selection of India where the facts are appropriate advances the goal of predictability. . .”); WR at 5 (“Historically, but not exclusively, the Department has relied upon India as a source of surrogate values in NME proceedings.”)

The Department's reliance on India as the primary surrogate country is based, in large part, on the fact that Petitioners almost always rely on Indian surrogate values in their Petitions (whether for convenience or for margin maximization purposes) and Respondents in an initial Investigation simply are unable to offer alternative choices in the short time frame available to address this issue and to prepare a comprehensive response. And once a primary surrogate country is selected in an initial Investigation, the Department often is reluctant to select an alternative primary surrogate country in an Administrative Review, citing "predictability" as the rationale for continuing to rely on India.

MOFCOM does not question the fact that India may be an appropriate primary surrogate country for certain Chinese commodities during certain periods of time. However, the Department's current selection process creates an unfair advantage for Petitioners, and may result in continued reliance on inaccurate (albeit predictable) surrogate values through multiple Annual Reviews. This problem of over-reliance on Indian data is exacerbated for products in which Indian and Chinese exporters are direct competitors; in these instances, sophisticated Indian companies may be able to skew the results by deciding that unnaturally high surrogate values are available to the public (e.g., published on the internet), while more appropriate, lower surrogate values are not disseminated to the public.

In order to level the playing field, the Department should adopt policies which allow Respondents to participate meaningfully in the surrogate country selection process, for example: (1) the Department should allow sufficient time for Respondents to participate in selecting a primary surrogate country in the initial Investigation; (2) the Department should consider whether a potential primary surrogate may be manipulating the public availability of data to skew the result; and (3) the Department should not presume that India should continue to be the

primary surrogate in an Annual Review merely because it was the primary surrogate in the initial investigation.

The example chosen by the Department in its Request for Comments, Wooden Bedroom Furniture, may be a proceeding in which the Department's selection of India as the primary surrogate in its initial Investigation led to the continued reliance on India as the primary surrogate in an Annual Review, thereby resulting in less accurate surrogate values than would have been selected had the selection process been truly fair. In its Notice requesting these comments, the Department refers interested parties to its Preliminary Determination in Wooden Bedroom Furniture (72 FR 6201, 6208; February 9, 2007) as an example of a proceeding in which the Department was required to select surrogate data where there was "more than one potential surrogate country with reliable data and significant production of comparable merchandise." Subsequent to this Notice, by decision dated August 8, 2007, the Department affirmed its Preliminary Determination, and selected India as the primary surrogate country in this proceeding, notwithstanding substantial evidence of record that the Philippines was (at least) an equally appropriate choice. See Issues and Decision Memorandum, Comment 1, at 23 - 39 (August 8, 2007). The Department's determination in Wooden Bedroom Furniture underscores the inherent difficulties in calculating "accurate" ADD margins based on a "factors of production – surrogate value" methodology. It constitutes an additional reason why the Department should calculate Chinese ADD rates based on market-economy principles to the maximum extent allowed by law. Clearly, NME margins – and the ability of Chinese exporters to continue to sell merchandise to the United States – should not depend solely on the Department's selection of "surrogate" costs – especially when; (1) the rejected costs clearly are no less accurate than the costs upon which margins are calculated; (2) the Department's selection of India as the

surrogate in the Annual Review appears to have been motivated, at least in part, on its decision to select India in the in the initial Investigation; and (3) the Department's initial selection of India was based, at least in part, on Petitioners' natural advantage in obtaining detailed surrogate values from India prior to filing their Petition. Thus, the facts in Wooden Bedroom Furniture illustrate why the Department should recognize that the surrogate value selection process favors Petitioners and why the Department should provide Respondents with adequate time in the initial Investigation to propose alternative surrogate countries. Wooden Bedroom Furniture also reveals that when faced with the dilemma of evaluating two arguably reliable surrogate countries in future proceedings, the Department should not conclude that "predictability" requires continuation of the "wrong" result, and should consider using the average costs from the two surrogates, rather than selecting costs which maximize surrogate values and margins.

In sum, the Department should always be mindful of the fact that with respect to any country ultimately selected as a primary surrogate country, "necessary" data for the surrogate value of each factor of production can only be the data which leads to the most accurate results.