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Honorable David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
Pennsylvania Ave. and 14th St., N.W.
Washington, DC 20230

Re: Comments in Response to Federal Register Notice, *Surrogate Country Selection in Proceedings Involving Non-Market Economy Countries: Request for Comment*, 72 Fed. Reg. 40,842 (July 25, 2007)

Dear Assistant Secretary Spooner:

The Law Offices of Stewart and Stewart is responding to the solicitation for additional comments regarding the Department's methodologies for selecting a surrogate country for valuing factors of production from a non-market economy, in particular the selection of countries that are "economically comparable." *Surrogate Country Selection in Proceedings Involving Non-Market Economy Countries: Request for Comment*, 72 Fed. Reg. 40,842 (Dep't Commerce July 25, 2007) ("*Request for Comment*").

We continue to support the positions that we have presented in our original comments. *See* Stewart and Stewart Comments (4/20/2007) ("S&S Comments"). We provide our additional comments in response to the particular questions asked by the Department in its second notice. Specifically, the Department has asked for comments and suggestions on specific guidelines to be used to determine the economic comparability of countries. *Id.* at 40,843. It seeks suggestions on: (1) 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; (2) whether certain comparable countries should be excluded on the basis of lack of country-specific data, and (3) how it should evaluate and weigh the production experiences and data availability of countries when there is more than one country with reliable data and significant production of comparable merchandise. *Id.* We address each of these questions below.

I. COUNTRY SELECTION

As we suggested in our original comments, the Department's initial selection of potential surrogate countries should be expansive rather than limited. As the Department has noted in a recent surrogate country selection memo considering two candidates for a surrogate for China, "{a}n excessive focus on the exact ranking of each country on the list would only provide an illusion of precision and distort the appropriate purpose of using per capita GNI as a primary indicator, which is to give a general sense of the level of economic development of the country in question." Commerce Inv. No. A-570-890, Admin. Review 6/24/04 – 12/31/05, *Wooden Bedroom Furniture from the People's Republic of China*, "First Administrative Review of the Antidumping Duty order on *Wooden Bedroom Furniture from the People's Republic of China: Surrogate Country Selection – Period of Review 6/24/04 – 12/31/05*" at 8 (Dep't Commerce Jan. 22, 2007).

As the Department also noted in that memo, any analysis of GNI should be done in the context of the range of GNIs. As indicated in our original comments, we support the selection of potential surrogate countries whose GNI is both above and below that of the targeted NME country. *See S&S Comments at 6-7.*

In its comments responding to the Department's original notice, the China

Chamber of Commerce for Import & Export of Machinery & Electronic Products (“CCC”) identified an additional reason for the Department to take a liberal approach to the use of GNI as an indicator of economic comparability. It noted regarding China that living costs were cheaper in the west than in the east so that the operating costs of enterprises in different locations in China would be different. *See* CCC Comments at 2 (4/10/2007). For such countries, GNI represents an average of wages for different areas that may differ significantly. Such an average necessarily provides only a rough approximation of relative economic development for the country as a whole.

The Department is, of course, the master of the dumping law. *Torrington Co. v. United States*, 68 F.3d 1347, 1351 (Fed. Cir. 1995) (“In antidumping cases, we accord substantial deference to Commerce’s statutory interpretation, as the International Trade Administration is the ‘master’ of the antidumping laws.”). As such, it is empowered to select a surrogate country that it determines to be suitable for measuring the extent of dumped imports from an NME country. Mandatory macroeconomic criteria would likely arbitrarily prevent Commerce from taking into account all relevant factors in selecting a suitable country.

Thus, we recommend that the Department cast a wide net in its initial selection of countries.¹ In this way, it will have greater flexibility to identify countries with

¹ Consequently, we strongly disagree with the recommendation of the Vietnam Ministry of Trade that surrogate countries be the three or five countries immediately above and below the NME in GNI on the grounds that such an approach is too restrictive. *See* Comments of the Ministry of Trade, The Socialist Republic of Vietnam at 2 (4/20/2007). In addition, we disagree with the comment of the Government of the People’s Republic of China that the “more developed market economy countries” should categorically be removed consideration. *See* Comments of the People’s Republic of China at 14

producers of comparable products and data resources.²

II. LACK OF DATA

To the extent possible, the Department should leverage the experience it gains from investigations and administrative reviews involving imports from NME countries. This experience should be employed in two ways. First, to the extent that it identifies a country that doesn't have sufficient publicly-available information to make it suitable as a surrogate, it should flag the country as such and exclude it from any of its lists of potential surrogates.

Second, as the Department identifies data sources for countries that it uses as surrogates, we recommend that it maintain an inventory of such sources. It should make this information available to the public for general use as well as to the parties in any proceeding together with the identification of candidates for selection as surrogate countries. With this information readily available, interested parties will be better able to focus on the particular issues arising from a particular proceeding and so provide more useful information to the Department.

Finally, we support the Department's favoring a country with publicly available price measures – all else being equal. *See* “New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China (PRC): Surrogate Country List” (Inv.

(4/20/2007). Under the liberal approach to the use of GNI to select surrogate candidates which we have advocated, it is entirely possible that a country which the PRC might categorize as “more developed” would be a reasonable candidate for use as a surrogate.² As it has in the past, the Department should continue to exclude other NME countries and any other countries that for technical reasons would not be reasonable surrogates from its list of candidates from the pool of candidates.

No. A-570-851) (Dep't Commerce Feb. 9, 2005); "New Shipper Review of Hand Trucks from the People's Republic of China (PRC): Request for a List of Surrogate Countries" (Inv. No. A-570-891) (Dep't Commerce Feb. 9, 2005).

III. COUNTRY EVALUATION

As we have reviewed in part above and in our original comments, we recommend that the Department's procedure for selecting a surrogate country involve three steps: (1) the selection of countries that are not NME countries or not otherwise to be excluded on technical grounds using a broad range of GNIs both above and below that of the subject country, (2) the exclusion of countries without reasonable data sources, and (3) the identification of countries among those qualifying under steps 1 and 2 that have industries comparable to that of the subject country.³

Once the Department has taken the third step, it should provide the list to the interested parties and allow an opportunity for comment. In this way the Department can best provide its expertise while obtaining that of the interested parties and so establish the basis for a reasoned surrogate selection. We recommend that the Department (as it has in the past) rely on the criteria identified in its policy memorandum as employed in proceedings in the past. *See* "Non-Market Economy Surrogate Country Selection Process," Import Administration Policy Bulletin 04.1 (3/1/2004) ("*Surrogate Policy Bulletin*").

³ We recommend also that if, as the result of the third step (a review for comparative industries), the number of countries remaining as candidates falls below a threshold of at least five, that the Department go back to the first step and expand the initial pool to include more countries.

That Bulletin explains that the Department will implement the statutory requirements that a surrogate for a non-market economy be at a comparable level of economic development and be a significant producer of comparable merchandise as follows.⁴

The Bulletin identifies GNI as the factor to be used to select an economically comparable surrogate. *Surrogate Policy Bulletin* at 2. As reviewed above, we support the liberal use of this criterion. The Bulletin indicates that potential surrogates will be deemed to have producers of comparable merchandise if they produce identical merchandise or if they produce merchandise that may be compared using adjustments for physical differences, such as: (1) steel products with low value added that are produced by combining iron, energy, and further processing, (2) industrial commodity chemicals, (3) light manufactured products, and (4) products that share major inputs. *Id.* at 3.

The Bulletin explains that the decision as to whether a potential surrogate is a significant producer of comparable merchandise will be based on the characteristics of world production and trade in comparable merchandise. *Id.* It notes that this decision may be influenced by data availability so that a country that is a net exporter and has necessary data may be selected even if it is not one of the world's top producers. *Id.* In making its choice, the Department does not need to pick the most comparable economy. *Tehnoimportexport v. United States*, 766 F. Supp. 1169, 1175 (Court Int'l Trade 1991).

In sum, as is effectively described in the Department's policy Bulletin, the choice of a surrogate country that is economically comparable and a significant producer of

⁴ See 19 U.S.C. § 1677b(c)(4).

comparable merchandise should be driven by the particulars of each case. This choice should be driven by the Department's underlying goal of determining the most accurate margin possible. *See Shakeproof Assembly Components Div. v. United States*, 268 F.3d 1376, 1381-83 (Fed. Cir. 2001).

IV. INDIA AS A SURROGATE FOR CHINA

As Stewart and Stewart reviewed in its original comments, we support the Department's continued reliance on India as a surrogate country for valuing factor costs in China. *See S&S Comments* at 7-8.⁵ Both countries are physically large and are the two most populous countries in the world. Recent measures place China's population at over 1,321 million and India's over 1,129 million.⁶ Both have economies that are growing rapidly: estimated GDP *per capita* growth was 10.5% in 2006 in China and 8.5% in India.⁷ Both have significant agricultural sectors.⁸ Both countries have a wide range of industries.⁹ The major industry groups in India include textiles, chemicals, food processing, steel, transportation equipment, cement, mining, petroleum, machinery, and software.¹⁰

The use of India is also particularly advantageous because the standard form of Indian financial statements for industrial companies allows a reasonably detailed

⁵ This position has also been endorsed by three of the parties that supplied comments responding to the Department's original notice. *See Comments of American Furniture Manufacturers Committee for Legal Trade and Vaughn-Bassett Furniture Co. Inc.* at 7 (4/20/2007), *Comments of Nucor Corporation* at 5-6 (4/20/2007), and *Comments of the Polyethylene Retail Carrier Bag Committee* at 7 (4/20/2007).

⁶ CIA, *The World Factbook 2007* (China at 3, India at 3).

⁷ *Id.*, China at 8 and India at 8.

⁸ *Id.*, China at 8 and India at 9.

⁹ *Id.*, China at 9 and India at 7.

¹⁰ *Id.*, India at 9.

breakout of the costs of production. This permits the Department to calculate the financial ratios that it uses to determine surrogate values for overhead, SG&A, and profit. By continuing to use India as a surrogate, the Department allows both respondents and petitioners to make better estimates of likely dumping.

Thank you for your attention to these comments.

Respectfully submitted,

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