中国食品土畜进出口商会
CHINA CHAMBER OF COMMERCE FOR IMP. & EXP. OF FOODSTUFFS, NATIVE PRODUCE & ANIMAL BY-PRODUCTS

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October 11, 2004

The Honerable 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 16 September, 2004, we hereby submit our opinions as follows:

First of all, we appreciate that USDOC does not insist on requiring all the respondents to submit the full questionnaire in order to get qualification for a separate rate that will be based upon the weighted average dumping rate found for mandatory respondents. The requirement is impractical and inappropriate for all parties in the case. On one hand, it is against the principle of fairness and justice. The voluntary

respondents are treated unfairly. Meanwhile, it would bring tremendously additional work and cost to the respondents. On the other hand, it is also a mission impossible for the USDOC to timely review all of the files carefully, which will probably lead to an unfair determination by USDOC. It should be noted that in market economy antidumping investigations, exporters that are not selected as mandatory respondents automatically are assigned an "all others" rate that is based upon the weighted average dumping rate of the mandatory respondents. These non-selected companies don't even have to submit a partial response to the dumping questionnaire. China has been a WTO member for three years. Therefore, China should be treated more and more fairly instead of harshly.

To some degree, we agree with the first point mentioned in the appendix. In principle, all the exporters that are not selected as mandatory respondents can get their separate rate as long as they are qualified. However, our greatest concern is: different from the Section A response process, what standard will the USDOC adopt in the new separate rate process? How could USDOC ensure the justice and validity of the standards? Is it possible that under certain circumstances these standards would be abused by the USDOC for obstructing the qualified exporters getting their separate rates?

Actually, in the anti-dumping investigation against Chinese shrimp, a total of 57 relevant Chinese enterprises responded to the shrimp antidumping case. Except for the 4 which were selected by USDOC as mandatory respondents, all other 53 respondents have carefully submitted Mini Section A, Section A and supplemental questionnaires following USDOC's requirements. But disappointing enough, DOC rejected 32 respondents for weighted average rate with various irrelevant excuses. The rejection rate hit a height of 60%. USDOC's excuses are unreasonable, and not in accordance

with the U.S. laws. We wrote to USDOC to complain, yet unfortunately, we have' t got any response from you. USDOC claimed that many Section A respondents were unqualified for weighted average rates because they didn't provide evidence for their absence of both de jure and de facto government control. Your reasons mainly are 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 the 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 VI 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.

We give that example because we are worry that the same situation will appear on the standard of so called "separate rate application process", which make the "qualification " itself become the artificially imposed obstacle for the non-mandatory respondents to obtain a separate rate which they should 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 ignores, even loses 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. We would welcome the changes on DOC's separate rates practice, if the new "qualification for separate rate application" DOC suggested this time can overcome some of the drawbacks in its former practices and become more reasonable and effective. But these changes should take the following as premise:

That is, DOC should formulate and promulgate the standard of "qualification for separate rate application" (including what kind of documents should be submitted), then publicize these standards and requests and solicit comments on them. In this way

it can be demonstrated that new standard can make the DOC assigns separate rates to respondents more effectively, and decreases DOC's administrative burden. After being commented, the standard should be legalized in order to prevent DOC officers from working at will.

The second issue mentioned the potential practice of combined rates for exporters and producers. But there is a loophole in it, that is, the combined rate isn't applicable to the exporters if they choose the suppliers other than those suppliers when they obtained the separate rate. Obviously, this is unfair and has damaged the right of free trade of the suppliers who were not the suppliers when the exporter obtained the separate rates.

The DOC would assume that NME producers shipping through third countries set the export price to the United States and assign to them, and not the reseller, antidumping duty rates, unless evidence were presented to the contrary.

We believe it is a discrimination against China, and we set ourselves against such a policy. Because such a discriminated assumption is absolutely an unfair treatment to Chinese exporters, such a presumption of guilt is against the principal of law. It is not consistent neither in international trade practice, not in principle of laws. In current policy, all the exporters should prove that they operate de jure and de facto independently of the government to get a separate rate treatment. The current policy is unreasonable. The new policy would ask the producer to provide evidence to prove they are not making transshipment, which is really ridiculous. USDOC is hoping to

handle the investigation with colored glasses to Chinese exporters. Moreover, the new policy would aggravate the burden to exporters who are conducting normal international business, and would harm the free trade. Obviously, even if the exporters do legal business and don't know the destination of their merchandise is US, they could hardly prove that they in fact have no idea of the destination in order to overthrow the assumption of USDOC.

Finally, we have to point out that there is a serious political fault in the notice, in Appendix (3), USDOC used the word "country" for Hong Kong and Taiwan, (when NME producers sell subject merchandise through exporters located outside the NME country (for example, Hong Kong, Taiwan, or Malaysia).) Here our chamber protests to such a mistake USDOC has made and asks USDOC to correct the mistake in the notice and promise such an incident will not happen in the future.

Sincerely yours,

President Cao Xumin

China Chamber of commerce for I/E of Foodstuff,

Native Produce & Animal By-Products (CFNA)