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PUBLIC DOCUMENT

James J. Jochum,
Assistant Secretary of Commerce,
U.S. Department of Commerce
Attention: Import Administration
Central Records Unit, Room 1870
Pennsylvania Ave. and 14th Street, N.W.
Washington, D.C. 20230

Re: Comments to Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economies

Dear Mr. Jochum:

As counsel to the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers ("the Coalition"), we hereby submit comments in response to the Federal Register notice published on September 20, 2004 regarding the separate rates policy of the Department of Commerce ("Department"). *See* Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 69 Fed. Reg. 56188 (Dep't Commerce, September 20, 2004) (request for comments).

The Coalition hereby presents the following comments regarding the Department's separate rates practice:

(1) Separate Rates Application Form

We encourage any effort by the Department to streamline the separate rates process as long as it does not negatively impact on the diligence and accuracy of the investigation as to respondents entitlement to such benefits.

The certification requirement is crucial to the application form. The Coalition proposes that the Department add language to the certification emphasizing the possible penalties for miscertification and submission of false statements. For example, suggested additions would include the fact that respondents statements concerning its entitlement to a separate rate may be verified, the possible use of adverse facts available, the applicability of provisions concerning false claims made to the U.S. government (18 U.S.C. § 1001; 31 U.S.C. § 3729), and any applicable sanctions.

The application form should include questions regarding provincial and local government control. Respondents should be able to prove with supporting documentation that they are free from any type and level of government control.

The application form should include questions about relationships with any level of the government, in the form of government officials visits, guidance and any type of benefit received from the government to promote exporting (i.e. subsidies). The Department should treat the granting of a subsidy to an exporter as control of such exporter by the non-market economy government.

Submission of documentation should be mandatory to support the certification. The Department should not accept certifications without supporting documentation. Such documentation should be translated in English, scanned and filed electronically together with the application form.

To accomplish the goal of streamlining the process, the Department should institute a policy of denial of separate rates application forms when they do not contain all necessary fields fully completed and all required certifications submitted. Respondents should be allowed to receive only one deficiency letter warning from the Department requiring supplemental information and only one extension of time to submit supplemental information and then only if based on "good cause". If a respondent does not comply with the supplemental request, the Department should automatically deny a separate rate to such respondent based on adverse facts available. Section 776(b) of the Trade Act of 1930 (the "Act"), (19 U.S.C. § 1677e(b)) provides the statutory authorization for such conduct by the Department.

(2) Combination Rates

A. Excluded Companies

The Coalition requests that the Department change its treatment of excluded companies during administrative reviews. Counsel's experience in the Brake Rotors from China reviews is that the Department's procedure does not fully ensure that Respondents are complying with the exporter/producer combinations. *See e.g.* Brake Rotors from China, 68 Fed. Reg. 25861, 25862, and Appendix, Comment 1 (Dep't Commerce, May 14, 2003) (Final Results).

In the Brake Rotors case, the Department's review of companies that were excluded from the antidumping order in the original investigation was limited to an investigation of a few entries of subject merchandise by each combination during the period of review ("POR"). *See Id.* Although the Department issues standard review questionnaires to such respondents, respondents often answer them with a letter stating that they did not have shipments during the POR outside the exporter/producer combination rules. *See Id.*. The Department then requests that Customs and Border Protection ("CBP") review and investigate a few entries of each

exporter/producer combination to ensure that the exporter and producer of the entries are indeed the correct combinations. *See* Id. This current policy of investigating only a few CBP entries of each exporter/producer combination does not ensure a statistically meaningful sampling and may not be representative of the behavior of the exporters during the entire POR.

The Coalition believes that the Department should create a specific questionnaire to review excluded companies. Such questionnaire should request information on all shipments of subject merchandise to the United States during the POR. Section 751(a)(1)(C) provides authorization for the Department to review an antidumping order. *See* 19 U.S.C. § 1675(a). The degree of scrutiny during a review is at the Department's discretion. Information should be requested from CBP to verify a statistically significant portion of the total shipments of exporter/producer combinations during the period of review.

B. Expansion of the Application of Exporter and Producer Combinations

The Department should extend its practice of assigning exporter/producer combination rates to NME exporters receiving separate rates so that only the exporter/producer combination that existed during the period of investigation or review receives the separate rate calculated by the Department. Exporters that purchase subject merchandise from other producers, not investigated by the Department in conjunction with said exporter, should receive the NME rate. Section 777A(c)(1) of the Trade Act authorizes the Department to determine the antidumping margin to each known exporter *and* producer. *See* 19 U.S.C. § 1677f-1(c)(1).

Exporters' merchandise purchased from producers for which the Department has not established a combination rate should receive the NME wide rate. Such exporters and producers have not been investigated together as a combination by the Department. The statute authorizes

the Department to estimate all others rate[1] for all exporters and producers not investigated. *See* Section 735(c)(5) of the Act (19 U.S.C. § 1673d(c)(5)).

(3) Third Country Resellers

The DOC should institute a *rebuttable* presumption that NME producers shipping subject merchandise through third countries are aware that their goods are bound to the United States. The NME rate should be assigned to the producer, not the reseller. Section 773(a)(3) of the Trade Act related to exportation from an intermediate country does not prohibit such presumption since it sets forth a rule applicable only when the manufacturer does *not* know the country to which the reseller intends to export. *See* 19 U.S.C. § 1677b(a)(3). The ability of the producers to rebut the presumption makes such proposed change authorized by the statute. The DOC can hold further rulemaking proceedings to determine the type of information needed to rebut the presumption.

Should you have any questions, please contact me at (202) 778-3022. Thank you for your attention to this matter.

Yours truly,

Leslie Alan Glick

[1] The NME wide rate is analogous to the all others rate but with specific applicability to NME economy countries.