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April 20, 2007

BY HAND DELIVERY

David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
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PUBLIC DOCUMENT

Re: *Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 Fed. Reg. 13,246 (Mar. 21, 2007): Comments of the Louisiana Department of Agriculture and Forestry and Bob Odom, Commissioner

Dear Mr. Secretary:

On behalf of the Louisiana Department of Agriculture and Forestry and Bob Odom, Commissioner ("LDAF"), we hereby provide comments as requested by the U.S. Department of Commerce ("Department") in *Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 Fed. Reg. 13,246 (Mar. 21, 2007). These comments pertain to "Issue One," *i.e.*, surrogate country selection.

The Department has requested comment on "the specific question of economic comparability" -- *i.e.*, "the extent to which, if any, there are limitations" as to the range of acceptable differences in per capita gross national income ("GNI") between the non-market economy ("NME") and a potential surrogate country. *Id.* at 13,247. More specifically, the

Department has sought comment on:

- (1) how, given the requirement to base the determination on per capita income, the Department should determine which countries are economically comparable to a given NME country, and
- (2) whether and on what basis the Department should disregard certain economically comparable countries as lacking data suitable for valuing the factors of production.

Id.

The LDAF urges the Department to recognize that (1) as the Department has noted in the past, it is not a "requirement," in all cases, that the surrogate country selection be based solely, or even primarily, on a comparison of per capita income; and (2) due to the fact that "the selection of an appropriate surrogate country is, in large part, necessarily a case-specific issue," *id.*, implementation of a uniform standard for data suitability is neither feasible nor desirable.

Since 1996, the LDAF has participated in numerous antidumping proceedings related to imports of freshwater crawfish tail meat from the People's Republic of China ("China"), in which it has been necessary for the Department to rely on surrogate values from countries with GNI significantly higher than China's because very few countries produce freshwater crawfish tail meat or maintain usable statistics regarding the value of the principal input, whole freshwater crawfish. In its 2004 Policy Bulletin, the Department recognized the difficulties inherent in such circumstances and made appropriate allowances:

The statute requires only that the Department use a surrogate market economy country that is at a level of economic development comparable to that of the NME country and that is a significant producer of comparable merchandise. Even these requirements are not binding, as the statute requires that they be met *only to the extent possible*. . . .

Given that the decision as to what constitutes "significant production" in a particular case depends on available (often scarce) data, the specific criteria and supporting factual information used to determine whether a potential surrogate producer is left to the discretion of the operations team . . . Occasionally, there are also cases in which it is more appropriate for the {operations} team to address economic comparability only *after* the significant producer of comparable merchandise requirement is met. Cases where a particular emphasis on "significant producer of comparable merchandise" is warranted are generally those that involve subject merchandise that is unusual or unique (with correspondingly unusual or unique inputs or other unique aspects of the cost of production), *e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of*

Antidumping Duty Administrative Review, 67 FR 63877 (October 16, 2002) Where only one country satisfies the significant producer and data requirements, that country will normally be used.

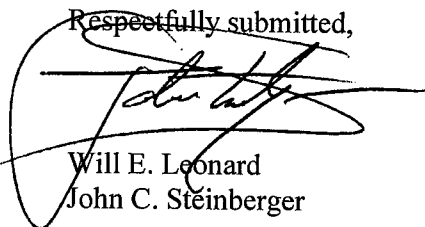
Import Administration Policy Bulletin 04.1, *Non-Market Economy Surrogate Country Selection Process* (Mar. 1, 2004) (emphasis in original).

This approach has promoted the goal of predictability which, presumably, is largely behind the Department's current request for comments. In nearly every administrative review and new shipper review regarding the 1997 crawfish antidumping duty order, the Department has based the surrogate value for whole crawfish on Spanish import data. For one administrative review and some concurrent new shipper reviews, the Department used a different data source due to an unusual collapse in crawfish production on the Iberian peninsula which rendered the Spanish import data unsuitable for lack of sufficient trade volumes.

A uniform rule for assessing data suitability is unlikely to be capable of accommodating the large number of unique factual circumstances encountered by the Department's operations teams in specific NME cases. Surrogate values may be taken from a wide variety of sources, including official statistics, studies published by private organizations, or even price quotes or newspaper articles. Suitability may be affected by (among other things) the rigor with which the information was collected, bias in the collection, the purpose for which the information was collected, the breadth or narrowness of the categories into which data are placed, the period to which the data relate, differences in production practices between the NME country and the potential surrogate country, sample size, representativeness, and the relative importance of the factor in question to the cost of producing subject merchandise. A rule that retains sufficient flexibility to address these inevitable variations would need to incorporate so many exceptions and escape clauses that it would be uniform in name only. Conversely, a rule that lacks such flexibility would, in many cases, lead to inferior results, merely to promote a foolish consistency.

For the foregoing reasons, the LDAF respectfully submits that the adoption of a single rule is unlikely to lead to better decisions on the selection of surrogate values or to any enhancement in predictability. Accordingly, the LDAF urges the Department to continue to provide operations teams with sufficient flexibility to adapt to unique circumstances such as those encountered in the crawfish proceedings.

Respectfully submitted,



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