



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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June 23, 2005

The Honorable Joseph A. Spetrini
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 Market Economy Inputs Practice in Antidumping Proceedings
involving Non-Market Economy Countries**

Dear Mr. Spetrini:

Aiming at making comments on USDOC's notice of *Market Economy Inputs Practice in Antidumping Proceedings involving Non-Market Economy Countries* published on 26 April 2005, we hereby submit our opinions as follows:

I. Summary

On May 26, 2005, the Department of Commerce ("DOC") solicited comments on two proposed approaches on the use of actual market-economy prices paid by a respondent over surrogate values for the purpose of valuing non-market-economy ("NME") producers' factor of production ("FOP"), as well as other options regarding market-economy inputs in NME antidumping proceedings.

We welcome DOC's attempts to promote accuracy in antidumping investigation involving NMEs by contemplating methodology relating to the application of best information available, as

required by the antidumping duty statutes. We hereby submit a brief comment. For a true and fair valuation of FOP, we suggest that the DOC, in exercising its discretion on using the best information available, must use actual price paid instead of surrogate value for the whole FOP, so long as the respondent establishes the price concerned is "market-driven."

II. DOC ignores the deciding issues underlining application of market-economy-input methodology

At the outset, the two "broad approaches" presented by the DOC, along with the accompany explanatory note, in the context of NME antidumping proceedings, appear to emphasize on two issues (1) what constitutes "meaningful" quantity of an input sourced from a market economy country, and (2) to what extent the investigation authority shall apply the company-specific market-economy price in valuing the pertinent factor of production under the market-economy-input methodology, i.e. whether the market-economy price may apply to domestically obtained factors of production. We disagree.

Accuracy is the touchstone of the antidumping statute. In order to address adjudicating issues arising from application of market economy inputs practice, the antidumping statute and court ruling instructed that the critical question should be (1) whether the methodology concerned, and any subsequent adjustment thereof, is based on the "best available information," and (2) whether methodology concerned, and any subsequent adjustment thereof, can fulfill the statutory goal for obtaining antidumping margins "as accurately as possible." Although the DOC enjoys the discretion in determining what constitutes the best information available to calculate normal value, it may not act arbitrarily in reaching its determination. Unfortunately, nothing in the May 26 Federal Register Notice provides any meaningful answer to these two important issues.

III. Instead of adopting the three-prong test, DOC shall use "market-driven price" over surrogate price for valuation of the whole FOP whenever the "market-driven price represents the best available information

On a respondent-specific basis, where a factor is purchased from a market economy supplier and paid for in a market economy currency, the DOC normally will use the price paid to the market economy supplier, instead of "publicly available information".

Instead of using the three-prong test regarding use of actual market price over surrogate value, we suggest that the DOC use "market-driven price" over surrogate price for valuation of the amounts of whole FOP whenever the market-driven price represents the best available information in order to calculate the margin as accurately as possible.

First, DOC's preference of surrogate value, and relinquishment of market economy price by mere reliance upon its own "reason to believe or suspect" that prices are being subsidized fail to take into account the totality of the circumstances of the market place, and contradict the intent of the law. The intent of the antidumping law is to "prevent dumping, an activity defined in terms of

the marketplace. Thus, the investigation authority shall look into the whole picture, and take into account the totality of circumstances in the market place in calculation of normal value as the ground for the alleged dumping. If the totality of the circumstances in the market place, in particular the market economy where a NME producer sourced it's a pertinent FOP, demonstrably evidenced that the actually price paid is market-driven, the DOC is obliged to take into account the price paid for the market economy input in FOP valuation.

Moreover, a company-specific market-driven price is more accurate than a surrogate price contained in generally public information for the purpose of calculation of the surrogate value. It represents the most accurate reflection of the value of the transactions from the market economy for the whole FOP. The antidumping duty statute authorizes, but does not mandate the Department of Commerce ("DOC") to use surrogate countries to estimate the value of the factors of production ("FOP"). The purpose of the statutory provisions regarding the construction of foreign market value for a producer in a non- market economy ("NME") country is to determine antidumping margins "as accurately as possible."

Third, the DOC should recognize that when the totality of circumstance in the market place establishes that the actual price paid by a NME producer for market economy input is market-driven, it establishes a reputable presumption about the reliability of the actual price, unless the DOC finds sufficient evidence to prove that, based upon a reasonable believe or suspicion, existence of dumping or subsidies on the same market economy suppliers for the same merchandise at issue distorted pertinent market behaviors of the market economy suppliers.

Indeed, the legislative history did not require the DOC to require a formal investigation to support its "reason to believe or suspect" dumping or subsidies. Nevertheless, market-distortion is a multi-facet phenomenon, in which many, rather a single factor enable the ultimate behaviors of a market economy entity. With respect to the subsidy standard, the Department should adopt the test set forth in Fuyao Glass Industries, Inc. v United States, Slip Op. 05-06 (January 25, 2005), which requires that: "to justify a finding with respect to subsidization, Commerce must demonstrate by specific and objective evidence that (1) subsidies of the industry in question existed in the supplier countries during the period of investigation ("POI"); (2) the supplier in question is a member of the subsidized industry or otherwise could have taken advantage of any available subsidies; and (3) it would have been unnatural for a supplier to not have taken advantage of such subsidies."

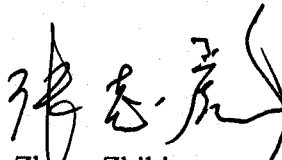
IV. Conclusion

DOC's present methodology, as explained in Shakeproof v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001), represents the accurate approach in valuing FOP in NME antidumping proceedings by the actual market economy price, which is the best information for the whole FOP because (1) it is contemporaneous, and (2) product-specific, in comparison with a surrogate value in third countries contained in a much broader category of Harmonized Tariff Schedule codes for a similar but by no means identical product. We suggest that the *status quo* should remain.

Recalling the statutory goal of antidumping duty statute for accuracy, we hope any change in the DOC's practice would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the antidumping duty statute, and would not result in imposition of unreasonable burden of proof on interested parties in contradiction with the international obligation of the U.S. under article 2.4 of the WTO Antidumping Agreement.

Last but not the least, we still want to mention that DOC insisted on "zeroing" in calculating the antidumping margins in the shrimp case. "Zeroing" means that DOC would calculate the negative dump margin as zero, only accept positive number to calculate the dumping margin. Through this methodology, DOC artificially increases the dumping margin, and such methodology has been ruled illegal by the World Trade Organization (WTO). We sincerely hope that DOC will consider this issue as a critical issue to all the respondents and make some amendment based on law and the principle of fairness.

Sincerely yours,

A handwritten signature in black ink, appearing to be '张智彪' (Zhang Zhibiao), written in a cursive style.

Zhang Zhibiao

Vice General Secretary

China Chamber of commerce for I/E of Foodstuff,
Native Produce & Animal By-Products (CFNA)