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James J. Jochum  
Assistant Secretary for Import Administration  
Room 1870  
U.S. Department of Commerce  
14th Street and Constitution Ave., NW  
Washington, D.C.

Re: Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries

Dear Assistant Secretary:

As counsel and on behalf of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (hereafter "Coalition"), we submit these comments pursuant to the Federal Register notice published on May 3, 2004. See Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 69 Fed. Reg. 24119 (Dep't Commerce 2004) (request for comments).

The following are our answers to the questions posed by the Department of Commerce ("Department") regarding the separate rates practice in antidumping proceeding involving non-market economy ("NME") countries.

**(1) Is Section A of the NME questionnaire sufficiently detailed to allow the Department to make complete, accurate, and informed determinations regarding exporters' eligibility for separate rates? If not, what would you recommend that the Department change with respect to its section A questionnaire? For example, should the Department request further information pertaining to *de jure control*, or lack of control, by the NME entity?**

**ANSWER:**

Section A of the NME questionnaire is not sufficiently detailed to make a fair determination of separate rates eligibility. The Coalition suggests the addition of the following inquiries:

(a) Respondents should provide information on any meetings or correspondence exchanged (with dates of letter, e-mail, etc) with any other government agency (including state, provincial or municipal agencies) related to the export/production of the subject product.

(b) Respondents should provide all relevant legislative enactments related to the centralization or decentralization of government control. Each legislative enactment should be current and accompanied by its history of amendments and translation into English. Federal, State and local laws should be included in such disclosure.

(c) Where applicable, answers should be required to be supported by written documentation.

**(2) What new procedures or approaches should be followed at verification to ensure a rigorous examination of whether a respondent qualifies for a separate rate?**

**ANSWER:**

Petitioner's counsel should be invited to observe the verification of companies. Such participation may be limited to observation. Petitioner's counsel should receive verification outlines at least 10 days before the verification visit.

Verification exhibits should not be considered all proprietary information. Due to practicality issues, respondents

should be allowed to submit Exhibits without bracketing within 2 business day of presentation to the Department as usual but should be required to submit revised bracketed, legible and translated exhibits within 10 days of their submission.

Verification of producers should always take place at the company's manufacturing facility, with no exceptions. Verification of non-producer exporters should always take place at the company's main office. If the country or the respondent cannot provide a secure environment to Department's officials, verification of such company should be considered a failure and facts available be used. This proposed policy if in place would have prevented the problems encountered by the Department during a verification of a Chinese company conducted in connection with the recent antidumping administrative review of Freshwater Crawfish Tail Meat from the People's Republic of China<sup>1</sup>.

Government agencies (e.g. MOFTEC in China cases) that have relevant data should be verified and if not cooperative facts available should be used<sup>2</sup>.

The Department should be more stringent in enforcing its policy that verification is not intended to be an opportunity for the submission of new factual information. Only in exceptional circumstances should the Department request new factual information from respondents during verification or after the period provided. The proposed criterion for accepting new factual information would be: (1) when the need for that information was not evident previously; and (2) to make minor corrections of information already in the record. The Department should define what it considers to be minor corrections as typos, numerical mistakes, etc. There has been inconsistent enforcement of this policy.

The Department should not accept new factual information from respondents at verification if the information corroborates, supports, or clarifies information already on the record. At such a phase in the proceeding, respondents have already been given sufficient opportunity to submit all information to complete the record.

**(3) Due to the number of possible section A respondents in many cases and the Department's resource constraints, should the Department establish a process whereby exporters seeking a separate rate must prepare a request and satisfy established requirements before the Department seeks additional information through the questionnaire process? What requirements would you recommend the Department establish?**

**ANSWER:**

No. Any short cuts to this process would be detrimental to the accuracy and completeness of the review/investigation.

**(4) Should the Department institute an earlier deadline for parties filing section A submissions who are requesting only a separate rate (as opposed to a full review), in relation to the deadline for mandatory respondents? When should this deadline be?**

**ANSWER:**

Section A questionnaire responses should have an earlier deadline for all parties. The Department's decision regarding mandatory or non-mandatory respondents should take place after all respondents submit their section A questionnaire responses.

**(5) In light of the Department's limited resources, should the number of section A respondents be limited and, if so, upon what basis should the Department limit its examination? For example, should the Department limit the examination to a specific number of parties, base this decision upon a percentage of the number of overall respondents requesting separate rates treatment, or develop an entirely different test to limit its examination?**

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<sup>1</sup> See Freshwater Crawfish Tail Meat from the People's Republic of China, Department's memorandum to the file, Verification of Weishan Fukang Foodstuffs Co. Ltd., dated September 26, 2003, Case no. A-570-848 (public version).

<sup>2</sup> In the original investigation of Brake Rotors from China, the Department conducted a visit to the offices of MOFTEC to investigate claims made by the Coalition that two respondents, China North Industries Guangzhou Corp. and China North Industries Dalian Corp., were controlled by the government. See Brake Rotors from China, 62 Fed. Reg. 9160, 9166 (Dep't Commerce 1997) (final determination). During the visit, Department officials were greeted with blatant lack of cooperation by MOFTEC officials. MOFTEC officials refused to provide certain documentation and additional information. Answers from MOFTEC to many questions posed by the Department were vague and did not assist the Department further. See Verification Report of MOFTEC (public version) (undated) (Case A-570-846).

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**ANSWER:**

No.

**(6) Under current practice, the Department maintains three rate categories: country-wide, individually calculated, and the average of the non-zero, non-de minimis, non-adverse rates. Does the Department have the authority to eliminate entirely the rate category that is based on the average of the calculated non-zero, non-adverse, and non-de minimis margins? This rate category is currently applicable to section A respondents, as well as to non-investigated respondents providing full questionnaire responses. If the Department has authority, should it eliminate this category and upon what basis?**

**ANSWER:**

No comments.

**(7) Should the Department develop an additional rate category beyond country-wide, individually calculated, and the average of the non-zero, non-de minimis, non-adverse rates? This additional rate category could be assigned to cooperative firms denied a separate rate under options (5) or (6) above, as an alternative to assigning them the country-wide rate. How should the duty rate for this fourth rate category be calculated?**

**ANSWER:**

No comments.

**(8) Once a separate rate has been awarded, should the Department apply it only to merchandise from producers that supplied the exporter when the rate was granted? In that case, should merchandise from all other suppliers shipped through an exporter with a separate rate receive the country-wide rate, the average of the non-zero, non-de minimis, non-adverse reviewed respondents' margins, or another duty rate altogether?**

**ANSWER:**

A separate rate should be awarded only to merchandise from producers that supplied the exporter when the rate was granted. The rate was calculated specifically with information from that producer and exporter, thus, it should be used only in circumstance where such exporter exports the subject merchandise from the same producer.

Merchandise from other suppliers shipped through an exporter with separate rate should receive the country wide rate. Such exporter/producer combination should only receive a separate rate after a proper determination of separate rates in a new shipper review.

**(9) Should the Department extend its separate-rates analysis to exporter-producer combinations, i.e., should the Department consider any government control exercised on an exporter through a producer?**

**ANSWER:**

Eligibility for a separate rate should be analyzed based on an exporter-producer combination. The producer plays an important role in setting the price of the product. Therefore, it is essential that the Department investigates whether the producer is free from government control.

**(10) Please provide any additional views on any other matter pertaining to the Department's practice pertaining to separate rates.**

**ANSWER:**

The Department should be less liberal when granting extensions of time to submissions of section A questionnaires. Submitters are requesting a benefit under the U.S. antidumping law (i.e. to receive a separate rate); therefore, they should bear all the burden to provide complete responses in the specified deadline. Extensions requests should only be granted in exceptional circumstances and only after notice and reasonable time to comments by petitioners.

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The Department should be more stringent when enforcing its authority to disregard deficient submissions. Under 19 U.S.C. §1677m, the Department may disregard deficient submissions, after giving one opportunity for remediation, but it rarely uses such authority.

The separate rate test should be expanded to include an investigation of all levels of government (federal, provincial, state, and municipal) over respondents. Such test should not be limited to central government control<sup>3</sup>.

The Department should request more assistance from the NME governments in its investigation of separate rates. A suggestion would be to have a questionnaire drafted to the NME government to investigate control that may exist over the subject industry. This would enable the Department to obtain official government answers to similar questions that are currently presented to respondents in their Section A questionnaire.

The Department should conduct a full review, including a reassessment of the company's entitlement to separate rates, in cases of reviews of exporter and exporter/producer combinations that received zero rate in the original investigation. The Department currently conducts a limited review of exporter/producer combinations that received zero rates in the original investigation (i.e. an investigation limited to whether the shipments to the United States comply with the exporter-producer combinations)<sup>4</sup>. Other than this, the Department does not review exporters that received zero rates in the original investigation. However, throughout the years these companies may have changed their corporate structure or even their ownership and management, therefore, at least a re-examination of their eligibility for separate rates is warranted.

We respectfully request that the Department consider these comments when reviewing the language and procedures related to its Section A questionnaire.

Yours truly,

Leslie Alan Glick

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<sup>3</sup> See Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States, Court No. 01-00825, slip. op. 04-31, at p.15 (Ct. Int'l Trade April 1, 2004) (The Court agreed that the separate rates test should be expanded to include all levels of government control).

<sup>4</sup> See e.g. Brake Rotors from China, 62 Fed. Reg. 18740 (Dep't Commerce 1997) (antidumping order) (Case A-570-846) and Brake Rotors from China, 69 Fed. Reg. 10402, 10404 (Dep't Commerce 2004)(Prelim. Results and Partial Rescission) (where the Department rescinded the review of exporter producer combinations which received zero rates in the original investigation because they allegedly did not make shipments outside their exporter /producer combinations).