CHINA CHAMBER OF COMMERCE FOR I/E OF LIGHT INDUSTRIAL PRODUCTS &ARTS-CRAFTS (CCCLA)

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From: China Chamber of Commerce for I/E of Light Industrial Product and Arts-Crafts (CCCLA)

To: United States Department Of Commerce

International Trade Administration, Import Administration

Atten: James J. Jochum, Assistant Secretary

May 31, 2004

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

Respectable officials,

China Chamber of Commerce for Import and Export of Light Industrial Products and Arts-Crafts (hereinafter CCCLA) would like to avail itself of this opportunity to present its compliment to the United States Department Of Commerce (the DOC).

It is an undeniable fact that: China has become a market economy country, therefore should be entitled to market economy treatment in AD proceedings. The international community has recognized China's efforts in its transformation into a market economy. Since at least November 2003, Canada has followed a policy of presuming that China is a market economy in connection with antidumping investigation. The Government of New Zealand also recently decided that China should be treated as a market economy for purposes of applying New Zealand's trade remedy laws.

However, the current practice that the US Department of Commerce (DOC) has been carrying out shows that China still is treated as non-market economy country and the Chinese companies should be, in the anti-dumping proceeding (AD case), assigned a single, adverse country-wide rate, unless a respondent can demonstrate an absence of both de jure and de facto control over its export activities.

We, the CCCLA, as the intermediary organization, particularly, the industrial representative and coordinative organizer in the AD case involving light industry of China are honored to take this opportunity to air our views by saying that the United States' practice in the AD case against China is completely unfair and inappropriate in terms of ignoring China's present economic reality.

As we all are aware, by any measure, the light industry of China is characterized overwhelmingly by private and collective ownership, with an insignificant level of state ownership. State-owned enterprises constitute a small share of the whole industry and the Chinese government plays no significant role in the prices and production of this industry.

The Company Law of the People's Republic of China, adopted in 1993 and amended in 1999, applies to domestic business enterprises regardless of their ownership, as well as to foreign-invested limited liability companies. The Company Law provides companies with operational freedom from the government. It states that "Chinese companies shall operate independently and be responsible for its own profits and losses according to law" and that "a company shall organize its production and operation independently in accordance with market demand."

The Chinese government retains its control role only with respect to certain sensitive commodities and business activities, consistent with China's WTO commitments and relevant Chinese law. Nevertheless, the light industrial product is the product of no strategic significance, and thus one for which there is no need for governmental involvement or regulation. Moreover, it is not a product subject to state trading or state designated trading product.

Considering the above-mentioned statements, the Chinese light industrial enterprises are qualified to be granted the market economic status and thus, awarded the separate duty rate in the AD proceedings by the DOC on the basis of the actual price, production, sales data of individual enterprise. Additionally, the DOC should make it easier-not harder for Chinese companies to qualify separate AD rates.

The CCCLA would take this opportunity to renew the assurance of its highest consideration to the DOC.

Very truly yours,

Mr. Luan Chunsheng
Vice president

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Reply to the questions in Appendix:

(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: Yes.

(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: Due to a fact of sufficiency and preciseness of the current on-site verification conducted by the Department, no new procedures or approaches will be necessary.

(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: Any additional and new process that the Department establishes for seeking the separate rate companies would be unnecessary.

(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: Instituting an earlier deadline for those parties would be inappropriate.

(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?

Answer: All the responses to the Section A should be taken into consideration by the Department.

(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: Apparently, the Department has no authority to eliminate entirely the average of the non-zero, non-deminimis and non-adverse rates.

(7) Should the Department develop an additional rate category beyond country-wide, individually calculated, and the average of the non-zero, non-deminimis, 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: It is very imperative for the Department to establish a new rate category for those cooperative firms denied a separate rate and the calculative methodology could be designed referring to that of separate rate.

(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: Once a respondent (an exporter), in the AD case, is awarded the separate rate, its subjected goods supplied by all producers should not be imposed the AD duty on the basis of any duty rates other than the separate rate, no matter what duty rates have been assigned to these producers.

(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: No.

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

Answer: The scope of mandatory respondents in AD proceeding should be enlarged, specifically in the case where the numbers of the companies subjected to the case are extremely great.