

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Consent Motion To Terminate Panel Review.

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final determination made by the Canadian Border Services Agency respecting "Unprocessed grain corn, excluding seed corn (for reproductive purposes), sweet corn, and popping corn, originating in or exported from the United States of America" (Secretariat File No. CDA-USA-2006-1904-01).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the complainants and pursuant to Rule 78(a) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated as of October 12, 2007.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: October 19, 2007.

Caratina L. Alston,
United States Secretary, NAFTA Secretariat.
[FR Doc. E7-20974 Filed 10-24-07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") requests public comment on whether it should consider granting market-economy treatment to individual respondents in antidumping proceedings involving the People's Republic of China ("China"), the conditions under which individual firms should be granted market-economy treatment, and how such treatment might affect our antidumping calculation for such qualifying respondents.

DATES: Comments must be submitted by November 26, 2007.

ADDRESSES: Written comments (original and six copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Constitution Ave., NW., Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Senior International Economist, or Anthony Hill, Senior International Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC, 20230; telephone 202-482-1579 or 202-482-1843, respectively.

SUPPLEMENTARY INFORMATION:**Background**

In antidumping proceedings involving non-market economy ("NME") countries, it is the Department's usual practice to calculate the normal value for allegedly dumped merchandise being imported into the United States by valuing the NME producer's factors of production using, to the extent possible, prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. See section 773(c)(4) of the Tariff Act of 1930, as amended ("the Act"). Specifically, section 773(c)(1) of the Act provides for the use of factors of production to determine normal value if two conditions are met:

(A) the subject merchandise is exported from an NME country; and

(B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined as is done for respondents in market economy countries.

In all past NME proceedings involving China, the Department has found that both conditions of section 773(c)(1) are met and has calculated the normal value based on prices and costs from a surrogate country, in accordance with sections 773(c)(3) and (4) of the Act.

The Department recently affirmed China's NME status. See Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China's Status as a Non-Market Economy (August 30, 2006) ("August 30th Memorandum") (on file in the Central Records Unit {"CRU"}, Room-B-099, on the record of case number A-570-901). In conducting this review of China's NME status in accordance with section 771(18)(B) of the Act, the Department concluded that, while China has enacted significant and sustained economic reforms, the Chinese government has preserved a significant role for the state in the economy. The Department concluded that the limits the Chinese government has placed on the role of market forces are sufficient to preclude China's designation as a market economy under the U.S. antidumping law.

Notwithstanding China's continued designation as an NME, the August 30th Memorandum noted that China has undertaken numerous positive reforms. These are discussed more fully in the Department's March 29, 2007 memorandum, *Countervailing Duty Investigation of Coated Free Sheet ("CFS") Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-day Economy*, (March 29, 2007) ("Georgetown Steel Memorandum") (on file in the CRU on the record of case number C-570-907). The Georgetown Steel Memorandum notes that China's economy has evolved significantly over time and its present-day economy "features both a certain degree of private initiative as well as significant government intervention, combining market processes with continued state guidance." *Id.* at 7. Further, the Department found that while private industry now dominates many sectors of the Chinese economy and entrepreneurship is flourishing, China's economy is best characterized as one in which constrained market mechanisms

operate alongside (and sometimes, in spite of) government plans. *Id.* at 9–10. Although the limits the Chinese Government has placed on the role of market forces are not consistent with recognition of China as a market economy under the U.S. antidumping law, the evolution in China's economy nevertheless has led the Department to conclude that it is possible to determine whether the state has bestowed a benefit upon a Chinese producer (*i.e.*, a subsidy can be identified and measured) and whether any such benefit is specific. *Id.* at 9. See also *Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484 (April 9, 2007). The Department also stated in the Georgetown Steel Memorandum that the evolution of China's economy, together with the features and characteristics of China's present-day economy, including a growing private sector, suggest that modification of some aspects of the Department's current NME antidumping policy and practice with regard to China might be warranted, such as the conditions under which the Department would grant an individual respondent in China market-economy treatment in some or all respects.

Following the conclusion in the Georgetown Steel Memorandum that the evolution in China's economy might warrant changes to the Department's NME practice, the Department invited public comment on a possible market-oriented enterprise ("MOE") test that could be introduced in future NME AD proceedings in a **Federal Register** notice published on May 25, 2007 (72 FR 29302). Given the Department's analysis in the Georgetown Steel Memorandum regarding China's present-day economy, the May 25, 2007 notice requested public comment on the conditions under which the Department might grant market-economy treatment to individual Chinese respondents (as well as possibly other NME respondents), and, if so, how this might affect our antidumping duty calculations for such enterprises. The Department received 39 comments in response to this notice, which are available (along with the May 25, 2007 request for comment) on the Import Administration Web site at <http://ia.ita.doc.gov/download/nme-moe/nme-moe-cmt-20070625-index.html>.

Request for Comment

The Department has carefully considered all of the comments it received in response to its first request for comment. The comments identify two broad competing concerns which

the Department now seeks to clarify in this second request for comment. The first is that various parties have argued that there may be prices within China that are sufficiently market-based that they can be used in the calculation of normal value, notwithstanding China's overall status as an NME. The Department has the legal authority to introduce an MOE test, these parties argue, and introducing such a test would recognize the reform efforts that China has undertaken since the Department adopted its current NME methodology. The Department agrees that to the extent that market-based prices exist in China that might be useable in the AD calculation, it would be appropriate to find a way to identify them through an MOE test.

However, other parties argue that the Department has no legal authority to introduce a MOE test. These parties also point out that any MOE test that attempted to identify market-based prices within an NME would be very difficult to administer, particularly since prices within an economy are interconnected. That is, these parties argue, even if the Department could identify which companies manage their operations on a market basis, these firms would still operate in a broader NME environment. In particular, firms' input prices could be affected by non-market considerations. Such a distortion of an otherwise "market-oriented" firm's acquisition prices could happen either directly, if these firms purchase inputs from non-profit maximizing SOEs, or indirectly, if macroeconomic NME distortions relating to land or capital affect the relevant input market. It would be impossible, these parties argue, to parse out the numerous distortions that could affect each input price, unless perhaps the Department and parties conducted a laborious analysis of each input price. However, anything less than a full analysis, these parties argue, would rapidly undermine China's overall NME status.

Because there are complex legal and administrative arguments on each side of this issue, the Department is requesting further comment on any potential MOE test. As noted above and described more fully in the August 30th Memorandum, market forces are not yet sufficiently developed in China to warrant market economy status. However, as noted in the Georgetown Steel Memorandum, China's economy has evolved to the point where domestic prices of certain market-oriented firms might be useable in the dumping calculation. In submitting comments, we ask parties to further consider whether there is a legal basis for a MOE

test. We also ask parties to consider administrative feasibility in proposing how the Department could identify an MOE operating within a broader NME environment. We ask parties also to consider to what extent, and under what conditions, the Department should rely on an MOE's prices and costs, particularly for those inputs that are inextricably linked to the broader operating economic environment, *i.e.*, labor, land and capital. While an enterprise may be market-oriented, the cost of certain inputs obtained in the broader economy may necessarily be determined on a non-market basis. Given such a situation in China, we request parties to consider administrative feasibility in proposing the extent and conditions under which a finding of an MOE might be limited. For example, how appropriate and feasible would it be to consider using a respondent's own prices and costs within China in conjunction with certain surrogate prices and costs in our antidumping duty calculations?

Submission of Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: <http://ia.ita.doc.gov/>. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import

Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

Dated: October 17, 2007.

David Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Targeted Dumping in Antidumping Investigations; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") seeks public comment on its development of a methodology for determining whether targeted dumping is occurring in antidumping investigations. The Department seeks input on standards and tests that may be appropriate in a targeted dumping analysis.

DATES: Comments must be submitted within thirty days from the publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street & Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Anthony Hill, Economist, Office of Policy, or Michael Rill, Director, Antidumping Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-1843 or 202-482-3058, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 777A(d)(1) of the Tariff Act of 1930 (the "Act"), the Department normally will calculate antidumping duty margins in investigations by comparing weighted-average export prices with weighted-average normal values or transaction-specific export prices with transaction-specific normal values. Section 777A(d)(1)(B) of the Act allows the Department to use an alternative method for determining the existence of margins of dumping in an investigation using what is commonly referred to as the targeted dumping comparison methodology. The alternative method

allows the Department to compare transaction-specific export prices to weighted-average normal values. In order to use this alternative method, the Act requires the Department to find that there is a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions, or periods of time. *See* 777A(D)(1)(B)(i) of the Act. In addition, the Act requires the Department to explain why the differences cannot be taken into account using one of the normal calculation methodologies. *See* 777A(D)(1)(B)(ii) of the Act. The Department's regulations at 19 CFR 351.414(f)(1)(i) further require that a determination of targeted dumping be made "through the use of, among other things, standard and appropriate statistical techniques."

The Department's experience with regard to the use of this methodology has been very limited. In the antidumping investigation of certain pasta from Italy, petitioners made an allegation that targeted dumping was occurring, but the Department found that it was unsubstantiated and did not accept the allegation. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996). Reviewing that determination, the Court of International Trade found that the Department had dismissed the allegation even though it had not articulated a test by which an allegation should be made. *See Borden, Inc. v. U.S.*, 4 F. Supp. 2d 1221, 1228-31 (CIT March 26, 1998) ("*Borden*"). On remand, the Department created a test (the "Pasta Test") to analyze U.S. price data in that case, but found no targeted dumping. *See Borden, Inc. v. U.S.*, 1999 WL 397968, *2 (CIT June 4, 1999) ("*Borden Remand*") (citing Department's *Remand Redetermination* ("*Remand Redetermination*") at 17). However, the Department noted that it reserved the discretion to alter its methodology in future cases. *See Borden Remand*, 1999 WL 397968, *1 (citing *Remand Redetermination* at 15).

An allegation of targeted dumping was made in the investigation of fresh tomatoes from Mexico. The Department determined that there was not an adequate basis on which to accept the allegation on the grounds that petitioners used a benchmark of ten percent to claim that price differences were significant even though prices for tomatoes were very volatile, changing by more than ten percent within a day, and petitioners did not establish that there was a pattern of price differences. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination:*

Fresh Tomatoes From Mexico, 61 FR 56608, 56610 (November 1, 1996).

Another allegation of targeted dumping was made in the investigation of stainless steel wire rod from Taiwan. Again, the Department found that the petitioners' analysis failed to meet the basic requirements of the statute. The allegation simply compared average prices to different customers without any further analysis. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Taiwan*, 63 FR 10836, 10837 (March 5, 1998).

The Department's most recent experience was in the antidumping investigation of coated free sheet paper from the Republic of Korea. In that proceeding, petitioners alleged that certain respondents were targeting certain customers and regions. The Department accepted this allegation, finding that petitioners had met the statutory requirement for showing that there was a pattern of prices that differ significantly among purchasers and regions while also acknowledging that the Department had not yet established a general set of standards for analyzing an allegation of targeted dumping. *See Memorandum to David M. Spooner* entitled "Antidumping Duty Investigation of Coated Free Sheet Paper from South Korea - Targeted Dumping," from Stephen J. Claeys, dated September 7, 2007.

Request for Comment

Given the Department's limited experience with targeted dumping allegations and analysis and certain undefined terms in the statute and regulations, the Department requests comments and suggestions on what guidelines, thresholds, and tests it should use in determining whether targeted dumping is occurring. For example, while the statute requires a showing that there is a "pattern" of price differences, there is no definition or explanation as to what constitutes a pattern. What standards or methods should be used to show a pattern of price differences? Another requirement is that price differences be "significant." What threshold should there be, if any, for showing that price differences are significant? Furthermore, the regulations require the use of "standard and appropriate statistical techniques." What would be the appropriate statistical techniques to use to show targeted dumping?

Submission of Comments

Persons wishing to comment should file a signed original and six copies of