

**Comment 7:** Corrections to U.S. Sales

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- C. Thuan An's Denominator
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**Comment 13:** Thuan An's Financial Statements**Comment 14:** Gross Weight vs. Net Weight**Comment 15:** New Factual Information**Comment 16:** Clarification of Vietnam Verification Report

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**DEPARTMENT OF COMMERCE**
**International Trade Administration****Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates**

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

**ACTION:** Request for Comment.

**SUMMARY:** The Department of Commerce ("the Department") requests public comment on two aspects of its non-market economy ("NME") methodology in antidumping proceedings. First, the Department seeks comment on certain aspects of the methodology by which it selects an economically comparable surrogate market economy country for the NME country under investigation or review. Second, the Department is requesting comment on the

methodology under which individual NME exporters can demonstrate independence from government control of their export activities and thereby qualify for separate rate status.

**DATES:** Comments must be submitted by 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, Pennsylvania Avenue and 14th Street NW, Washington, DC, 20230.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Norton, 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, 202-482-1579 or 202-482-1843, respectively.

**Issue One: Surrogate Country Selection Background**

In antidumping proceedings involving NME countries, the Department calculates normal value by valuing the NME producer's factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. The Tariff Act of 1930, as amended ("the Act"), provides broad discretion in the selection of surrogate market economy countries to value NME factors of production. In particular, section 773(c)(1)(B) of the Act reads:

...the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

Section 773(c)(4) of the Act adds:

The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are

- A. at a level of economic development comparable to that of the nonmarket economy country, and
- B. a significant producer of comparable merchandise.

The Act does not provide a definition of "comparable level of economic development," "comparable merchandise," or "significant

producer." However, the Department's regulations do provide guidelines for comparing levels of economic development. 19 CFR 351.408(b) reads:

*Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy country under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on per capita GDP as the measure of economic comparability.

Finally, the Department provided further guidance on economic comparability in a 2004 Policy Bulletin, establishing a sequential procedure for selecting a surrogate country, with economic comparability being the first factor considered. Import Administration Policy Bulletin 04.1 states<sup>1</sup>:

First, early in a proceeding, the Operations team sends the Office of Policy ("OP") a written request for a list of potential surrogate countries. In response, OP provides a list of potential surrogate countries that are at a comparable level of economic development to the NME country. OP determines economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the World Development Report (The World Bank). The surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability. Both the team's written request and OP's response should be made available to interested parties by being placed on the record of the proceeding.

As noted above, in each proceeding, the Department generates a list of potential surrogate countries. In constructing this list, the Department orders the per capita gross national income ("GNI") figures as reported in the latest available published edition of the World Bank's *World Development Report*, disregarding countries designated as NMEs during the period of review.<sup>2</sup> From among the remaining group of countries, the Department selects approximately five with similar levels of economic development to the NME that have offered, in the

<sup>1</sup> The full text of the policy bulletin can be found at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>2</sup> The Department now uses per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development.

Department's experience, the statistical sources and breadth of information that might make them suitable surrogate countries in the specific proceeding. The Department places this list on the record and invites comment from the interested parties, who may suggest that the Department consider other economically comparable surrogate countries. However, absent comment from parties, the Department normally will determine, from among the countries on this list, which country produces merchandise comparable to the subject merchandise in significant quantities and offers adequate data upon which to base the review.

The process of selecting an appropriate surrogate country for the NME is a crucial element of an NME antidumping proceeding, particularly since the regulations direct the Department to normally value all of the NME factors of production with data from the primary surrogate country. See 19 CFR 351.408(c)(2). Because of the importance of finding a suitable surrogate country, the Department does not consider a country's level of economic comparability in isolation, but considers whether the potential surrogate country is a significant producer of comparable merchandise and offers the data necessary to conduct the proceeding. See Policy Bulletin 04.01. Accordingly, as the footnotes to the Policy Bulletin cited above clarify, the statute and regulations do not restrict the Department's analysis simply to a review of per capita GNI, as such an analysis would unreasonably limit the Department from choosing the most appropriate surrogate country. As the footnotes state, the Department "excludes countries that are technically presumed to be market economies, but which in OP's judgment are unsuitable sources for factor values" and "current practice reflects in large part that the statute does not require the Department to use a surrogate country that is at a level of economic development most comparable to the NME country." Indeed, the Department often disregards certain countries that it deems to be unsuitable sources for factor values based on factors other than per capita GNI. For example, using the current 2005 GNI data, the closest country to Vietnam's level of economic development (at \$620 per capita) is Sudan, with \$640 per capita. Sudan, however, with its ongoing internal conflicts, would be unlikely to offer adequate data on which to base the dumping calculation, so the Department turns instead to other countries as potential surrogates.

### Request for Comment

The selection of an appropriate surrogate country is, in large part, necessarily a case-specific issue, since the range of available data and production of comparable merchandise vary with the product under investigation or review. The specific question of economic comparability does remain largely constant from case to case, however, and it is on this aspect of the surrogate country selection process that the Department is now requesting comment. Specifically, the Department seeks 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.

Regarding the first question, on how the Department determines economic comparability, the Department uses per capita income to measure comparability, but even if a country is the most economically comparable to the NME, this does not mean that the Department is obliged to use that country as the primary surrogate. Often, there is a range of countries from which the Department could select the most appropriate potential surrogate based on their relative production of comparable merchandise, and on data considerations. See, e.g., Memorandum from Ron Lorentzen to Howard Smith *Antidumping Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Request for a List of Surrogate Countries* (January 22, 2007). The Department is now soliciting comment on the extent to which, if any, there are limitations as to this range. For example, at what point should differences in per capita GNI of a potential surrogate and the NME be "too large" for the two to be considered "economically comparable"?

Furthermore, should the Department develop a standard for deciding which countries to include on the initial list of potential surrogate countries? What could be an appropriate standard for determining which countries are likely to offer the necessary data for conducting an antidumping proceeding? As noted above, interested parties will continue to have the opportunity to suggest the use of economically comparable countries that do not appear on the initial list of potential surrogates. Nevertheless, the Department first examines (absent any submission from

parties) this initial list of countries to determine whether any of the included countries are appropriate surrogate countries. Accordingly, the Department welcomes comment on how this list should be constructed. Should this list be comprehensive (which may require that the Department and interested parties examine the extent of production of comparable merchandise in every economically comparable country), or could the list be limited in some way? Is there a broad measure of countries' data quality (for example, the availability, reliability, and accuracy of import statistics) that the Department could use to determine at the outset of the proceeding a subset of the economically comparable countries for consideration as a primary surrogate? Should the Department consider whatever countries remain after applying these data screens, or should the Department ensure that the final list includes a balance of countries both above and below the NME's per capita income?

### Issue Two: Separate Rates In Nme Antidumping Proceedings

#### Background

In an NME antidumping proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless an exporter demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities through a "separate rates" test. See *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). The Department's separate rates test is not concerned, in general, with macroeconomic border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent the dumping of merchandise in the United States. Rather, the test focuses on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level. See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Preliminary Determination of Sales at Less Than Fair Value: Honey from the*

*People's Republic of China*, 60 FR 14725, 14727 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control in its export activities to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (Silicon Carbide). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. See *Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). In order to request and qualify for a separate rate, it is the Department's practice that a company must have exported subject merchandise to the United States during the period of investigation or review, and it must provide information responsive to the following considerations:

1. **Absence of *De Jure* Control:** The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

2. **Absence of *De Facto* Control:** Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control over its export activities: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the central, provincial, or local governments in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

The Department last invited public comment on its separate rates methodology in a process that

culminated in April 2005, when it announced a change in practice in the **Federal Register** (70 FR 17233) and posted a concurrent Policy Bulletin on the Import Administration website (Import Administration Policy Bulletin 05.1, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>). Prior to that, the Department published three notices in the **Federal Register** soliciting comment on its separate rates practice (69 FR 24119, 69 FR 56188, and 69 FR 77722). The Department was prompted to request public comment on this issue because of the large and increasing numbers of requests for separate rates status the Department had received in recent years, which led to two concerns. The first is that it proved increasingly difficult to evaluate the large number of separate rate requests made by respondents. The second concern was whether the implementation of the separate rates test could be improved to more effectively determine whether respondents act, *de facto*, independently of the government in their export activities.

Taking into account comments submitted by the public, the Department adopted an application process for evaluating separate rate requests by non-investigated firms. This application process, which in subsequent cases was extended from initial investigations to administrative reviews, streamlined the process of evaluating separate rates requests but did not alter the threshold of eligibility for a separate rate, which remained an absence of *de jure* and *de facto* governmental control over a firm's export activities. Despite the introduction of the application process for evaluating requests for separate rates status, however, the administrative burden on the Department of evaluating separate rates requests continued to increase. As a result, the Department began to employ a separate rates "certification" process in certain recent reviews involving numerous potential respondents, in which firms that had already obtained a separate rate in a previous segment were able to submit a certification form in lieu of the full application. See *Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China* 71 FR 11394, (March 7, 2006), and *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China* 71 FR 17813, (April 7, 2006).

## Request for Comment

The Department is now requesting public comment on the separate rates test as a whole and how its implementation could be further improved. As noted above, while the Department has revised its administration of the separate rates test over the past ten years, it has not modified the test itself during this time. The Department has also received comments from certain parties alleging that testing firms for independence over their export activities is no longer necessary in light of economic reforms that have occurred in particular NME countries. The Department is therefore issuing this notice to invite comments concerning whether alternatives to its current separate rates test should be considered, *i.e.*, on whether a reconsideration of the test as outlined in *Sparklers* and *Silicon Carbide* is warranted. The Department is also interested in comments on whether the Department should consider revisions in the implementation of the current test, particularly on the proper balance between efficiency and enforcement in the implementation of the separate rates test, *i.e.*, on whether the Department can reduce the administrative burden on both the Department and on interested parties in operationalizing the test. In providing comment, however, the Department requests that parties address the real possibility that streamlining the test might impact the enforcement goal of the test, that only firms operating independently of government control over their export activities become eligible for an individually calculated rate.

## 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 website 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, email address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

Dated: March 9, 2007.

**David Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Proposed Information Collection; Comment Request; Survey of Information Habits and Preferences of Millennial Scientists

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before May 21, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Terrie Wheeler, Assistant Chief, Information Services Division, at (301) 975-3772, [terrie.wheeler@nist.gov](mailto:terrie.wheeler@nist.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This study will determine how the next generation of scientists, frequently referred to as the Millennial Generation, will seek scientific information in their research. This generation was born between 1982 and 2000. Having grown up with information technology, general studies show this population has technological preferences for receiving and integrating content, and this study is to learn if this extends to the scientific content among young scientists. It will identify most useful (and most desired) devices and formats, so that the Information Services Division can plan to serve the next generation of scientists. The findings will impact how digital scientific content is harvested, identified using metadata, stored, accessed, and disseminated. The project will identify young scientists' preferences for content format and ease of assimilation into current processes. Specifically the project aims to learn: (1) Which library resources and information services are most valuable and why, and (2) what scientific library resources do not exist that could, or are not yet robust enough to be valuable. Further the study aims to learn: (3) In what specific ways are commercial Internet tools both successful and unsuccessful in helping find answers, (4) which platforms and devices are most helpful and why, and (5) which technologies help support collaboration with peers. The project plans to use Summer Undergraduate Research Fellowship (SURF) students who work at the National Institute of Standards and Technology every summer as the test population. The survey is voluntary, and all information gathered will be carefully safeguarded.

### II. Method of Collection

The study will use an electronic survey form. SURF students will have the URL sent to them in an e-mail message so they may take the survey on any computer with a Web browser if they choose.

### III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Students enrolled in the NIST SURF program for 2007.

*Estimated Number of Respondents:* 100.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 33.

*Estimated Total Annual Cost to Public:* \$0.

### IV. Request for Comments

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; West Coast Community Economic Data Collection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before May 21, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be