

American Federation of Labor and Congress of Industrial Organizations



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IMPORT ADMINISTRATION

January 15, 2007

Susan H. Kuhbach, Senior Office
Director for Import Administration,
U.S. Department of Commerce,
Central Records Unit, Room 1870,
Pennsylvania Avenue and 14th Street, N.W.,
Washington, DC 20230

Re: Application of the Countervailing Duty Law to Imports From the People's Republic of China:
Request for Comment

Dear Ms. Kuhbach,

I. Introduction:

The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), on behalf of its over 10 million members, strongly urges the U.S. Department of Commerce ("Commerce") to apply, immediately and to the fullest extent, current countervailing duty ("CVD") laws to illegally subsidized goods imported from the People's Republic of China ("China"). For too many years, China has maintained an unfair competitive advantage over U.S. manufacturers through the use of illegal subsidies, currency manipulation and the brutal suppression of its workforce. As a result, the U.S. trade deficit with China hit \$202 billion in 2005 (of a \$725.8 billion total),¹ making up twenty seven percent of our total trade deficit. The Economic Policy Institute estimated that this bilateral deficit cost the U.S. 410,000 manufacturing jobs between 2001-2005. If Commerce were to reverse its current policy and apply countervailing duties to illegally subsidized goods from "non-

¹ According to the U.S. Census Bureau of Foreign Trade Statistics, the bilateral trade deficit with China reached \$213.5 billion by the end of November 2006.

market economies,” while alone not the total solution, it would be an important step both in reversing the economically unsustainable deficit with China and in supporting the U.S. industries (and jobs) that are materially injured by such illegal trade practices.

II. Commerce’s Policy Should be Reversed

There are no domestic or international legal obstacles to the application of CVDs to any country maintaining a “non-market economy” (“NME”), including China. Indeed, the only reason that U.S. CVD law has not yet been applied to China is Commerce’s misguided policy against applying CVDs to NMEs, a policy it has the ability to reverse based upon subsequent changes to the relevant law. Our national economic health depends upon it, as manufacturers and workers have suffered serious economic harm without resort to adequate legal mechanisms to counterbalances the impact of Chinese subsidies.

The current policy, that countervailing duties should not be applied to NMEs, was reviewed over 20 years ago in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986). At issue in that case was the now repealed CVD statute,² which provided a mechanism for countervailing duty relief in those cases where a foreign government, directly or indirectly, provided a “bounty or grant” on merchandise manufactured or produced and exported to the United States. In Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. 19,370 (May 7, 1984), Commerce concluded that the statute did not apply to NMEs, as the concept of subsidies had no meaning where there were no markets but rather central economic planning. The Court of International Trade (CIT) reversed Commerce’s determination on appeal, finding instead that the CVD law was meant to be complete and without exception – thus applicable to NMEs. The Federal Circuit reversed the CIT, holding that Commerce’s conclusion that the benefits provided by the Soviet Union and the German Democratic Republic for the export of potash to the United States were not “bounties” or “grants” was not

“unreasonable, not in accordance with the law or an abuse of discretion.” Georgetown Steel, 801 F.2d at 1318. Importantly, the decision merely upheld the agency’s interpretation; it did not find as a matter of law that the statute did not apply to NMEs.

Since Georgetown Steel, there have been significant changes in law and the global economy. In 1994, the U.S. CVD law was amended to be consistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (“SCM Agreement”). Thus, with regard to Subsidies Agreement countries - such as China - U.S. CVD law provides that if:

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy.

See 19 USC § 1671(a).

There is neither a specific exception for China nor a general exception for non-market economies under the law.³ Moreover, the statute broadly defines a countervailable subsidy in terms

² Section 303 of the Tariff Act of 1930, 19 U.S.C. § 1303 (1982), the statute in question in Georgetown Steel, was repealed in 1994 by the Uruguay Round Agreement Act and replaced by the current statute.

³ Indeed, Section 1677-b(c) contemplates the application of CVD law to a non-market economy, setting forth a detailed methodology by which one may ascertain the value of the production of merchandise from such an economy (and thus the amount of the subsidy).

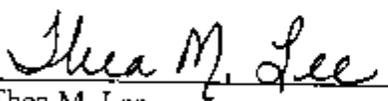
of conferring certain benefits on producers in the foreign country, a less restrictive definition than found in previous law.⁴ Such benefits described may easily result from activities that can be engaged by the governments of both market and non-market economies.

Further, China became a member of the WTO in 2001. The SCM Agreement allows the imposition of CVDs on subsidized imports without regard as to whether the import in question is from an NME country. Indeed, the absence of any distinction between China and other WTO members is made clear by China's Protocol of Accession ("Protocol") to the WTO. In Article 15 of the Protocol, China agreed to subject Chinese-origin goods imported into a WTO member country to CVD remedies. The application of CVD remedies was not premised on China having achieved the status of a market economy country.

One must also consider that China's economy has been in a period of radical transition since the economic reforms adopted in the mid-1980s. The market plays an important role in China's economy, with central planning being far less pervasive in investment, production, and pricing than before. Most importantly, China does subsidize certain merchandise in a manner that fits within the definition of countervailable subsidy under current law. A partial list of those countervailable subsidies is set forth in an annex to the Protocol.

III. Conclusion

For all of the reasons set forth above, Commerce should interpret CVD law to apply to NMEs such as China.


Thea M. Lee,
Director of Policy, AFL-CIO

⁴ 19 U.S.C. 1677(5)(B) defines a subsidy as a case in which an authority— (i) provides a financial contribution, (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or (iii) makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, to a person and a benefit is thereby conferred.