



RETAIL INDUSTRY LEADERS ASSOCIATION
Retail's Future...Educate, Innovate, Advocate

1700 N. Moore Street, Suite 2250, Arlington, VA 22209
Phone: 703-841-2300 Fax: 703-841-1184
Email: info@retail-leaders.org www.retail-leaders.org

January 19, 2007

Susan H. Kuhbach
Senior Office Director - Import Administration
U.S. Department of Commerce, Rm. 1870
14th Street & Pennsylvania Ave., NW
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:

This letter responds to the request by the U.S. Department of Commerce (“Department”) for comment on the applicability of the countervailing duty (“CVD”) law to products originating in the People’s Republic of China. 71 Fed. Reg. 75,507 (Dep’t Comm. 2006). For the reasons set out below, the Retail Industry Leaders Association (RILA) believes the Department should maintain its existing policy of not seeking to apply the CVD law to non-market economy (“NME”) products.

By way of background, RILA is the trade association of the largest and fastest growing companies in the retail industry. Its members include retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales. RILA members operate more than 100,000 stores, manufacturing facilities and distribution centers, have facilities in all 50 states, and provide millions of jobs domestically and worldwide.

RILA’s members have a significant interest in the balanced administration of U.S. import laws, as they depend on imports both of finished consumer products and of production inputs for merchandise that will eventually be sold at retail. RILA’s members pride themselves on strict compliance with all import-related laws, and by the same token are keen to ensure that those laws are fairly and neutrally applied, and not subject to sudden or unwarranted changes that increase their restrictiveness.

As noted in the Department’s request for comment, the current policy of not applying the CVD law to NME products is long-standing and court-approved. RILA does not believe a sound policy basis exists for altering that policy at this time.

First, there are serious practical challenges associated with identifying and measuring subsidies in an economy that has not fully transitioned from central planning. The Department itself has regularly cited these challenges in explaining its policy over the last twenty years, and while perhaps diminished today, those challenges can hardly be said to have disappeared. We agree with the Department’s statements that it cannot identify and calculate NME subsidies with the

Susan H. Kuhbach
January 19, 2007

accuracy and confidence that would be needed to legitimately impose countervailing duties. (We also note that the Department's ability to perform this difficult task might well be greater if it applied standard methodologies, instead of the special NME methodology, in the antidumping context. But the Department, by continuing to look to surrogate countries for data to use in antidumping calculations, has missed the best possible opportunity to gain confidence and expertise in understanding transactions and other economic events in NMEs.)

Second, domestic industries aggrieved by imports from China have several U.S. trade remedies available, including traditional safeguards, a special safeguard for textiles and apparel products, a special China product-specific safeguard, and the antidumping remedy whose special NME elements already tilt the scales sharply in favor of restricting imports. U.S. trade remedy laws already adequately cover the full range of products imported from China.

Third, a remedy for any trade damage attributable to Chinese subsidies already exists at the WTO. Beyond the generally-applicable rules in the WTO Subsidies Agreement, there are several specific subsidy-restricting commitments (most of them reflecting U.S. government demands) in China's WTO accession package. The period since China's WTO accession has seen few complaints with respect to Chinese subsidies and no move to invoke the WTO anti-subsidy remedy. Likewise complaints to the Department have been scarce, seeking to narrow or reverse the policy at issue here. The filing of two CVD complaints in twenty years hardly seems consistent with the notion of a widespread plague of trade injury arising from Chinese subsidies.

Before moving to alter its longstanding policy regarding CVD investigations, the Department should insist on significant evidence of a real problem arising from Chinese subsidies. This evidence should form a major part of the "reasoned explanation" which the Department will be legally obligated to furnish if it does seek to change its policy and the statutory interpretation on which that policy rests. In addition, the Department would need to adopt at the outset strict rules to prevent any possibility of "double-counting" in parallel CVD and antidumping proceedings where the special NME antidumping rules are used. (RILA reserves the right to comment further on this last point depending on how the Department's deliberations proceed.)

* * *

RILA appreciates the opportunity to comment on this important issue of trade law administration. If you have any questions on the foregoing, please contact Allen Thompson, Vice President, Global Supply Chain Policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Thompson", with a long horizontal line extending to the right.

Allen Thompson
Vice President, Global Supply Chain Policy