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March 21, 2011

Docket No. ITA-2011-0002

**VIA FEDERAL E-RULEMAKING PORTAL**

The Honorable Gary F. Locke  
Secretary of Commerce  
Attn: Christopher Mutz, Office of Policy  
Room 1870, Import Administration  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

**Re: Comments on Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor**

Dear Secretary Locke:

On behalf of the Southern Shrimp Alliance (“SSA”), we hereby submit comments as requested by the U.S. Department of Commerce (the “Department”) on the means by which the agency can best capture the cost of labor in its wage rate methodology in antidumping proceedings involving non-market (“NME”) economy countries.<sup>1</sup> SSA supports the Department’s current interim wage rate methodology and further agrees that this methodology can be improved by

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<sup>1</sup> Antidumping Methodologies in Proceedings Involving the Factor of Production: Labor; Request for Comment, 76 Fed. Reg. 9,544 (Feb. 18, 2011) (“Request for Comments”); Antidumping Methodologies in Proceedings Involving the Factor of Production: Labor; Correction to Request for Comment, 76 Fed. Reg. 11,196 (Mar. 1, 2011).

employing alternative data sources for valuing labor “to ensure all labor costs incurred by the NME producer are accounted for in the normal value (‘NV’) calculation.”<sup>2</sup>

Antidumping duty orders are currently in place on certain frozen warmwater shrimp imports from two NME countries – the People’s Republic of China (“China”) and the Socialist Republic of Vietnam (“Vietnam”).<sup>3</sup> In both of these cases, the Department’s methodology for determining surrogate labor rates plays an important role in the calculation of NV. In prior proceedings, the Department’s willingness to entertain alternative methodologies for valuing this factor of production has led to absurd values which vastly understate the cost of labor. For example, in the original investigation of frozen warmwater shrimp from China, the Department recalculated the surrogate labor rate employed in the proceeding following remands from the Court of International Trade: “In its Second Remand Determination, submitted to the court on May 21, 2009, Commerce . . . adopted a new surrogate labor rate of \$0.05 per hour.”<sup>4</sup>

A calculated surrogate value for labor that assumes the total cost of employing a worker to be no more than five cents an hour is, on its face, ridiculous. Five cents an hour implies a cost of labor that would be dwarfed by housing and board costs of either slave or prison labor. There are 8,760 hours in a year (365 days multiplied by 24 hours a day). The surrogate labor rate adopted by the Department on remand of the original investigation assumes that if someone working in the

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<sup>2</sup> Request for Comments, 76 Fed. Reg. at 9,545.

<sup>3</sup> See Certain Frozen Warmwater Shrimp from the People’s Republic of China, 70 Fed. Reg. 5,149 (Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order) and Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 Fed. Reg. 5,152 (Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order).

<sup>4</sup> Allied Pacific Food (Dalian) Co. Ltd. v. United States, 716 F. Supp. 2d 1339, 1342 (Ct. Int’l Trade 2010). The Court ultimately upheld this calculated labor rate. Id. at 1,351.

seafood processing industry in India or China worked every single hour of every single day in one year, they would earn \$438.

If five cents an hour is, in fact, the amount that workers in the seafood processing sector of the Indian and Chinese economy earn, then Americans will need to be made even more aware of the terrible consequences of consuming cheap imported shrimp that has inundated our marketplace. But we doubt that this incredibly low labor value would be claimed by anyone involved with shrimp imports outside the context of the Department's administrative proceedings. Although the exploitation of cheap labor in foreign countries, along with the relative absence of environmental controls and the lack of enforcement of regulatory limitations on the use of harmful antibiotics and fungicides in these countries, provides an important foundation for the expansion of shrimp aquaculture abroad, wage rates that approximate slave labor costs for the entire shrimp processing industries of India and China would appear to perversely exaggerate the extent of the labor cost advantage obtained at the expense of Indian and Chinese workers.

The five cent an hour wage rate, therefore, stands for the danger of allowing parties to cherry-pick information related to this surrogate value to support absurd results in order to forward a litigation position. As described in the Request for Comments, the Department's current interim wage rate acknowledges the limitations of labor rates calculated from limited sources because "wage data from a single surrogate country does not normally constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNI."<sup>5</sup> The five cent an hour wage rate calculated as a surrogate value in the original investigation underscores this observation.

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<sup>5</sup> Request for Comments, 76 Fed. Reg. at 9,545.

The use of an objective and consistent data source involving data from a broad number of countries for valuing labor rates – such as the International Labor Organization (“ILO”) Yearbook of Labor Statistics – presents a far more rational and reasonable tool for establishing a surrogate value. However, under the current interim wage rate methodology, the Department’s use of ILO data reported in Chapter 5B of the Yearbook undercounts the NME producer’s labor costs by failing to incorporate indirect labor costs (*i.e.*, employer expenses for social benefits, pensions and training, etc.).<sup>6</sup> The Request for Comments observes that the Department is proposing relying on labor and wage data that would include indirect labor costs, such as those data reported in Chapter 6A of the ILO’s Yearbook.<sup>7</sup> Because Chapter 6A includes “all costs related to labor including wages, benefits, housing, training, etc.”<sup>8</sup> and this data source is as robust as Chapter 5B with respect to the shrimp processing industry, SSA supports the Department’s proposal.

We are grateful for the opportunity to provide our comments on the Department’s methodology for valuing labor as a factor of production of NME producers and look forward to the agency’s additional efforts to improve the efficacy of our antidumping laws.

Sincerely,



John Williams  
Executive Director

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.