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A-549-822 and A-351-838  
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Administrative Review  
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The Honorable Carlos M. Gutierrez  
Secretary of Commerce  
Attn: Import Administration  
Central Records Unit, Room 1870  
U.S. Department of Commerce  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

Attn: James Maeder, Room 3713  
Import Administration

Re: Antidumping Duty Administrative Review of Certain Frozen Warmwater  
Shrimp from Ecuador, India, Thailand and Brazil: Second Administrative  
Review Period (2006-2007)

Dear Secretary Gutierrez:

On behalf of Domestic Producers<sup>1</sup> in the above-captioned administrative reviews, we hereby submit comments on the selection by the U.S. Department of Commerce (the "Department") of comparison markets in those administrative reviews. As the Department is

<sup>1</sup> Ad Hoc Shrimp Trade Action Committee ("Domestic Producers"). The Committee is a domestic interested party to the proceeding and was the Petitioner in the underlying investigation.

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aware, in several instances during the First Administrative Reviews (“AR 1”) of the orders covering Frozen Warmwater Shrimp from Ecuador, India, Thailand and Brazil, the mandatory respondents did not have viable home markets.<sup>2</sup> It is likely that the Department will be confronted with similar situations in these Second Administrative Reviews (“AR 2”).

In proceedings where record evidence indicates that a respondent’s home market is not viable, the Department bases normal value on prices in a third country if (1) prices in that market are representative; (2) the aggregate quantity (or value) of sales in the third-country markets is five percent or more of the aggregate quantity (or value) of U.S. sales; and (3) no “particular market situation” exists that would prevent appropriate comparisons with U.S. prices.<sup>3</sup>

Where prices in more than one third country market satisfy these requirements, the Department’s regulations require that the agency select an appropriate third country market based on all of the following three criteria: (1) whether the foreign like product exported to a particular third country is more similar to subject merchandise exported to the United States than is the foreign like product exported to other third countries; (2) the volume of sales to the particular third countries under consideration; and (3) other factors the Department considers appropriate.<sup>4</sup> As the Department has recognized in the course of these cases, “{t}he

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<sup>2</sup> Certain Frozen Warmwater Shrimp from Ecuador, 72 Fed. Reg. 10,698, 10,702 (Mar. 9, 2007) (Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review); and Certain Frozen Warmwater Shrimp from India, 72 Fed. Reg. 10,658, 10,663 (Mar. 9, 2007) (Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review).

<sup>3</sup> See 19 U.S.C. § 1677b(a)(1)(B)(ii) (2006).

<sup>4</sup> 19 C.F.R. § 351.404(e) (2006).

Department's practice is to consider all of the criteria under 19 C.F.R. § 351.404(e) when determining the appropriateness of a third-country comparison market."<sup>5</sup>

Thus, the statute, the Department's regulations, and the Department's practice require the agency to consider each of the three criteria identified above. It is not enough to select a third country market merely because a higher volume of sales are made there than other markets. Sales volume is one factor in the agency's determination of the most appropriate comparison market, but it is not the preeminent factor in that determination set out in the regulation. Indeed, the size of the market is not even the first criteria listed, rather the comparability of merchandise is. Moreover, the Department's questionnaire strongly implies that the volume of sales alone is not the principle determinative factor in selecting a third country market, as it requests that respondents identify the three largest third country markets, not simply the largest third country market.<sup>6</sup>

Nevertheless, throughout this proceeding, respondents have routinely failed to provide sufficient information to permit the Department to meaningfully assess each of the criteria set forth in 19 C.F.R. § 351.404(e) consistent with agency practice. As such, it is imperative that the agency obtain the requisite information that will allow it thoroughly to evaluate these criteria as

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<sup>5</sup> See U.S. Department of Commerce Internal Memorandum from the Team through S. Thompson to L. Apple, Case No. A-533-840 at 4 (July 28, 2004) (Public Version) (citing Issues and Decision Memorandum (comment 19c) regarding Canned Pineapple Fruit from Thailand 68 Fed. Reg. 65,247 (Nov. 19, 2003) (Final Results of Antidumping Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke in Part)) (emphasis added).

<sup>6</sup> U.S. Department of Commerce Antidumping Questionnaire (Market Economies) (Administrative Reviews) at A-1 (revised Sept. 21, 2006).

early as possible in the administrative review. The Department should therefore obtain from each and every mandatory respondent detailed information on the comparability of merchandise sold in each of the various potential comparison markets to the merchandise sold in the U.S. market. Only by doing so will the agency be able to accurately determine whether the foreign like product exported to a particular third country is more similar to subject merchandise exported to the United States than is the foreign like product exported to other third countries -- the first criteria listed in § 351.404(e).

For that reason, as soon as it becomes apparent that a respondent's home market is not viable during the period of review ("POR"), the Department should immediately instruct the respondent to supply the total volume of each CONNUM (as defined in the Questionnaire) sold in the U.S. market and the total volume of each CONNUM sold in each of the company's three largest third country export markets. Requiring such information to be submitted would allow the Department in almost every case to fairly quickly, easily and definitively determine the third country market containing sales of merchandise most comparable to that sold in the U.S. market. Alternatively, failure to require such information would in many, if not most, cases prevent the Department from quickly, easily and/or definitively determining the most appropriate comparison market.

There is no reason to believe that it would be particularly burdensome for a respondent to provide this CONNUM-specific sales volume information. Moreover, if a respondent were to claim that it was tremendously burdensome for it to provide this information, then the Department would have to view with great skepticism any statement by the company that it

knew which of its third country markets contained sales of merchandise most comparable to that sold in the U.S. market.

Given the central importance of the selection of the comparison market to each administrative review and the need to proceed with each review as efficiently and expeditiously as possible, the Department should endeavor to both resolve the comparison market selection issue as early as possible in the proceeding, and resolve that matter as accurately and judiciously as possible. Those twin goals can only be served if the Department obtains the market-specific, CONNUM-specific sales volume information discussed above as early as possible in the administrative review. Accordingly, Domestic Producers urge the Department to solicit such information as soon as it becomes apparent that a respondent's home market is not viable during the POR.

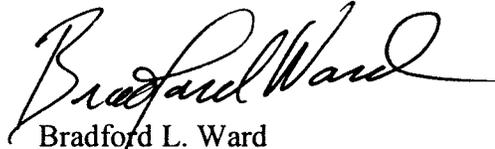
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This submission is being served today as indicated on the attached certificate of service.

Please do not hesitate to contact any of the undersigned should you require clarification of any aspect of this submission.

Respectfully submitted,



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