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PUBLIC DOCUMENT

Hon. David Spooner
Assistant Secretary for Import Administration
US Department of Commerce, Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street NW, Washington, DC, 20230

Re: Request for Comments on Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market –Oriented Enterprise

Dear Mr. Spooner,

I would like to take this opportunity to submit the following comments on antidumping methodologies in proceedings involving certain non-market economies: market-oriented enterprise.

I. UNDER WHAT CONDITIONS SHOULD THE DEPARTMENT GRANT MARKET-ECONOMY TREATMENT TO INDIVIDUAL CHINESE RESPONDENT.

The existing regulation governing the calculation of the normal value for alleged dumped merchandise being imported to the United States originating from the People's Republic of China is commonly treated as products from Non-Market Economy countries. In addition, before applying Factors of Production Methodology, the Department employs an industry-wide test to determine whether it is available to

use the market economy antidumping methodology for the NME industry producing the subject merchandise.

Despite the afore-mentioned methodology, Chinese respondents are seldom granted with market-economy treatment in practice. On November 27, 2006, the Department officially announced the initiation of antidumping and countervailing investigation of Coated Free Sheet paper from the People's Republic of China. The opening of the investigation is commonly considered as a mile-stone case for adopting countervailing measures on a NME country. As stated in its revised preliminary decision: *Although the limits the PRC Government has placed on the role of market forces are not consistent with recognition of China as a market economy under the US antidumping law, the evolution in China's economy nevertheless has led the Department to conclude that it is possible to determined whether the state has bestowed a benefit upon a Chinese producer.*

In addition it is further noticed that a Non-Market Economy is considered to be any foreign country that the Department determines does not operate on market principles of cost and pricing structures. (Section 771 (18)(B) of the Act), so it is presumable that if a country is treated as NME, its prices and costs are distorted by government intervention and control, and thus the Department will determine the normal value by valuing the respondent's factors of production "based on the best available information regarding the values of such factors in market economy country or countries". Such practice is intended to calculate the dumping margin as accurately as possible.

However, Department's decision that the state can bestowed a benefit to a Chinese firm seems to contradict with the recognition that in NME countries the prices and costs are distorted and the adoption of FOP methodology, in particular under the situation of non-prohibited subsidies.

Further more, the decision in the *Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484 (April 9, 2007) together with the *Georgetown Steel Memorandum* suggests that the Department's past practice of refusing to grant China's ME status and MOI treatment no longer consist with present-day economy development and is contradicting with the Department's practice of countervailing analysis.

With the reasoning above, we believe that the Department either recognize China as a Market Economy, or grant Market-Oriented Industry treatment to Chinese firms automatically. With regard to the latter proposition, we propose that a Chinese firm shall be recognized automatically receive MOI treatment, unless there is evidence demonstrating otherwise.

II. SPECIFIC CRITERIA FOR GRANTING CHINA MARKET-ECONOMY TREATMENT

As stated above, both the present-day economy and the Department's newly adopt practice demonstrate that China shall be granted with ME status or MOI treatment. We further note that there might be cases where certain industries in China are not fully operating under the market situation, however, we believe those industries shall be identified through transparent, fair and predictable procedure.

It is the Department's long-standing practice to adhere to the following criteria to identify industries that are market-oriented. Those criteria include: (1) that there be virtually no government involvement in production or prices for the industry; (2) that the industry be marked by private or collective ownership that behaves in a manner consistent with market considerations; and (3) that producers be found to pay market-determined prices for all major inputs, and for all but an insignificant proportion of minor inputs. See Section 773 (C)(1)(B).

We would suggest that under the new regulation, the burden of proof shall be imposed on the party of the opposing party. They will need to demonstrate that: (1) that there be virtually substantial government involvement in production or prices for the industry; (2) that the industry be marked by private or collective ownership that behaves in a manner that is insignificantly inconsistent with market considerations; and (3) that producers be found to have distorted cost and prices under significant government control; (4) such evidence shall be sufficient and positive. Therefore, mere allegation shall not be deemed suffice the requirement.

The justification for this proposal is that as a general principle, China shall be treated as ME countries, or granted with MOR treatment, if any opposing party claim that particular industry does not suffice the market conditions, it shall be obliged to provide concrete and positive evidence supporting its claims. Such allegation shall not based on merely allegation or assertion, it should be able to demonstrate that the industry concerned is operation under significant government control which substantially distort the costs and prices of the industry.

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We appreciate your consideration of these comments. We are transmitting those documents as instructed by the Department. Please contact the undersigned if you have any questions regarding the submission.

Respectfully submitted,

Yao Feng

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