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June 25, 2007

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

**STAMP AND RETURN**

**Subject: Response to Request for Comments Concerning Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise (72 Fed. Reg. 29302, May 25, 2007)**

Dear Mr. Spooner:

On behalf of the Chutex Group (Chutex), we hereby respond to the Department of Commerce's request for public comments on the proposed application of market-economy treatment to individual respondents in antidumping proceedings involving the People's Republic of China (China).<sup>1</sup> This response is filed within the thirty-day period established in the request for comments.

Chutex has a strong interest in the treatment of producers in countries considered by the United States to be non-market economies. The Chutex Group is a knit apparel company which has established manufacturing facilities in China and in Vietnam (as well as Singapore and Malaysia) to serve its U.S. customer base.<sup>2</sup>

Chutex operates its business on market-based principles. In dealing with U.S. buyers, prices are negotiated between Chutex – acting as the exporter and/or manufacturer – and the U.S. buyer. The price offered to the U.S. buyer may vary by the manufacturing location, based upon the different costs involved, including different labor costs and different transportation costs. Chutex sets the labor rates for its workforces based upon the local labor market. In Southern China and in Vietnam, demand for qualified labor often exceeds availability, and Chutex must compete for labor by offering better wages and benefits. As a consequence, Chutex is particularly qualified to address the issues raised by the Department in its request for comments on market-oriented enterprises.

<sup>1</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Market-Oriented Enterprise*, 72 Fed. Reg. 29302 (Dep't Commerce May 25, 2007) (request for comments).

<sup>2</sup> The Chutex Group includes Chin Heng Garments Fty Pte. Ltd. in Singapore, Chutex Enterprises (Kunshan) Co. Ltd. in China, Chutex International Company Ltd. in Vietnam, and Fesyen Melati Sdn. Bhd in Malaysia.

## **I. Whether Commerce Should Grant Market-Economy Treatment to Individual Respondents in Antidumping Proceedings Involving Non-Market Economies**

Chutex strongly supports the Department's efforts to adjust its antidumping methodologies to better reflect the economic realities of modern non-market economies. Although the Department has focused its inquiry on China, as discussed below, adjustment of antidumping methodologies with respect to both China and Vietnam is warranted.

"The China of today is not the China of years ago."<sup>3</sup> As the Department recently noted in its countervailing duty investigation of *Coated Free Sheet Paper from the People's Republic of China*, "private industry now dominates many sectors of the Chinese economy, and . . . [m]any business entities in present-day China are generally free to direct most aspects of their operations . . ."<sup>4</sup> The evolution of China's economy toward market-based principles has been driven, in large part, by China's export-oriented industries. "[T]he PRC Government has dismantled its monopoly over foreign trade" and, in its place, entrepreneurship has flourished.<sup>5</sup> More than 200,000 firms now have the right to import and export from China.<sup>6</sup> These firms (and their major suppliers) are internationally competitive, as demonstrated by the influx of foreign direct investment (FDI) that has accompanied the liberalization of China's markets.<sup>7</sup> Moreover, while such FIEs are important to China's burgeoning industries, they face very real competition from Chinese firms which have embraced market-oriented business practices.<sup>8</sup>

Like China, significant market-oriented change has taken place within Vietnam. Foreign investment has expanded dramatically in Vietnam, which has become an important trading

<sup>3</sup> *Commerce Applies Anti-Subsidy Law to China* (Dep't Commerce Mar. 30, 2007), available at [http://www.commerce.gov/opa/press/Secretary\\_Gutierrez/2007\\_Releases/March/30\\_Gutierrez\\_China\\_Antisubsidy\\_law\\_application\\_rls.html](http://www.commerce.gov/opa/press/Secretary_Gutierrez/2007_Releases/March/30_Gutierrez_China_Antisubsidy_law_application_rls.html).

<sup>4</sup> *Countervailing Duty Investigation of Coated Free Sheet ("CFS") Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy*, C-570-907 (Dep't Commerce Mar. 29, 2007), at 10.

<sup>5</sup> *Id.* at 7; see also *Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") – China's status as a non-market economy ("NME")*, A-570-901 (Dep't Commerce Aug. 30, 2006) at 46 ("The government has made a decision, however, to recede from direct state control over certain parts of the economy (particularly across much of export-oriented manufacturing) . . .").

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., *Foreign Investment in China*, U.S.-China Business Council, Feb. 2007 ("In 2006, China maintained its position as one of the world's top destinations for [FDI]. [FIEs] play a large role in China's economy, accounting for 27 percent of value-added production, 4.1 percent of national tax revenue, and more than 58 percent of foreign trade."), available at <http://www.uschina.org/info/forecast/2007/foreign-investment.html>.

<sup>8</sup> See *Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") – China's status as a non-market economy ("NME")* at 33 ("Even in the export market, where most FDI is still concentrated, FIEs compete with domestic private firms in various sectors . . . These sectors in China are able to reap the efficiency gains of greater competition, international practices, and foreign technical expertise.") (footnote omitted).

partner with the United States.<sup>9</sup> The foreign enterprises engaging in this investment activity, including Chutex, have expanded operations to Vietnam, injecting both funds and market-oriented principles into the Vietnamese economy.<sup>10</sup> Indeed, as early as 2002, the Department itself made the following observations concerning the Vietnamese economy:

The Department is cognizant of the positive changes, both in law and on the ground, that Vietnam has experienced over the past 15 years. The Government of Vietnam has undertaken significant market reforms in its *doi moi* initiative and passed legislation to promote the market-based development of its economy. Wage rates are largely market-based. The government has also encouraged the development of small- and medium-sized enterprises through legal reforms that have led recently to the impressive growth of the private commercial (non-farm) business sector.<sup>11</sup>

This finding, made in the context of the Department's evaluation of Vietnam's eligibility for graduation from non-market economy status, belies the Department's assertion in the request for comments that it "has only examined China's economy on a country-wide basis."<sup>12</sup> Since 2002, the Department has reviewed the Vietnamese economy on an annual basis, through the lens of individual Vietnamese respondents in the context of two ongoing antidumping proceedings.<sup>13</sup> As a result of these proceedings, we submit that the Department has collected the information necessary to determine that market-economy treatment for individual Vietnamese respondents, in addition to Chinese respondents, is warranted. Chutex therefore respectfully submits that the

<sup>9</sup> See, e.g., Vietnam's Leader Wants U.S. Visit to Be All Business, *The New York Times*, June 14, 2007 ("The United States is Vietnam's largest trading partner, with an increasing two-way trade that rose to \$7.8 billion in 2005, from \$1.5 billion in 2001, according to Vietnamese government figures."); Vietnam's foreign investment surges in first quarter, *People's Daily Online*, Mar. 23, 2007 ("Vietnam is estimated to entice over 2.5 billion U.S. dollars in foreign direct investment (FDI) in the first three months of this year, a year-on-year rise of 22 percent . . .").

<sup>10</sup> See, e.g., Hunger for Vietnam bonds despite market worries, *Yahoo Asia*, June 12, 2007, ("Foreign direct investment commitments rose to a record \$10 billion in 2006, a significant amount considering Vietnam's gross domestic product of around \$60 billion and per capita income at just \$720 a year."); Foreign direct investment in Vietnam on pace to hit record for year, *International Herald Tribune*, Nov. 27, 2006 ("As of Nov. 20, overseas companies have agreed to invest US\$8.27 billion in Vietnam, set to open up its economy after it joins the World Trade Organization next month. That's up 47.4 percent from the same period last year, thanks to major projects like Intel's US\$1 billion chip plant in Ho Chi Minh City.").

<sup>11</sup> *Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam – Determination of Market Economy Status*, A-552-801 (Dep't Commerce 2002) at 42, available at <http://www.ia.ita.doc.gov/download/vietnam-nme-status/vietnam-market-status-determination.pdf>.

<sup>12</sup> *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Market-Oriented Enterprise*, 72 Fed. Reg. at 29303.

<sup>13</sup> See *Certain Frozen Fish Fillets*, 68 Fed. Reg. 37116 (Dep't Commerce June 23, 2003) (final determination of sales at less than fair value); *Certain Frozen and Canned Warmwater Shrimp*, 69 Fed. Reg. 71005 (Dep't Commerce Dec. 8, 2004) (final determination of sales at less than fair value).

Department should adjust its antidumping methodologies to reflect the profound changes in both China and Vietnam's economies which have already been acknowledged by the Department.

Although the Department has already attempted to account for aspects of China and Vietnam's newfound market-orientation in certain of its methodologies, such as the "33 percent rule" for market economy inputs,<sup>14</sup> these methodological changes have not gone far enough in recognizing the true nature of modern Chinese and Vietnamese companies as market actors. Indeed, the "33 percent rule" is applied as an exception to the Department's baseline treatment of such companies as *non-market* actors, as signified by the use of surrogate values in place of these companies' actual costs when calculating dumping margins.<sup>15</sup> As discussed above, such a premise is directly contrary to the reality of most export-oriented firms in China and Vietnamese. Even though, in the Department's view, China and Vietnam may not operate a perfectly *laissez-faire* economy such that graduation from non-market economy status is currently warranted,<sup>16</sup> "private enterprise can flourish" nonetheless.<sup>17</sup> The Department should recognize – and thereby encourage – these market-oriented entrepreneurs by affording them market economy treatment in the first instance. Just as these companies now face market economy forces in their day-to-day business, they should be subject to corresponding market economy treatment in the Department's proceedings.

When applied to appropriate companies (as identified by application of the criteria discussed below), such treatment would result in more accurate dumping calculations and thus assist the Department in achieving important enforcement goals. The Department has a well-recognized duty to ensure that dumping margins are calculated as accurately as possible,<sup>18</sup> and this duty is intended to apply "with equal force to imports from a [non-market economy]."<sup>19</sup> By applying market economy treatment to appropriate companies in China and Vietnam, the Department would be able to use these companies' actual prices and costs in calculating dumping margins. As such, the Department would avoid the "process of constructing foreign market value for a producer in a non-market economy country" which is widely recognized as

<sup>14</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 Fed. Reg. 61716 (Dep't Commerce Oct. 19, 2006) (instituting rebuttable presumption that market economy input prices are best available information for valuing an entire input when the total volume of the input purchased from all market economy sources during the period of investigation/review exceeds 33 percent of the total volume of the input purchased from all sources during the period).

<sup>15</sup> See 19 U.S.C. § 1677b(c) (requiring the Department to calculate the normal value of merchandise from a non-market economy by valuing its factors of production using surrogate values obtained from a market economy).

<sup>16</sup> See *Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") – China's status as a non-market economy ("NME")* at 82.

<sup>17</sup> *Id.* at 81.

<sup>18</sup> See, e.g., *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185, 1190 (Fed. Cir. 1993); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

<sup>19</sup> *Dorbest Ltd. v. United States*, Slip Op. 6-160 at 11 (Ct. Int'l Trade Oct. 31, 2006).

“difficult and necessarily imprecise.”<sup>20</sup> This would result in more accurate determinations of dumping margins by the Department.

Further, if the Department were to use the actual prices and costs of appropriate companies operating in China and/or Vietnam, these companies, including Chutex, would be in a better position to adjust their prices to avoid dumping in the U.S. market. It is currently very difficult to predict how the Department will value the factors of production in an investigation or review, given vagaries in the availability of surrogate value data available across multiple time periods. This uncertainty makes it virtually impossible for companies like Chutex, operating in non-market economy countries, to be sure that they have established pricing policies compliant with U.S. antidumping law. Simply put, market-oriented companies like Chutex which would otherwise seek to fairly trade their goods with the United States are currently unable to identify the necessary pricing adjustments to do so. By injecting greater predictability in its calculations of these companies’ dumping margins, the Department may in fact be able to reduce the overall incidence of dumped Chinese and Vietnamese imports in the U.S. market, to the benefit of domestic industries.

Application of market-economy treatment to appropriate companies would also enable the Department to better address the problem of double counting which may result from simultaneous antidumping and countervailing duty investigations of Chinese or Vietnamese imports. The Department has recognized that this is a problem which may arise now that U.S. countervailing duty law is being applied to imports from non-market economies, such as China and Vietnam.<sup>21</sup> Whether the use of surrogate values in non-market economy investigations necessarily captures and compensates for government subsidies remains an open question in the view of the Department and many commentators.<sup>22</sup> What is certain is that the Department is

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<sup>20</sup> *Shakeproof Assembly Components Div. of Ill. Tool Works v. United States*, 268 F.3d 1376, 1381 (Fed. Cir. 2001).

<sup>21</sup> See *Commerce Applies Anti-Subsidy Law to China* (Dep’t Commerce Mar. 30, 2007), available at [http://www.commerce.gov/opa/press/Secretary\\_Gutierrez/2007\\_Releases/March/30\\_Gutierrez\\_China\\_Anti-subsidy\\_law\\_application\\_rls.html](http://www.commerce.gov/opa/press/Secretary_Gutierrez/2007_Releases/March/30_Gutierrez_China_Anti-subsidy_law_application_rls.html) (“Since the possibility of double counting resulting from simultaneous anti-dumping and countervailing duty investigations is dependent on the specific facts arising in such investigations, to the extent that the parties to these proceedings provide evidence on the record of these investigations, Commerce will have to respond to these concerns in the course of our investigations.”)

<sup>22</sup> See, e.g., *Coated Free Sheet Paper from the People’s Republic of China*, 72 Fed. Reg. 30758, 30760 (Dep’t Commerce June 4, 2007) (preliminary determination of sales at less than fair value) (“We further note that the question of whether a double remedy has been or could be applied, or whether the Department has the authority to adjust for such a situation, involves complex factual, methodological and legal issues that will require additional time to analyze.”); *U.S. China Trade: Eliminating Nonmarket Economy Methodology Would Lower Antidumping Duties for Some Chinese Companies*, GAO-06-231 (GAO Jan. 2006) at 18 (“When an antidumping duty is calculated using the third-country-based methodology that Commerce applies to NME countries, the normal value of the product (the basis for calculating an antidumping duty) is based not on Chinese prices (which might be artificially low as a result of domestic subsidies) but on information from a country where prices are determined by free markets. Thus, when the normal value is compared with the export price, the difference will, at least in theory, reflect the price advantages that the exporting company has obtained from both export and domestic subsidies.”).

generally able to avoid double counting when dumping margins are calculated using the actual prices and costs of respondents from market economies. To the extent that the Department is also able to use the actual prices and costs of appropriate respondents from non-market economies, like China and Vietnam, the Department will be able to avoid double counting and the litigation (both domestic and international) that will almost certainly be engendered by this factually and legally complex issue.

## **II. How a Market-Oriented Enterprise or Limited Market-Oriented Enterprise Should Be Identified**

Chutex respectfully submits that the Department should identify companies appropriate for market economy treatment, or market-oriented enterprises (MOEs), by reference to clearly defined, objective criteria which may be realistically met by companies that have embraced market principles.

As noted in the request for comments, the Department currently employs an industry-wide, rather than enterprise-specific, test to determine whether market economy treatment may be afforded to companies under investigation. This market-oriented industry (MOI) test focuses on three criteria, related to: (1) government involvement in production or prices, (2) private or collective ownership of companies and (3) frequency of payment of market-determined prices for inputs used in the production of the subject merchandise (significant and insignificant).<sup>23</sup> Although the MOI test features clearly defined, objective criteria, its extremely "high standard" has rendered the test ineffectual.<sup>24</sup> As a practical matter, industries in non-market economies, such as China and Vietnam have faced the greatest difficulties in satisfying the test's third-prong, *i.e.*, proving that virtually all prices for local inputs were unaffected by government intervention. Despite the profound economic changes in China and Vietnam, no industry has met the MOI standard in the fifteen years since this test was introduced by the Department.<sup>25</sup>

Any new MOE test developed by the Department must be constructed in such a way as to avoid the problems which have plagued application of the MOI test. To that end, and as requested by the Department, suggested criteria for identifying MOEs are provided below. However, we respectfully submit that these same criteria may instead be worked into a revised form of the MOI test. If applied in a more practical manner, we believe that the MOI test may still enable the Department to appropriately reflect the economic realities of modern China and Vietnam but with greater efficiency than an individually-applied MOE test.

<sup>23</sup> See *Certain Color Television Receivers from the People's Republic of China*, 69 Fed. Reg. 20594, 20595 (Dep't Commerce Apr. 16, 2004) (final determination of sales at less than fair value).

<sup>24</sup> *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Market-Oriented Enterprise*, 72 Fed. Reg. at 29303.

<sup>25</sup> See *id.*

One criterion which the Department should consider in identifying an MOE is the extent to which a company makes decisions regarding prices, output, sales and investment in response to market signals and without significant government interference. The Department is already well-versed in evaluating this criterion, as it parallels much of the inquiry made by the Department in its current test for separate rates eligibility.<sup>26</sup> The relevance of this criterion to both the separate rates and MOE tests is manifest: independent decision-making is a hallmark of the private sector. The Department could request that companies provide documentation establishing their independence, including a company's articles of incorporation limiting the possibility of government influence over business decisions. Other documentation could include evidence of a company's ties to foreign business partners, such as distribution agreements with major multi-national companies. A Chinese or Vietnamese company that regularly does business with such entities, which typically have their own rigorous evaluation system for suppliers, is likely to be operating under market conditions. Moreover, the Department could employ a presumption that FIEs satisfy this criterion of the MOE test, under the rationale that international investors would not invest in a company lacking sufficient safeguards from government intervention in decisions affecting profitability.

A second criterion which the Department could also consider in an MOE test is whether a company has one clear set of basic accounting records that are independently audited in accordance with international accounting standards (IAS) and that are used by the company for all relevant purposes. Adherence to IAS, such as the proper recording of assets and liabilities, reflects a company's awareness of the need to manage to the bottom line. Orderly and consistent accounts are indicative of a company that is responsive to its shareholders' profit-maximizing concerns. They also demonstrate a company's integration in the market-driven international business community, particularly if internationally-recognized accounting firms are used as auditors. In addition, a company's responsiveness to auditor's comments and reservations further reflects a commitment to conducting business in a reliable and consistent manner.

The Department may also consider a third criterion for identifying an MOE: adherence to regularized depreciation and payment systems. Companies which employ inadequate depreciation of assets or which tolerate barter or significant arrearages in their business transactions typically do not operate in accordance with market principles. Indeed, this is a factor regularly considered by the Department on a macroeconomic level when considering

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<sup>26</sup> See Policy Bulletin 05.1: *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries* (Dep't Commerce Apr. 5, 2005) at 2 (noting that, with respect to a company's *de facto* independence from government control, the Department considers (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the company has authority to negotiate and sign contracts and other agreements; (3) whether the company has autonomy from the central, provincial and local governments in making decisions regarding the selection of its management; and (4) whether the company retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses).

whether to graduate a country from non-market economy status.<sup>27</sup> To the extent that a company has shed these indicia of non-market operations, it should be considered an MOE by the Department.

In addition, the Department may consider as a fourth criterion a company's ability to set the wage rates for its employees and freely hire or discharge employees. Labor is a major aspect of production for many industries and freely determined wages validate that a company is subject to prices and costs generated by market forces. Here again, the Department already considers this factor on a macroeconomic level when assessing a country's overall progression toward market economy status.<sup>28</sup> This analysis is equally applicable on a company-specific basis and may be considered indicative of whether a company is operating as an MOE.

### **III. How Antidumping Calculations Should Be Revised to Accommodate Recognition of Market-Oriented Enterprises or Limited Market-Oriented Enterprises**

Chutex respectfully submits that the Department should adjust its antidumping calculations with respect to MOEs by using these companies' actual prices and costs instead of surrogate values.

The Department is permitted to resort to surrogate values in antidumping calculations only when "available information does not permit the normal value of the subject merchandise to be determined" by reference to a company's actual prices and costs.<sup>29</sup> As discussed above, the normal value of merchandise produced or exported by MOEs would be susceptible to Commerce's standard calculation methodology because these companies operate in accordance with market principles, notwithstanding their non-market economy origins.

Nonetheless, we recognize that the Department has observed the residual influence of non-market economy policies on non-material inputs which are linked to the "broader operating economic environment" in China and Vietnam, such as capital, energy and depreciation of real property.<sup>30</sup> To the extent that the Department is able to obtain substantial evidence in a given

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<sup>27</sup> See, e.g., *Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law*, A-821-816 (Dep't Commerce June 6, 2002), available at <http://ia.ita.doc.gov/download/russia-nme-status/russia-nme-decision-final.htm>; *Decision Memorandum Regarding Ukraine's Status as a Non-Market Economy Country for Purposes of the Antidumping Duty Law Under a Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine*, A-823-812 (Dep't Commerce Feb. 16, 2006), available at <http://ia.ita.doc.gov/download/ukraine-nme-status/ukraine-nme-final-02-17-2006.pdf>.

<sup>28</sup> See 19 U.S.C. § 1677(18)(B)(ii).

<sup>29</sup> 19 U.S.C. § 1677b(c)(1)(B).

<sup>30</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Market-Oriented Enterprise* 72 Fed. Reg. at 29303.



investigation or review demonstrating that a particular respondent's access to these non-material inputs has been gained under non-market conditions, then the Department may consider modifying its approach to antidumping calculations by adjusting the actual prices and costs reported for these inputs.

For example, with respect to capital, the Department may consider applying an expanded version of its "33 percent rule." That is, if a company obtains a significant portion of its loans and credit from market economy or otherwise market-determined sources (*i.e.*, other MOEs), then the Department could accept that company's reported capital charges. The Department has already employed the "33 percent rule" as an antidumping methodology in investigations and reviews involving non-market economies and, thus, this rule seems particularly adaptable to the MOE context.

With respect to energy or depreciation of real property, the Department may consider applying an inflator to reported costs or depreciation values which are found to be distorted by government intervention. In the past, the Department has recognized that even market economies may feature certain unusual distortions provoked by government intervention,<sup>31</sup> such that adjustments are required to the Department's standard methodologies on an exceedingly exceptional basis. The Department has specifically noted that adjustments (typically inflators) may be needed with respect to the energy costs reported by companies from countries just emerging from state planning and control – a close analogy to the economic conditions experienced by MOEs.<sup>32</sup> For example, with respect to the energy costs reported by companies from the Russian Federation, the Department expressly found that "adjustments [were] permissible" when called for by the unusual facts of an investigation or review.<sup>33</sup> The Department noted that limited adjustments would be appropriate "when evidence of continuing significant distortions at the macroeconomic level is accompanied by sufficient evidence or

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<sup>31</sup> See, e.g., *Hynix Semiconductor Inc. v. United States*, 425 F. Supp. 2d 1287, 1308 (2006) (holding that Commerce reasonably rejected as benchmarks private loans with terms affected by government involvement with borrower); *Allegheny Ludlum Corp. v. United States*, 358 F. Supp. 2d 1334, 1338 (2005) (noting that presumption of subsidy extinguishment which accompanies sale of government-owned company for fair market value may be rebutted upon showing of distortive government intervention in broader market); *Al Tech Specialty Steel Corp. v. United States*, Slip Op. 04-114 at 26-27 (Sept. 8, 2004) (noting that, if proven, government manipulation would render a real estate appraisal an unreliable measure of market conditions).

<sup>32</sup> See, e.g., *Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the U.S. Antidumping Law* (noting that "energy is of such significance to the Russian economy that continuation of the Russian government's current energy price regulatory policies may warrant careful consideration of energy price data in future trade remedy cases"); *Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 68 Fed. Reg. 3859, 3861 (Dep't Commerce Jan. 27, 2003) (notice of suspension of antidumping duty investigation) ("Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barter, as well as items that are not recognized by the Russian Accounting System.")

<sup>33</sup> *Magnesium Metal from the Russian Federation*, 70 Fed. Reg. 9041, 9043 (Dep't Commerce Feb. 24, 2005) (final determination of sales at less than fair value).

analysis with respect to the impact of such distortions on . . . prices paid by respondent firms.”<sup>34</sup> That is, where the Department has observed specific, aberrational distortions in a market economy respondent’s reported prices or costs for energy, the Department has indicated its willingness to adjust those prices or costs for purposes of its antidumping calculations. Importantly, the Department has not suggested resorting to use of surrogate values in the face of unusual aberrations from market economy conditions. To the extent necessary, the Department should adopt a similar approach for those prices and costs for non-material inputs reported by MOEs which are demonstrably distorted by non-market economy market conditions.

Chutex believes that the Department should otherwise accept the prices and costs reported by MOEs for material inputs (*i.e.*, raw materials), consistent with the Department’s recognition that these companies operate in accordance with market principles. As discussed above, much of China and Vietnam’s private industry now has substantial contacts with the international business community, such that these companies obtain important inputs from third-country sources, such as Taiwan or South Korea. Further, companies like Chutex demand – and obtain – the same market-determined treatment even from non-market economy suppliers which are likewise independent of government control and operate in accordance with market principles. (For example, Chutex purchases Chinese-made fabrics to produce garments in either China or Vietnam, and such transactions are market-based. In many instances, the fabric purchase is through a Hong Kong vendor, paid for in Hong Kong dollars.) The Department’s MOE methodology should recognize this operating reality of modern Chinese and Vietnamese companies.

Regardless of any adjustments made to the antidumping calculations for MOEs, the Department should maintain its current use of separate rates for non-MOE respondents in non-market economy countries.<sup>35</sup> Although companies like Chutex operate in accordance with market principles, there may be others that have not yet fully made the transition to MOE status. Yet, these companies may have made initial steps toward market-orientation, namely by establishing their independence from the Chinese or Vietnamese government. These companies should continue to benefit from rates separate from the country-wide non-market economy rate.

Finally, as with the Department’s current separate rates practice, the Department should presume that companies found to be MOEs in past investigations or reviews maintain that status in all subsequent proceedings so long as the companies provide appropriate certification which is not contradicted by substantial evidence placed on the record. This approach would substantially reduce the administrative burden to the Department with respect to administrative reviews of merchandise from non-market economy countries, like China and Vietnam.

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<sup>34</sup> *Id.*

<sup>35</sup> See generally Policy Bulletin 05.1: *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries.*

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**Conclusion**

Chutex appreciates the opportunity to provide comments concerning the application of market-economy treatment to individual respondents in antidumping proceedings involving China and Vietnam.

Sincerely,



Brenda A. Jacobs  
On behalf of Chutex Group