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December 10, 2007

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Mr. David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
14th Street and Constitution Ave., N.W.
Washington, DC 20230

Subject: Response to Request for Comments Concerning Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprises (72 Fed. Reg. 60649 Oct. 25, 2007)

Dear Mr. Spooner:

On behalf of the Chutex Group (Chutex),[1] we hereby respond to the request by the Department of Commerce (the Department) for further public comments concerning the proposed application of market-economy treatment to individual respondents in antidumping proceedings involving the People's Republic of China (China).[2] This response is filed by the revised due date established by the Department.

In its request, the Department identified two topics of specific interest concerning the market-oriented enterprise (MOE) test previously proposed[3] as a mechanism to afford market-economy treatment to individual Chinese respondents. These topics, which are addressed separately below, are (1) the legal basis for instituting the MOE test and (2) the administrative feasibility of applying the MOE test.

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[1] The Chutex Group, based in Singapore, 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.

[2] *See Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprises*, 72 Fed. Reg. 60649 (Dep't Commerce Oct. 25, 2007) (request for comments).

[3] *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). Chutex Group filed comments in response to the original request.

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Issue One: Legal Basis for Adopting the MOE Test

Based upon a review of the statute and its legislative history, the Department clearly has the legal authority to adopt the MOE test for antidumping proceedings involving an NME country, such as China.

A. The Statute Provides Ample Discretion to Adopt the MOE Methodology

While the antidumping statute does not specifically dictate use of the MOE test, the statute nonetheless provides the Department with ample discretion to adopt this new methodology. Under the statute, the Department typically must calculate the "normal value" of subject merchandise using the price at which that merchandise (the "foreign like product") is sold in its home market or a third country.[4] The statute permits the Department to deviate from this approach in a proceeding involving a non-market economy (NME), such as China, and to calculate normal value on the basis of factors of production calculated using surrogate values.[5] However, such deviation is permissible only under very limited circumstances. To justify use of an alternative (*i.e.*, NME) methodology, the Department must make *two* distinct findings, i.e., that:

> (A) the subject merchandise is exported from a nonmarket economy country, *and*
>
> (B) . . . available information does not permit the normal value of the subject merchandise to be determined under [the standard, market economy methodology for calculating normal value based on actual price, cost and sales data] . . . .[6]

As this statutory language makes clear, the mere fact that an antidumping proceeding involves an NME is insufficient reason for the Department to deviate from the standard methodology for calculating normal value. Rather, the Department must also consider whether "available information" permits use of the standard methodology notwithstanding the NME status of respondents.

In other words, this two-step statutory analysis anticipates that the Department may find it appropriate to use its standard methodology for calculating normal value even in proceedings involving an NME country. Indeed, where the Department finds that "available information" permits use of the standard methodology, the Department is *statutorily obligated* to do so. Contrary to the suggestion of some commentators, this obligation is not somehow undermined by the definition of the term "nonmarket economy country" found elsewhere in the antidumping

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4 *See* 19 U.S.C. § 1677b(a)(1)(B).

5 *See id.* § 1677b(c)(1)-(2).

6 *Id.* § 1677b(c)(1) (emphasis added).

statute.[7] This definition is the touchstone of the first step of the statutory analysis described above. If involvement of an NME country in an antidumping proceeding were alone sufficient to justify use of an alternative methodology for calculating normal value, there would be no need for the Department to proceed to the second statutory step of analyzing "available information." Read *in pari materia*,[8] the antidumping statute clearly permits the Department to apply its standard methodology for calculating normal value (*i.e.*, by reference to a respondent's price, cost and sales data) to proceedings involving an NME country where warranted.

To that end, the proposed MOE test represents a means by which the Department may identify those proceedings where use of the standard normal value methodology is in fact warranted, notwithstanding the involvement of an NME country. We understand that this test will involve an analysis by the Department of an individual respondent's business to determine whether it is sufficiently driven by market forces such that the respondent's price, cost and sales data may be used in calculating normal value. This analysis of "available information" is perfectly in keeping with the Department's statutory mandate to apply an alternative NME methodology for calculating normal value only when strictly necessary.

B. The Legislative History of the Statute Supports Adoption of an MOE Test

Second, the legislative history of the antidumping statute supports the Department's adoption of a test that will permit application of the standard normal value methodology to NME respondents. Specifically, the legislative history of the Omnibus Trade and Competitiveness Act of 1988, which amended the antidumping statute, provides:

> [T]he bill does not prohibit [the Department] from using its normal methodology for determining foreign market value in cases regarding non-market economy countries. If information submitted by a non-market economy country to the Department permits foreign market value to be determined accurately using the

[7] *See id.* § 1677(18)(A) ("The term 'nonmarket economy country' means any foreign country that the [Department] determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise."). As noted below, subsection (B) of this statutory provision describes the specific factors to be considered when determining the NME status of a country, such as the extent of government control over the allocation of resources. See id. § 1677(18)(B). These factors may be therefore understood as included within the statutory definition of the term "nonmarket economy country."

[8] *See Ambassador Div. of Florsheim Shoe v. United States*, 748 F.2d 1560, 1565 (Fed. Cir. 1984) (noting that "a legislative intent to have [different statutory sections] work harmoniously together, and for neither to frustrate the other, or partially repeal it, is very much to be inferred").

> normal methodology, then the committee expects such methodology to be used by the [Department].[9]

This legislative history belies the suggestion of several commentators that Congress did not intend to allow exceptions from NME treatment for individual respondents. Congress did in fact envision that individual respondents from NME countries could be amenable to the Department's standard normal value methodology under certain circumstances. As such, the proposed MOE test does not represent a radical departure from congressional intent or creation of special trade law treatment for Chinese companies. Rather, adoption of the MOE test would assist the Department in fulfilling its statutory mandate, as further elucidated by the relevant legislative history.

C. The Department's Regulations and Practice Support Adoption of an MOE Test

Third, the Department's regulations and practices related to antidumping proceedings involving NME countries further support adoption of the proposed MOE test. Like the antidumping statute, the Department's regulations do not expressly require adoption of this test or use of the standard methodology for calculating the normal value of subject merchandise from an NME country. However, the Department's regulations also do not mandate use of the alternative methodology for calculating normal value in all proceedings involving NME countries. Recognizing that such a bright line rule would run afoul of the Department's more limited statutory mandate, the regulations simply provide that the Department will "normally" use the alternative NME methodology.[10] This permissive terminology allows for use of the standard methodology for calculating normal value of subject merchandise from an NME country, where appropriate.

Other practices adopted by the Department reinforce the principle that the Department may deviate from its alternative NME methodology where warranted. For example, the Department will "normally" use publicly available information to value factors of production in calculating the normal value of merchandise from an NME country.[11] However, where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Department will instead "normally" use the price paid by the NME respondent to the market economy supplier.[12] In other words, the Department's regulations already waive strict application of the alternative NME methodology under certain circumstances.

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[9] S. Rep. No. 100-71, 100th Cong., 1st Sess., 108 (1987); *see also* Conf. Report No. 100-576, 100th Cong., 2d Sess. 591 (1988).

[10] *See* 19 C.F.R. § 351.408.

[11] *Id.* § 351.408(c)(1).

[12] *Id.*

Similarly, the Department's market-oriented industry (MOI) test, which permits use of the standard normal value methodology for qualifying industries within an NME country, recognizes that the alternative NME methodology for calculating normal value may not be suitable in every instance. As the Department observed in adopting the MOI test:

> Congress clearly contemplated a situation in which a sector of an NME may be sufficiently free of NME distortion so that the actual prices and/or costs incurred in the NME could be used in the dumping calculations and render meaningful results.[13]

Although the Department has never identified an industry satisfying the requirements of the MOI test, the very existence of this test further demonstrates that the Department may deviate from strict application of the alternative NME methodology for calculating normal value when warranted by the facts of an antidumping proceeding.

D. There Is No WTO Bar To The MOE Test

Fourth, contrary to the suggestion of some commentators, the United States' obligations under the World Trade Organization (WTO) do not prohibit adoption of a test that would lead to individualized treatment of respondents in antidumping proceedings involving NME countries. As an initial matter, the WTO Anti-Dumping Agreement states that "the Authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation."[14] There is, therefore, a firm preference within the WTO for national antidumping proceedings that afford individualized treatment to respondents whenever feasible. The Department's MOE test would thus permit the United States to better fulfill its obligations under the WTO Anti-Dumping Agreement.

Further, while China's Accession Protocol to the WTO does not specifically envision application of market economy treatment to individual antidumping respondents, it does not preclude the United States from granting such treatment where warranted.[15] Although some commentators have suggested that differential treatment of Chinese companies within the same proceeding would be challenged as a violation of U.S. WTO obligations, there is no basis for such a challenge in China's Accession Protocol or other WTO legal texts. The Department's current separate rates practice already similarly affords differential treatment of Chinese

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[13] *Oscillating Ceiling Fans from the People's Republic of China*, 57 Fed. Reg. 24018 (Dep't Commerce June 5, 1992) (final negative countervailing duty determination).

[14] *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (WTO Anti-Dumping Agreement), Art. 6.10, *available at http://www.wto.org/english/docs_e/legal_e/19-adp.pdf.*

[15] *See Accession of the People's Republic of China* (China's Accession Protocol), Decision of 10 November 2001, WT/L/432, Nov. 23, 2001, ¶ 15, *available at www.wto.org.*

respondents and has not been challenged before the WTO. Moreover, as a practical matter, it would be highly unusual for China to challenge a methodology that better reflects the economic realities of its domestic companies and affords them more predictable treatment before the Department.

E. The Department Has Legal Authority To Change Past Interpretations In Light of Changed Circumstances

Finally, to the extent that the Department has not previously interpreted the antidumping statute as permitting application of market economy treatment to individual respondents to an antidumping proceeding involving an NME country, the Department may change its past interpretations and practices under certain circumstances. Specifically, "an agency is free to change its policy based on either a change of circumstances or a changed view of the public interest" so long as the agency "suppl[ies] a reasoned analysis for the change."[16] With respect to trade remedy proceedings involving China, the Department has provided a detailed analysis of the changes in China's economy warranting revision of the methodologies used in such proceedings.[17] Although the Department determined that China's economy is still government-controlled and thus still designated as an NME country, the Department also recognized that China has undergone a series of profound economic reforms, such that "business entities in present-day China are generally free to direct most aspects of their operations . . . ."[18] In light of this express finding with respect to individual Chinese companies, it is perfectly consistent for the Department to now update its policies and practices on a more company-specific basis.

Strong policy considerations also support the Department's reconsideration of its approach to calculating normal value for respondents from NME countries. Providing more predictable and regularized treatment of MOEs may encourage the spread of capitalism within China. That is, such treatment may encourage additional foreign investment within China's

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16 *Tung Mung Dev. Co. v. United States*, 354 F.3d 1371, 1379 (Fed. Cir. 2004) (quotation mark omitted).

17 *See, e.g., 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); *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); *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.*

18 *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*, at 10.

private sector and provide a competitive advantage to MOEs over their state-controlled analogs. Rather than provide a "back door" method of graduating China from NME status, adoption of the MOE test may be seen as providing a subtle but effective means for the United States to reinforce capitalist principles within China. Moreover, to categorically disregard market-based transactions in antidumping investigations while applying the countervailing duty law to Chinese respondents, on the ground that there is now a private industrial sector, is both contradictory and discriminatory.

In addition, the Department has engaged in two rounds of comments concerning the proposed MOE test, which we anticipate will be followed by a formal announcement by the Department in the Federal Register thoroughly explaining its decision concerning the adoption of the MOE test. As such, we anticipate that the Department will have little difficulty in fulfilling its obligation to explain its adoption of a new methodology which represents a shift from past practice.

For all these reasons, it is clear that the Department has the legal authority to institute the MOE test for antidumping proceedings involving China.

Issue Two: Administrative Feasibility of Applying the MOE Test

It is also administratively feasible for the Department to administer the MOE test in antidumping proceedings involving China. Chutex recognizes that administrative feasibility is an important consideration in adoption of the MOE test. If, as noted above, the purpose of this test is to enable the Department to discern "available information" permitting use of the standard, market economy methodology for calculating normal value, then the MOE test must achieve this end effectively. Further, the MOE test should not unduly tax the Department's resources.

The Department has identified three areas of concern with respect to the feasibility of implementing the MOE test. Each of these areas is discussed separately below. As this discussion reveals, the MOE test presents no greater administrative difficulties or costs than existing Department practices and has operated successfully in substantially similar form in antidumping proceedings conducted by the European Union since 1998.

A. It is Administratively Feasible To Identify an MOE Within a Broader NME Environment

First, it is feasible for the Department to identify MOEs operating within a broader NME environment by reference to clearly defined, objective criteria that may be realistically met by companies that have embraced market principles. In response to the Department's initial proposal of the MOE test, multiple commentators identified several criteria which may be readily used to identify an MOE. These include:

- Ability to make decisions regarding prices (including export prices), output and sales in response to market signals and without significant government interference;

- Retention of proceeds from export sales and control over disposition of profits and financing of losses;

- Authority to negotiate and sign contracts and other agreements;

- Use of one clear set of basic accounting records that are independently audited in accordance with international accounting standards and that are used by the company for all relevant purposes;

- Adherence to regularized depreciation and payment systems;

- Autonomy from the government in the selection of management; and

- Ability to set wage rates for employees and freely hire or discharge employees.

Because of the Department's existing separate rates test, the Department is well-versed in applying such factors and would likely experience a similar trend in usage among respondents. The respondents that currently seek separate rate status are the only respondents likely to pursue the even more stringent MOE status. As such, the administrative costs of the MOE test are not likely to be any greater than those associated with the separate rates test. Although application of the separate rates test has presented some resource challenges for the Department, the Department over time has achieved efficiencies permitting its continued use in antidumping proceedings involving a large number of Chinese respondents. We anticipate that the Department would benefit from this experience with the separate rates test, as well as develop specific expertise in administering the MOE test, following its adoption and use.

Indeed, the successful application of the separate rates test belies many of the criticisms voiced by commentators in response to the Department's proposed MOE test. As an initial matter, there is no reason to believe that the MOE test would be more controversial or politically difficult than the existing separate rates test. The Department's current analysis of whether Chinese companies are sufficiently independent from the government to warrant a separate antidumping duty rate already addresses a fundamental issue in the Chinese economy: the reach of governmental control. This issue is inextricably linked to the rise in importance of market

forces within China,[19] such that the MOE test may be seen as a progression and logical next step following the separate rates test.

Further, suggestions by some commentators that the Department must consider the factors in 19 U.S.C. § 1677(18) each time the MOE test is applied in an antidumping proceeding is unnecessary and unrealistic. 19 U.S.C. § 1677(18) describes the legal and economic conditions which must exist in order for a *country* to qualify for market economy treatment under U.S. law.[20] The macroeconomic analysis dictated by this statutory provision may be appropriate for identifying prevailing conditions within a country, but it does little or nothing to identify "available information" concerning the price, cost and sales data of an *individual respondent*. Because the goal of the MOE test is to evaluate whether this data permits use of the Department's standard normal value methodology, the factors analyzed under the test should be designed to achieve this goal. The factors described in 19 U.S.C. § 1677(18) are simply not so designed. The MOE test outlined above, which is based on the existing separate rates test, is a far more realistic test that is narrowly tailored to discern the economic realities of each respondent under investigation or review.

B. It is Feasibile For the Department to Rely on MOE Prices and Costs

Second, it is feasible for the Department to rely on the prices and costs of individual MOE respondents for purposes of antidumping calculations. As the Department has observed, "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 . . . ."[21] In light of the broad reforms in China, the Department should consider the price, cost and sales data of Chinese entrepreneurs to be generally reliable.

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[19] *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 46 (discussing China's attempt "to combine market processes with continued state direction").

[20] *See* 19 U.S.C. § 1677(18)(B) (identifying six macroeconomic factors: "(i) the extent to which the currency of the foreign country is convertible into the currency of other countries; (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management, (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country, (iv) the extent of government ownership or control of the means of production, (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and (vi) such other factors as the [Department] considers appropriate").

[21] *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*, at 10.

Indeed, the Department should approach antidumping proceedings involving Chinese MOEs in the same manner that it approached proceedings involving companies from countries emerging from Soviet-style central planning and control in the early 1990s.[22] For example, in 1993, the Department observed a number of shortcomings in its analysis of Poland's economy under the statutory factors enumerated in 19 U.S.C. § 1677(18). These included only partial currency convertibility, restrictions on capital account transactions, restrictions on foreign ownership in multiple industries, low levels of foreign investment, limited privatization of large state-owned enterprises and persistent price controls.[23] Nonetheless, for subsequent antidumping proceedings, the Department announced its willingness to accept the prices and costs of individual Polish respondents and calculate antidumping margins accordingly.[24] If the Department was willing to rely on the price, cost and sales data of such respondents without detailed analysis of the data's reliability, then the Department should have little difficulty in affording Chinese respondents the same treatment after rigorous evaluation under the MOE test.

More recent Department practice also demonstrates the feasibility of relying on MOE prices and costs. For example, many commentators voiced concerns that such reliance would be misplaced due to the economic distortions believed to be caused by China's currency practices. However, China is not the only country accused of currency misalignment by the United States. Japan is also a regular target of such criticism.[25] Nevertheless, the Department continues to rely on the prices and costs reported by Japanese respondents in antidumping proceedings.[26] This practice with respect to Japanese respondents demonstrates that a country's currency policies should not be an impediment to the use of individual respondent's price, cost and sales data in antidumping proceedings.

In addition, several commentators have suggested that it would not be possible to rely on an MOE respondent's prices and costs because the upstream and downstream Chinese industries linked to an MOE do not necessarily operate on commercial terms. As a result, these commentators argue, an MOE that receives significant inputs from or sells to the broader Chinese market will be influenced by the distortions caused by government intervention. Such broad generalizations disregard the extent to which inputs are produced outside of China, with Chinese factories only responsible for assembly operations, a function of the increasing presence

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[22] *See Memo Concerning Respondent's Request for Revocation of Poland's NME Status*, A-455-802 (Dep't Commerce June 21, 1993).

[23] *See generally id.*

[24] *See Certain Cut-to-Length Carbon Steel Plate From Poland*, 58 Fed. Reg. 37205 (Dep't Commerce July 9, 1993) (final determination of sales at less than fair value).

[25] *See* U.S. panel raps 'currency manipulation' by Japan, China, *Yahoo Asia News* (May 10, 2007), *available at http://asia.news.yahoo.com/070509/kyodo/d8p143ig0.html.*

[26] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 72 Fed. Reg. 58053 (Dep't Commerce Oct. 12, 2007) (final results of antidumping review).

of foreign invested enterprises. Even if there are some instances in which the state affects input costs, the Department already has the means to identify them.

Further, other commentators have questioned the reliability of the price, cost and sales data of MOE respondents based on press allegations concerning the use of fake books and records by Chinese companies. Although these commentators recognize that China has adopted new reforms to its generally accepted accounting practices, they suggest that poor enforcement by Chinese authorities permits companies to use deceptive accounting practices to evade audit. These commentators overlook the fact that the Department itself has the ability to verify the accuracy and reliability of a Chinese respondent's books and records through questionnaire responses and the verification process. The Department currently provides this oversight function with respect to the factors of production information provided by Chinese respondents and there is no reason to believe that the Department's investigative tools would be any less effective when evaluating the reliability of an MOE respondent's price, cost and sales data.

Finally, the European Union's experience in applying Market Economy Treatment (MET) to respondents from NME countries further demonstrates the feasibility of relying on the prices and costs of MOE respondents. Under Article 2(7) of the Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, individual companies in certain NME countries may apply for MET in antidumping proceedings administered by the European Union.[27] If a company succeeds in showing that it operates under market economy conditions, its normal value and dumping margin are established in the same way as for a company from a market economy country. The European Union has employed the MET concept – which closely resembles the proposed MOE test – for nearly ten years, including with respect to respondents from China.[28] The experience of the European Union demonstrates the feasibility of relying on the price, cost and sales data of MOE respondents, and the Department should take this experience into consideration when weighing the feasibility of the proposed MOE test.

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[27] *See Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community*, OJ L 56, 6.3.1996, p. 1, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005, OJ L 340, 23.12.2005, p. 17.

[28] *See, e.g., Council Regulation (EC) No 2570/2000 of 20 November 2000 amending Regulation (EC) No 393/98 imposing a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof originating, inter alia, in the People's Republic of China*, OJ L 297, 24.11.2000; *Commission Regulation (EC) No 255/2001 of 7 February 2001 imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China*, OJ L 38, 8.02.2001; *Council Regulation (EC) No 950/2001 of 14 May 2001 imposing a definitive anti-dumping duty on imports of certain aluminum foil originating in the People's Republic of China and Russia*, OJ L 134, 17.5.2001.

C. It is Feasibile To Limit an MOE Finding

Third, in the rare case where it may be appropriate to limit an MOE finding, the Department has the tools to make such limitation feasible by not accepting a particular input cost as market-based.

As an initial matter, it is important to emphasize that the circumstances in which the Department may be forced to deviate from its standard normal value methodology with respect to MOE respondents are likely to be exceedingly limited. As the Department has observed:

> [A]lthough price controls and guidance remain on certain "essential" goods and services in China, the PRC Government has eliminated price controls on most products; market forces now determine the prices of *more than 90 percent of products* traded in China.[29]

Given the predominance of market-determined prices in China, as well as for the reasons discussed above, the Department may reasonably rely on an MOE respondent's prices and costs as representing "available information" permitting use of the Department's standard normal value methodology. Once a respondent has established its eligibility for MOE status (and hence market economy treatment), there should be few circumstances requiring deviation from that designation.

Further, the costs of limiting an MOE finding far outweigh the theoretical benefits. As the Department well knows, identifying surrogate values for the scores of minor inputs comprising subject merchandise can be a tedious and time-consuming process with limited impact on margin calculations. If the Department sought to limit an MOE finding, the Department would be forced to undertake this factors of production analysis (in addition to having already applied the MOE test). This would increase the Department's administrative burden, while only marginally (and theoretically) improving the accuracy of the resulting dumping margin. The Department should not so severely limit the utility of the MOE test by introducing additional analytical complexity with only negligible benefits.

Nonetheless, if the Department is able to demonstrate by substantial evidence in a given investigation or review that a particular input used by an MOE respondent was obtained under non-market conditions, then the Department may consider modifying its approach to antidumping calculations by adjusting the actual prices and costs reported for that input. For

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[29] *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*, at 5 (quotation marks omitted and emphasis added).

example, the Department may apply an adjustment (or inflator) to labor, land or capital costs similar to the adjustments proposed with respect to energy costs reported by companies from the Russian Federation.[30] Such adjustments, if applied in a regularized manner, could permit the Department to account for any residual distortions in the Chinese economy while lending stability and predictability to the Department's calculations. Adjustments would also be easier for the Department to administer than identifying and applying surrogate values to a limited number of an MOE respondent's prices and costs.

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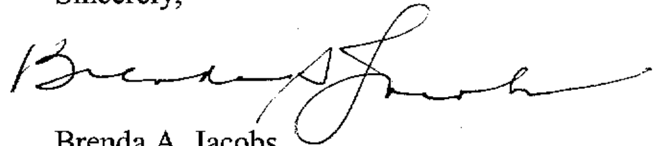
On behalf of Chutex Group, we appreciate the opportunity to provide comments concerning the application of market-economy treatment to individual respondents in antidumping proceedings involving China, supplementing the comments previously filed on June 25, 2007.

Sincerely,



Brenda A. Jacobs
Counsel to Chutex Group

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[30] *See 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).