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PUBLIC DOCUMENT

James J. Jochum
Assistant Secretary for Import Administration
Room 1870
U.S. Department of Commerce
14th Street and Constitution Ave., NW
Washington, D.C.

Re: Public Hearings on U.S.-China Joint Commission on Structural Issues

Dear Assistant Secretary Jochum:

On behalf of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (the "Coalition"), we hereby submit comments regarding China's structural issues and government policies to assist the Department of Commerce ("Department") in its discussion to evaluate China's condition to be graduated to a market economy under the U.S. antidumping law. *See* U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 69 Fed. Reg. 24132 (Dep't Commerce 2004) (hearing and request for comment).

The Coalition is a non incorporated association of U.S. aftermarket brake drum and rotor producers which petitioned for the imposition of antidumping duties on Brake drums and rotors

from China in 1995. In 1997, the Department imposed an antidumping duty order on Brake Rotors. *See* Brake Rotors from China, 62 Fed. Reg. 18740 (Dep't Commerce 1997) (antidumping order) (Case A-570-846).

The Coalition believes that China should not at this time be treated as a non-market economy ("NME") under the U.S. antidumping law. These comments focus on the Coalition's experience before the Department's antidumping investigation and numerous reviews of the Brake Rotors from China antidumping order.

I. MOFTEC's Lack of Transparency and Unwillingness to Cooperate with the Department

In the original investigation of Brake Rotors, the Department conducted a visit to the offices of MOFTEC to investigate claims made by the Coalition that two respondents, China North Industries Guangzhou Corp. and China North Industries Dalian Corp., were controlled by the government. *See* Brake Rotors from China, 62 Fed. Reg. 9160, 9166 (Dep't Commerce 1997) (final determination). During the visit, Department officials were greeted with blatant lack of cooperation by MOFTEC officials. MOFTEC officials refused to provide certain documentation and additional information. Answers from MOFTEC to many questions posed by the Department were vague and did not assist the Department further. *See* MOFTEC Verification Report of MOFTEC (public version) (undated) (Case A-570-846).

This unwillingness to cooperate with the Department has continued. In Heavy Forged Hand Tools from China, the Department again have been faced with lack of cooperation from MOFTEC in several reviews where MOFTEC failed to respond to the Department's

questionnaires. *See e.g.* Heavy Forged Hand Tools from China, 66 Fed. Reg. 48026, 48029 (Dep't Commerce 2001).

Such behavior of the Chinese government officials impairs a clear analysis of the Chinese industry and demonstrates that the government of China is not yet prepared to be a market economy.

II. Control of Government over Village Committees and Private Companies

The Government of China continues to exert power and authority over private companies in China, which is uncharacteristic of a market economy. It appears that the government still has a far reaching authority over private companies through its control of Village Committees.

The villages in China are the lowest official level in China's government and their leaders and committees may be assisted and controlled by the government. *See* A Tale of 2 Villagers: China's 'Democracy' Shows Different Faces, International Herald Tribune, (August 28, 2000). Although the members are elected by the villagers, the candidates are often chosen by the government. *See Id.* An article published by Anne F. Thurston, the U.S. Institute of Peace, stated that it is estimated that no more than 10 percent of village elections have been conducted according to democratic standards. *See* Thurston, Ann, Muddling Toward Democracy, Political Change in Grassroots China, U.S. Institute of Peace (undated), <<http://www.usip.org>> (visited on May 13, 2004).

In November 27, 2000, the Department initiated a new shipper review of the Brake Rotors order covering, among others, Shandong Laizhou Huanri Group General ("Huanri General"). *See* Brake Rotors from China, 65 Fed. Reg. 70695 (Dep't Commerce 2000) (initiation). Huanri General requested the initiation of a new shipper review alleging

independence from the government. The Coalition challenged its independence when the Department late in the proceeding found out that the new shipper was owned and controlled by a Village Committee. It is not uncommon to find these Committees in China overlapping governmental functions (e.g. management of village-owned businesses and affairs, resolution of disputes, enforcement of governmental policies, etc.) and ownership of private companies. Despite the Coalition's arguments, the Department determined that Huanri General was free from government control. *See Brake Rotors from China*, 66 Fed. Reg. 44331 (Dep't Commerce 2001) (final results). On Appeal, the Court of International Trade has recently remanded the case to the Department for further investigation, specifically on the issue of whether Village Committee may be exercising government control. *See Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States*, Court No. 01-00825, slip. op. 04-31 (Ct. Int'l Trade April 1, 2004).

Government ownership of companies in China is sometimes disguised by situations like the Huanri General example, which illustrates how the government may manipulate an *apparent* democratic process (the Village Committee elections) to control companies clandestinely.

III. Artificial Exchange Rate

It has been well documented that China has been maintaining an artificial exchange rate that is 15 to 25 percent undervalued. This has the effect, among other things, of making Chinese exports priced lower than they would otherwise be in the U.S. market, creating an unfair trading advantage to U.S. competitors such as the Coalition. This practice violates rules of the International Monetary Fund that prohibit the manipulation of exchange rates to gain an unfair

competitive advantage over other countries. China has to date defended its exchange rate and shown no desire to reform it. Outside commentators have indicated that the Chinese exchange rate regime is “deeply embedded, reflecting some fundamental weaknesses in the Chinese political and economic system. As a result, the much needed switch to a flexible exchange rate regime is unlikely to occur in the near future” (Lawrence Lindsay, The Political Economy of Asian Exchange Rates, Center for Strategic & International Studies, October 15, 2003). Given the unlikelihood of China reforming its exchange rate policy, granting of free market economy status to China cannot be considered at this time.

IV. Artificially Low Prices and Wages and the Effect on Dumping Investigations

Switching to treating China a free market economy would substitute Chinese costs in the calculation of home market price, for the surrogate values from free market economies currently being used. This would have the effect of making the Chinese dumping margins even lower because of the extremely low cost figures. These low costs are due to fundamental structural issues in the Chinese economy. One Coalition member visiting China was told by a plant manager that he is compensated not based on sales or profits but based on how many workers he employs. This type of centralized planning and social engineering has no place in a free economy. Moreover, it is impossible to rationalize costs and profits under this system. The recent section 301 petition filed by the AFL–CIO documented the labor practices in China that are considered to be inconsistent with international standards. Workers are not free to move, are often paid as little as \$25 per month and forced to live in dormitories where they are little more than indentured servants. Prison labor is still common. Until changes are made in China to these

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labor practices, it cannot be considered a free market economy and it would be inherently unfair to treat China a free market economy for purposes of antidumping investigations.

The Coalition requests that the Department consider the issue of MOFTEC's lack of cooperation, and the Chinese Government's authority over exporters at all levels of government, the artificial exchange rate and distorted prices, wages and labor conditions inconsistent with a free market economy, when discussing policy issues related to China's aspiration to be a NME under U.S. antidumping law.

Yours truly,

Leslie Alan Glick

cc: Lawrence Norton, ITA (via facsimile)
Anthony Hill, ITA (via facsimile)