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June 28, 2004

Via e-mail: webmaster-support@ita.doc.gov

PUBLIC DOCUMENT

Ronald Lorentzen
Acting Director, Office of Policy
Import Administration, Room 3713
U.S. Department of Commerce
14th Street and Constitution Ave., NW.
Washington, DC 20230

Re: Comments of Libbey Inc. in Response to the Federal Register Notice of May 27, 2004 regarding the Unfair Trade Practices Task Force

Dear Mr. Lorentzen:

On behalf of Libbey Inc., we hereby respond to the request of the Department of Commerce for public comment on the work of the newly established Unfair Trade Practices Task Force. *See Request for Public Comment--Unfair Trade Practices Task Force*, 69 Fed. Reg. 30285 (May 27, 2004).

Libbey Inc. is a leading producer of glass tableware in North America and a leading producer of tabletop products. Based in Toledo, Ohio, Libbey operates glass tableware manufacturing plants in the United States in California, Louisiana, and Ohio. Its Syracuse China subsidiary, located in New York, manufactures an extensive line of high-quality ceramic dinnerware, and its Traex subsidiary, located in Wisconsin, manufactures an extensive line of plastic items, both produced primarily for the foodservice industry. Libbey exports to more than

75 countries and provides technical assistance to glass tableware manufacturers around the world.

The Department's notice states that, to help the Task Force establish its initial priorities, it seeks public comments to identify those unfair trade practices that are of greatest concern and that are deserving of the Task Force's attention. As a US manufacturer and exporter, Libbey is affected by unfair foreign trade practices. In the following comments, Libbey identifies a number of unfair trade practices or market distortions that adversely affect its commercial interests. Libbey urges the Task Force to consider these issues in the course of its work.

(1) Currency manipulation

Currency manipulation and currency misalignments maintained by foreign governments are substantial market distortions that the Task Force should examine. Currency misalignments should be corrected because they create market distortions, produce false market signals that result in misallocation of economic resources, and undermine stability. Industries in countries with undervalued currencies appear more competitive than they actually are; as a result, they are susceptible to overexpansion of capacity and production.

China, in particular, has been active in maintaining its currency at a set level. Since 1994, China has pegged its currency exchange rate at 8.28 yuan to the dollar. As a result, China's currency, the yuan, is substantially undervalued, as has been pointed out by numerous economists and by the Fair Currency Alliance. The practical result of China's currency activity is that the prices of Chinese goods are artificially low, adversely affecting competing US producers in the US market, in the Chinese market and in third country markets.

Japan, South Korea, and Taiwan (in addition to China) have, in recent years, made massive purchases of US dollars to maintain their exchange rates or minimize their currencies' appreciation.[1] These four countries taken together account for about 60% of the US trade deficit, and hold $1.2 trillion of official reserves, with at least a $188.4 billion increase since 2002.[2]

Currency intervention by China, Japan, South Korea and Taiwan has had significant adverse effects on the US economy in general and on US manufacturers in particular. Since 2000, shipments of manufactured goods fell by $270 billion, and 2.8 million factory jobs have been lost.[3] Economists estimate that China's yuan is undervalued by 40% or more[4] and that the effect of currency undervaluation by China, Japan, South Korea, and Taiwan on the US trade deficit has been to increase it by about $100 billion.[5]

Currency manipulation is not defined by the International Monetary Fund Agreement or under IMF or US law. There are, however, potential WTO and IMF remedies available to address the problem, and clarification by the US and the IMF would encourage our trading

1 In 2002, China purchased $165.6 billion in US dollars. By July 2003, this amount doubled to $356.5 billion. Similarly, in 2001 and 2002, Japan, Taiwan, and Korea also intervened in the currency market by increasing their purchases in order to compete with the undervalued Chinese yuan. In the first half of 2003, Japan purchased $59 billion in US currency with an additional $22.7 billion in July and August. *See* US Dept. of Treasury, *Report to Congress on International Economic and Exchange Rate Policies* (JS-954) at 9 (October 30, 2003); US Dept. of Treasury, *Report to Congress on International Economic and Exchange Rate Policies, Reporting Period: July 1, 2000 through December 31, 2000.*

2 *See* Testimony of Franklin J. Vargo, National Association of Manufacturers, before the Subcommittee on Domestic and International Monetary Policy, Trade, and Technology of the House Committee on Financial Services, *Hearing on China's Exchange Rate Regime and Its Effects on the U.S. Economy* at 2, 5 (October 1, 2003).

3 *See* Testimony of Franklin J. Vargo, National Association of Manufacturers, before the House Committee on International Relations, *Hearing on U.S.-China Ties: Reassessing the Economic Relationship* at 2 (October 21, 2003).

4 *See* Testimony of Franklin J. Vargo, National Association of Manufacturers, before the House Committee on International Relations, *Hearing on U.S.-China Ties: Reassessing the Economic Relationship* at 4 (October 21, 2003).

5 *See Chinese Currency Manipulation and the U.S. Trade Deficit*, Statement Before the U.S.-China Economic and Security Review Commission by Ernest H. Preeg, Senior Fellow in Trade and Productivity, Manufacturers Alliance/MAPI (September 25, 2003).

partners to establish sustainable currency policies. The urgency of the problem with respect to China, however, cannot wait; a revaluation of China's currency is needed now.[6]

Libbey requests that the Task Force acknowledge and urgently address the adverse effects of China's currency manipulation on US manufacturers. The Task Force should also address how the US can work toward achieving exchange rate equilibrium with Japan, Korea and Taiwan vis-à-vis the US dollar.

(2) Border tax adjustments

As an exporter, Libbey faces the disadvantages that US exporters generally face from the effect of different countries' tax systems and how border tax adjustments are treated by the GATT and WTO. The Task Force should examine the problems and adverse consequences that border tax adjustments cause to US exporters.

The underlying problem was addressed in the Department's report, *Manufacturing in America*, which explained foreign manufacturers enjoy an advantage from the interrelationship between the current U.S. tax system and international trade rules.[7] Many foreign governments apply taxes solely to income earned on sales in their jurisdictions and rebate any taxes that apply to exports while the US relies primarily on income taxes. Thus:

> By relying more heavily on income as the basis for taxation, and in taxing U.S. manufacturers on their worldwide income, the U.S. system contains no simple means of ensuring that U.S. exporters

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6 The Fair Currency Alliance, a group of trade associations and unions representing manufacturing, agriculture and labor, prepared a "Section 301 Petition" to address the problem of Chinese currency manipulation but has not filed the petition with USTR. *See Fair Currency Alliance Says China Understating Global Trade Surplus*, INSIDE US-CHINA TRADE (June 16, 2004) ("Zoellick and other cabinet officials said in late April that they would reject a Section 301 petition on China's currency policies if it were filed. However, the Alliance has said it might still file the petition, and will monitor the Bush Administration's progress on the issue over the summer before deciding how to proceed.").

7 U.S. Dept. of Commerce, *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers* (January 2004) at 46-47.

> receive comparable treatment. The international trade rules reinforce that disparity because they allow the rebate of indirect taxes (that is, taxes on consumption such as value-added taxes) but prohibit the rebate of any direct taxes on income, on which the U.S. system relies so heavily.[8]

Since 1988, the US Congress has directed the US Government to make the revision of border tax adjustments a prime trade negotiating objective,[9] but the disparity in treatment and the consequent unfairness persists. Libbey agrees with the Department's statement that in future negotiations, the US "should pursue the elimination of the border adjustability of indirect taxes to address the disadvantages to countries relying primarily on direct taxes."[10] The Task Force should take up this issue as well.

(3) <u>Intellectual property rights</u>

The Task Force should address the area of infringement of intellectual property rights. Libbey designs and manufactures glass tableware and ceramic dinnerware. Libbey's designs are distinctive. The Libbey trade name as well as product shapes and styles enjoy a high degree of consumer recognition and are valuable assets. Glassware, in particular, is a product that is vulnerable to copying. In the past, foreign glassware producers have produced "knock-offs" or "look-a-likes" that imitate Libbey designs. Consequently, Libbey is keenly aware of the problem of intellectual property infringement, especially as it relates to infringement of trade dress and industrial design.

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8 U.S. Dept. of Commerce, *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers* (January 2004) at 46-47.

9 *See* Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, Title I, Sec. 1101, Aug. 23, 1988, 102 Stat. 1121; 19 U.S.C. § 2901(b)(16); Trade Act of 2002, Pub. L. 107-210, Div. B, Title XXI, Sec. 2102, Aug. 6, 2002, 116 Stat. 994; 19 U.S.C. § 3802(b)(15).

10 U.S. Dept. of Commerce, *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers* (January 2004) at 76.

In its *Manufacturing in America* report, the Department of Commerce recognized the importance to US manufacturers of protecting intellectual property:

> For U.S. manufacturers, protection of intellectual property is not an abstract concept. America's competitive edge ensues directly from innovation and rising productivity. Intellectual property protection is the best means for ensuring that American manufacturers enjoy the benefits of their investments in research and development and of their efforts to raise productivity. It is also the means best calculated to ensure that they can enjoy the investment they make in customer service and creating a brand name that distinguishes them from other manufacturers.[11]

Moreover, as a general matter, the importance of protecting and enforcing the intellectual property rights of US manufacturers has been a focus of the US government's attention. In the USTR's recent 2004 "Special 301" report, for instance, the status of intellectual property protections in 85 countries was reviewed, and USTR found that counterfeiting and piracy of trademarked and copyrighted products is rampant.[12] In particular, USTR noted the "weak IPR protection and enforcement in China is one of the Administration's top priorities."[13]

(4) <u>Investment restrictions</u>

As a US manufacturer with foreign investments, Libbey is concerned with foreign trade practices that have the effect of restricting investment opportunities. As a general area of examination, the Task Force should address to what extent investment restrictions and investment requirements by foreign countries act as unfair trade practices.

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11 US Dept. of Commerce, *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers* (January 2004) at 54.

12 USTR, 2004 SPECIAL 301 REPORT, at 1, Executive Summary (May 2004); *available at* http://www.ustr.gov/reports/2004-301/fullreport.pdf.

13 *Id.*

Typical barriers to investment can take the form of local content and trade balancing requirements (both of which are prohibited by the WTO TRIMS Agreement), inconsistent enforcement of laws, lack of access to global markets for foreign-invested enterprises, corruption, and strict guidelines or prohibitions on foreign investment, for example, by conditioning investment on the transfer of technology. The USTR's annual National Trade Estimate on Foreign Trade Barriers identifies numerous examples of these practices in foreign countries. The Task Force should examine this area to determine the extent to which investment restrictions in foreign countries act as unfair trade practices and disadvantage US manufacturers.

(5) <u>Subsidies and State-owned/State-invested Enterprises</u>

An important issue that the Task Force should address is the adverse impact upon US manufacturers of subsidies and government support provided by foreign governments to industries and state-owned or state-invested enterprises that are not economically sound. The Department has recognized that the "use of trade-distorting subsidies by foreign governments can seriously threaten the interests of American workers and industries."[14] It is unfair when US manufacturers must compete with government treasuries rather than in the market.

China provides an example where subsidies are used to support its manufacturers, including subsidies to state-owned enterprises (SOEs). These practices distort market competition and put competing US manufacturers at a disadvantage. The National Association of Manufacturers noted in testimony before Congress that it continued to receive reports from different industries that Chinese products were being sold in the US at prices so low that they could not cover the cost of raw materials and shipping much less full production and marketing

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[14] USTR and Dept. of Commerce, *Subsidies Enforcement Annual Report to the Congress* (February 2004) at 1.

costs.[15] NAM concluded: "These reports suggest the possibility of widespread use of subsidies, either direct or indirect, to help Chinese exporters gain a competitive advantage in the US market."[16]

In addition, China has not fully complied with its WTO commitments to phase out a number of subsidy programs, including, among others, subsidies provided to SOEs operating at a loss.[17] Significant parts of the Chinese economy remain state-owned or state-invested. China's support of state-owned enterprises that is not justified by commercial considerations is an unfair trade practice. This has been recognized by a US trade official, who indicated that "an example of an unfair trade practice that cannot be clearly classified as either subsidy or dumping is the practice in China of providing state-owned companies with loans from state-owned banks, with the understanding that these loans do not necessarily need to be paid back. When the cost of capital to those companies essentially amounts to zero, U.S. manufacturers cannot compete with them on the same basis."[18] He also noted that "this happens in a variety of different settings around the world, it's not just China."[19] The Task Force should therefore address how subsidies and the operation of state-owned or state-invested enterprises cause market distortions and adversely affect US manufacturers.

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15 *See* Testimony of Franklin J. Vargo, National Association of Manufacturers, before the House Committee on International Relations, *Hearing on US-China Ties: Reassessing the Economic Relationship*, October 21, 2003.

16 *Id.*

17 *See* Protocol of Accession, WT/L/432 (23 November 2001) at Annex 5B (Subsidies to be Phased Out). China also committed to notify all of its subsidies that are included within the meaning of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures (SCM), but, so far, has not complied.

18 Embassy of the United States, Japan, Issues Notice, *U.S. Urges Stronger Enforcement of Trade Obligations*, *available at* http://japan.usembassy.gov/e/p/tp-20040120-13.html.

19 *Id.*

(6) Anticompetitive conduct

Another significant type of unfair trade practice that adversely affects US manufacturers is anti-competitive behavior by foreign companies that distorts and restricts trade. Anticompetitive practices can take a number of forms, such as cartels, refusals to deal, and market sharing agreements, as well as other practices that distort global commerce.

Taking cartels as an example, if participating firms agree to fix prices, limit output or restrict exports, this behavior effectively reduces market access and weakens global competition. But, in addition to restraining competitive behavior, cartels often result in dumping as they have the effect of lowering the export price versus the price charged in the home market.[20] In its considerations, the Task Force should address the broad range of anticompetitive activity that US manufacturers and exporters face in international trade and that adversely affect their commercial interests.

(7) Country-specific market access problems

In addition to the foregoing unfair trade practices that affect Libbey as well as many other US manufacturers/exporters, Libbey takes note of several countries where particular practices have adversely affected Libbey's ability to access and compete in those foreign markets.

- **Vietnam**

In Libbey's past experience, Vietnam has imposed upon glassware very high import duties and import taxes/fees, which together can amount to as much as 100% ad valorem. In addition, Libbey has found that, on a per shipment basis, Vietnam has required importers to prepare and file a great deal of expensive paperwork and forms, adding to the importing process burden. In the NTE report for 2003, USTR noted that Vietnam imposed price differential surcharges on glassware:

> In addition to formal tariffs, Vietnam applies "price differential surcharges" on some products, although there is no fixed list of goods subject to these surcharges. In principle, these surcharges are applied to both import and export products where there exists a major differential between the domestic and world prices as a result of international fluctuations. Import surcharges range from four percent to 40 percent and are imposed mainly on "sensitive" products such as **glassware**, construction glass, paper, steel, ceramic products and alcoholic goods.[21]

- **India**

In its 2004 NTE report, USTR notes: “India’s economy is one of the most closed in the world. Thus, India's tariffs remain among the highest in the world.”[22] With respect to its experiences in exporting to India, Libbey has encountered a sharp disparity in import duties depending on the identity of the buyer. When selling to distributors in India, Libbey has faced extremely high import duties on glassware (approximately 70%). Libbey has been informed, however, that the import duty would be significantly reduced (5%) if it sold glassware directly to an end-user in India, such a hotel. Libbey has found that, because end users such as hotels are generally not capable of buying full containers of glassware, this disparity in import duty based on the identity of the buyer disadvantages Libbey’s ability to sell to India and encourages Indian companies to purchase glassware from other countries (e.g., Singapore).

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20 *See* Greg Mastel, *Keep Anti-Dumping Laws Intact*, JOURNAL OF COMMERCE (1999); *available at* http://www.newamerica.net/index.cfm?pg=article&pubID=321.

21 USTR, 2003 NATIONAL TRADE ESTIMATE ON FOREIGN TRADE BARRIERS, at 400.

22 USTR, 2004 NATIONAL TRADE ESTIMATE ON FOREIGN TRADE BARRIERS,, at 213.

- **<u>Turkey</u>**

Libbey has encountered difficulties in exporting its glassware to Turkey. Libbey has been informed that Turkey is requiring a health certificate from a US government agency (FDA) certifying that Libbey's glassware imports are suitable for use by humans. While such a certificate may be appropriate for glass containers intended for food packaging or storage, Libbey exports to Turkey consist of drinking glasses, not food container glassware.

The foregoing are selected examples of specific trade practices that have impeded Libbey's ability to access foreign markets. Libbey has encountered similar problems in other countries as well. In sum, the Task Force should address the extent to which import duties, charges, fees and other import processing requirements imposed by foreign countries (such as in the examples of Vietnam, India, and Turkey) act as unfair trade practices by imposing excessive or unnecessary burdens on US exporters.

Libbey is appreciative of the opportunity to submit its views to the Task Force respecting foreign unfair trade practices that adversely affect its and other US manufacturers' commercial interests and cause disadvantages in international trade.

Respectfully submitted,

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STEWART AND STEWART

Special Counsel to Libbey Inc.