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June 24, 2005

Mr. Joseph A. Spetrini  
Acting Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Avenue and 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20230

Re: Comments on Proposed Change to Market Economy Inputs Practice

Dear Mr. Spetrini:

These comments are submitted on behalf of the Consuming Industries Trade Action Coalition ("CITAC") on the Department's proposed change to its market economy inputs practice in antidumping proceedings involving non-market economy countries. 70 Fed. Reg. 30418 (May 26, 2005). CITAC is a coalition of companies and organizations committed to promoting a trade arena where U.S. consuming industries and their workers have access to global markets for imports that enhance the international competitiveness of American firms. CITAC opposes the Department's proposal to change its current practice on the grounds that these proposals would make the administration of the antidumping laws less fair and accurate, and more unpredictable, and U.S. consuming industries such as CITAC will be prejudiced by such an ill-advised change of policy.

Under the Department's current regulations and practice, there is a clear preference for using the prices paid to market economy suppliers to value inputs in non-market economy dumping cases. In particular, "where a factor is purchased from a market economy supplier and paid for in a market economy currency, [Commerce] *normally* will use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy supplier and the remainder from a non-market economy supplier, the Secretary *normally* will value the factor using the price paid to the market economy supplier." 19 C.F.R. § 351.408 (emphasis supplied).

The reason for this preference is clear. As both Commerce and the courts have recognized, use of a market economy input price is more accurate than a surrogate value. For example, in *Lasko Metal Products, Inc. v. United States*, 40 F. 3d 1442, 1446 (Fed. Cir. 1994), the Federal Circuit noted that "[w]here we can determine that a[n] NME producer's input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices. Therefore, using surrogate values when market-based values are available would, in fact, be contrary to the intent of the law." (Quoting Commerce's determination in the underlying case, *Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 Fed. Reg. 55271, 55275 (Dep't Comm. 1991)(final determination). See also, *Shakeproof*

*Assembly Components v. United States*, 268 F. 3d 1376, 1382-83 (Fed. Cir. 2001)(confirming *Lasko's* reasoning).

Similarly, as the Department explained in its remand determination in *Certain Helical Spring Lock Washers from the PRC* --

The purpose of the factors of production methodology is to determine what [normal value] would be if the producer's costs were set by the market forces in a comparable economy. Because the import price is an actual market price paid by the NME producer, it provides a more accurate value than other potential surrogates. Therefore, the actual price paid for the imports constitutes the best available information for valuing this factor. <sup>1/</sup>

The Department's Federal Register notice indicates that it is exploring two possible changes to its current practice of preferring the use of market economy inputs: 1) it would use market economy prices for inputs, but would limit their use to the valuation of the imported portion of the input only; and 2) it would continue to use market economy import prices to value an entire input if it found the quantity of imports to be meaningful, but would apply certain new criteria for determining what constitutes a "meaningful" amount. CITAC opposes both proposals.

It is not appropriate for the Department to change its regulations and end its long-standing practice of using market economy import prices to value an entire

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<sup>1/</sup> *Final Results of Redetermination on Remand Pursuant to Shakeproof Assembly Components v. United States*, Court No. 97-12-02066 (September 27, 1999), p. 2.

Mr. Joseph A. Spetrini

June 24, 2005

Page 4

input – this would only serve to make the Department’s non-market economy antidumping determinations less accurate and less predictable. Furthermore, the threshold for the share or volume of a given input sourced from market economy suppliers should remain low and the burden should be on the party seeking to ignore such values to prove that use of a market economy value is inappropriate in a particular case.

The Department provides two purported reasons to reconsider its current approach to market economy inputs. The first is “to address a concern that basing the entire input value on a small amount of purchases might not be the most accurate reflection of what a company pays to source the entire input.” 70 Fed. Reg. 30418 (May 26, 2005). As discussed above, this first rationale is simply invalid as inputs from market economy sources are necessarily *more accurate* than any surrogate value -- not less so.

The second reason provided by the Department for reevaluating its practice is that “current practice may allow parties to manipulate the Department’s margin calculations by sourcing just enough of an input from market economy suppliers so that the market economy price is used to value the entire input, even though that party does not source the entire input from foreign (market economy) suppliers in the normal course of business.” 70 Fed. Reg. 30418 (May 26, 2005). First, there is no reason to impose any sort of requirement that a party source its entire (or even

Mr. Joseph A. Spetrini

June 24, 2005

Page 5

most) of its input from foreign (market economy sources). <sup>2/</sup> Second, the Department's current practice inherently contains adequate safeguards to address the possibility of "manipulation." As explained in the Department's Federal Register notice, the Department will use the average input price paid by the respondent to market economy suppliers (in market economy currency) to value all of the given input (both imported and domestically-sourced) used by respondents *provided* three conditions are met: 1) the volume of the imported input as a share of total purchases from all sources must be "meaningful," a term which is interpreted by the Department on a case-by-case basis; 2) this average import price must reflect bona fide sales; and 3) the Department will disregard prices of any input it has reason to believe or suspect might be dumped or subsidized. 70 Fed. Reg. 30418. Thus, the Department has sufficient discretion under its current practice to set aside input prices from market economy sources where there may be intentional "manipulation" or other "distortion" of margins.

CITAC members are American consumers that often rely on imports for the inputs they need for manufacturing. Where these imports are subject to antidumping orders, CITAC members frequently have to pay the additional costs

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<sup>2/</sup> See, *Shakeproof Assembly Components v. United States*, 268 F. 3d 1376 (Fed. Cir. 2001), upholding the use of steel imported from the United Kingdom to value all inputs, notwithstanding the fact that U.K. steel constituted only one-third of all steel used by respondent, and the remaining steel was purchased from Chinese suppliers.

Mr. Joseph A. Spetrini

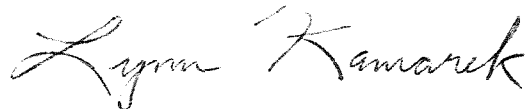
June 24, 2005

Page 6

associated with the antidumping duties. Antidumping duties must be calculated in as accurate, fair and predictable manner as possible. The current proposals being considered by the Department do not meet this standard: they would substitute less accurate, less fair, and less predictable calculations for the Department's current approaches. The Department has not provided a sufficient basis to change its practice in the manner described. Accordingly, CITAC members respectfully request that the Department maintain the current practice regarding valuation of market economy inputs.

Consuming industries are affected by these proposals and we urge the Department to take these views into consideration. We appreciate this opportunity to state the views of consuming industries and would be happy to answer any questions the Department might have.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lynn Kamarek".

Lewis E. Leibowitz  
Lynn Kamarek  
*Counsel for CITAC*