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BY HAND DELIVERY

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

Re: **Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries**

Dear Secretary Spetrini:

We hereby submit the following comments with respect to the above-captioned matter in response to the U.S. Department of Commerce's Request for Comments, which was published in the Federal Register on May 26, 2005.¹

I. BACKGROUND

Under the Department's current practice in antidumping proceedings involving non-market economy countries ("NMEs"), the Department calculates normal value by valuing the NME producers' factors of production, to the extent possible, using prices from a market economy country that is at a comparable level of economic development which is also a significant producer of comparable merchandise.² If a respondent in an NME investigation

¹ Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 70 Fed. Reg. 30,418 (May 26, 2005) ("Request for Comments").

² Id. See 19 U.S.C. § 1677b(c)(1) (2005).

sources an input from a market economy country, the Department normally uses 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.³

Where a portion of the factor input is purchased from a market economy supplier and the remainder is purchased from an NME supplier, the Department normally values the entire factor using the price paid to the market economy supplier.⁴

In its Request for Comments, the Department announced that it was considering options to change certain aspects of its current policy and practice regarding market economy input prices in antidumping proceedings,⁵ and solicited comments on the following options:

- (1) Is it appropriate for the Department to change its regulations and end its long-standing practice of using market economy import prices to value an entire input? For example, should the Department use market economy import prices to value only the portion of the input that was imported, and use surrogate country prices to value the remainder of the input?
- (2) Assuming the Department continues its long-standing practice of using market economy import prices to value an entire input, what should the threshold be for the share or volume of a given input sourced from market economy suppliers to qualify as “meaningful” in order for the import price to be used to value all of the input?⁶

³ Request for Comments at 30,418. This methodology is subject to three conditions. First, 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. Second, the average import price must reflect bona fide sales. Third, the Department disregards all inputs it has reason to believe or suspect might be dumped or subsidized. Id.

⁴ Id. See 19 C.F.R. § 351.408(c)(1) (2004).

⁵ Request for Comments at 30,418.

⁶ Id. at 30,419 (Appendix).

II. DISCUSSION

A. Option 1

We support Option 1 in the Appendix to the Department's Request for Comments. **We believe it is appropriate for the Department to change its regulations and end its practice of using market economy prices to value an entire input in NME antidumping investigations. The Department should instead use market economy input prices to value only the portion of the input that was purchased from a market economy, and use surrogate prices to value the remainder of the input.**

The use of a proportional valuation methodology that (1) uses market economy prices for inputs, but limits their use to the imported portion of the input only, and (2) values the remainder of the input through surrogate factor valuation is appropriate, for the following reasons:

First, a proportional valuation methodology avoids the need for the Department to grapple with what constitutes a "meaningful" quantity of an input sourced from a market economy country. As the Department correctly acknowledges, under current practice, the term "meaningful" is undefined in the Department's regulations; and the interpretation of what constitutes a "meaningful" quantity of an input sourced from a market economy country above which the Department will use market economy input prices to value all of an input is currently determined on a case-by-case basis. Proportional valuation replaces ad hoc uncertainty with consistent certainty.

Second, a proportional valuation methodology avoids uncertainty over whether the prices paid to market economy suppliers are a reliable benchmark for valuing all of the given input (both imported and domestically sourced). The Department's current "all or nothing"

methodology unwittingly opens the door to manipulation of the Department's margin calculations. Creative respondents can "game" the system by purchasing just enough of a given input from market economy suppliers to satisfy the "meaningful" threshold, such that the market economy price is used to value the entire input. Proportional valuation closes this manipulative door.

Third, a proportional valuation methodology eliminates the speculative aspects of the Department's current "one price fits all" methodology. Valuing an entire given input (both imported and domestically sourced) based on prices paid to market economy suppliers ignores market realities. Even if additional volumes were available at that price, it is possible that a respondent would not source the entire input from market economy suppliers in the normal course of the respondent's business. For these reasons, it is unreasonable to speculate that prices paid by a respondent to market economy suppliers for a portion of a given input accurately reflect what a respondent could or would pay to source the entire input. Proportional valuation replaces such back-of-the-envelope generalizations with hard numbers firmly grounded in marketplace realities.

Finally, a proportional valuation methodology recognizes that differences exist between and among respondents in a given investigation with respect to their production experiences and their specific usage rates of a given input. Simply put, proportional valuation does away with a potentially distortive "cookie cutter" valuation approach to potentially disparate respondents in an NME antidumping proceeding. By using market economy import prices to value only the portion of the input that was imported, and using surrogate country prices to value the remainder

of the input, the Department eliminates speculation and surmise, and instead takes -- and treats -- individual respondents as it finds them.⁷

B. Option 2

We do not support Option 2 in the Appendix to the Department's Request for Comments.

We believe it is inappropriate for the Department to continue to use market economy import prices for an entire input where it finds the quantity of imports to be "meaningful."

As explained above, establishing criteria for what constitutes a "meaningful" volume or value of a given input is a definitional slippery slope. Moreover, such an approach ignores the variances that exist among industries, among product lines, and most importantly for purposes of this discussion, among inputs. Attempting to quantify "meaningful" input volumes and values that would apply across the universe of products and industries is a questionable undertaking at best. Markets, and the technologies that drive them, are not static. What is "meaningful" today may be irrelevant tomorrow.

Moreover, even if the Department could through some heroic effort, fashion a meaningful definition of "meaningful" -- and we have serious doubts -- there is a readily available alternative, which the Department spelled out as the first option in its Request for

⁷ In cases where the amount of the input purchased from a market economy is not significant, the Department may determine that proportional valuation creates an administrative burden that exceeds the benefits of proportional valuation, such that the Department should value the entire input using surrogate country prices. In the event the Department elects to create such an exception to proportional valuation where the share or quantity of a given input obtained from market economy suppliers is deemed not significant, such share or quantity should be small, for example five percent of the total input.

Comments -- i.e., proportional valuation. As explained in detail above, we support Option 1, because it replaces amorphous uncertainty with transparent and equitable certainty.

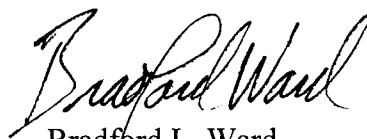
III. CONCLUSION

The Department should change its regulations and end its long-standing practice of using market prices to value an entire input in NME antidumping proceedings; and should instead adopt the proportional valuation methodology, using market economy input prices to value only the portion of the input that was imported, and surrogate country prices to value the remainder of the input.

We are submitting an original and six copies of this submission, in accordance with the Department's instructions. We are also submitting these Comments in electronic form, on CD-ROM, in accordance with the Department's instructions.

Please contact any of the undersigned should you require clarification of any aspect of this submission.

Respectfully submitted,



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