FILE COPY

HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

WILLIAM SILVERMAN
DIRECT DIAL: 202-419-2013
EMAIL: wsilverman@hunton.com

FILE NO: 55666.000018

June 24, 2005

Total Pages:
Office of Policy
PUBLIC DOCUMENT

By Hand

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

Re: Market Economy Inputs Practice in Antidumping Proceedings involving Non–Market Economy Countries, 70 Fed. Reg. 30418 (May 26, 2005).

Dear Mr. Spetrini:

On behalf of the Furniture Retailers of America ("FRA")[1], we submit the following comments with respect to its Federal Register notice Market Economy Inputs Practice in Antidumping Proceedings involving Non–Market Economy Countries, 70 FR 30418 (May 26, 2005). In that notice, the Department specifically sought comments with respect to the following issues:

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

[1] The Bombay Company, City Furniture, Crate and Barrel, Haverty Furniture Companies, Inc., J.C. Penney Corporation, Inc., Rhodes Furniture, Rooms To Go Furniture Corporation, and Wickes Furniture, Inc.

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?

3. Please provide any additional views on any other matter pertaining to the Department's practice concerning the use of market economy import prices.

FRA presents its comments below.

INTRODUCTION

Chinese furniture producers seek to comply with U.S. antidumping law by changing their pricing, costing, and sourcing of raw materials. Compliance is, after all, the purpose of the antidumping law. The purpose of the law is *not* to create uncertainty for foreign producers or to deny access to the U.S. market by inflating dumping margins mid-stream in a review. This is a remedial statute, not a punitive one; it encourages changes in commercial behavior by foreign producers to comply with the U.S. law to eliminate or reduce dumping margins.

Petitioners' groups would seek to use mid-stream changes in the Department's methodology to create uncertainty and to create margins that would not occur when Chinese companies acted in reliance on the Department's existing methodology. The Department's methodology already contains elements of uncertainty (e.g., selection of surrogate country, selection of surrogate values, selection of companies in a surrogate country for SG&A and profit) that make it difficult for Chinese furniture producers to comply with U.S. law. However, where Chinese producers have a chance to comply with U.S. law, by purchasing

inputs from market sources, they should be encouraged to so by the Department. Current Department methodology on market economy inputs does this because Chinese producers will prefer the certainty resulting from the purchase of market inputs to the uncertainty of unknowable surrogate rates. At the time of an export sale, Chinese furniture producers do not know, nor could they know, what surrogate values the Department will select months later in a review. Without this information, a Chinese company that seeks to comply with U.S. law in effect is left in the dark with no basis for compliance. By contrast, under the current Department methodology, a Chinese company can work to comply with U.S. law by purchasing inputs from a market source.

Moreover, U.S. companies that import goods covered by an antidumping duty order, rely on existing agency methodologies to ensure that they are not found to have purchased dumped goods. When the Department devises new methodologies in the middle of a review period in order to create uncertainty and increase duties, the Department causes substantial harm to these U.S. companies. We know of no statutory purpose that is served to create such harm for U.S. companies that seek to comply with the law.

In short, the proposed methodology handicaps, if not precludes, the ability of Chinese producers from complying with U.S. law. The existing methodology allows Chinese companies to comply.

Therefore, FRA strongly recommends that the Department make no changes to its current practice: as long as market economy purchases are meaningful, the Department should

continue to use such purchases to value non-market economy purchases of the same input. However, if the Department does decide to change its methodology to make it appreciably more difficult for Chinese companies to comply with the dumping law, such a change should apply prospectively, not retroactively. The change should only apply to investigation (or review) periods that cover time periods occurring *wholly* after the policy is published in the Federal Register. Any other timing would unfairly disadvantage Chinese furniture producers that have sought to comply with U.S. law based upon the current methodology.

Question 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?

RESPONSE:

For a number of compelling reasons, it would be highly inappropriate for the Department to diverge from its current and undisputed regulatory practice of using market economy import prices to value an entire input.

A. Inherently Less Accurate Margin Calculations

First and foremost, FRA notes that the Department's proposal would lead to less accurate normal value calculations, because it would ignore actual, product-specific acquisition prices in favor of *inherently less accurate* surrogate value information that, at least with regard to cases involving the People's Republic of China, is usually obtained from "basket category" Indian import statistical HTS data.

As the Department is well aware, it is often difficult, if not impossible, to obtain publicly available surrogate value information from a surrogate country that is *product-specific*. Often, this occurs because transactional information is, by definition, the product of a transaction between two companies, neither of whom has an interest in making the selling (purchase) price publicly known. Moreover, the quality of data available in many surrogate countries is relatively poor, reflecting the lack of adequate resources available to governments and businesses operating in those countries to compile and distribute such information. For example, in the case of *Wooden Bedroom Furniture from the PRC*, the surrogate countries eligible for consideration by the Department included India, Indonesia, Pakistan, Sri Lanka, and the Philippines. The per capita GNP's of these countries ranged from USD 420 to USD 1,050. See Memorandum from Ron Lorentzen to Robert Bolling: Investigation on Wooden Bedroom Furniture from the People's Republic of China (PRC): Request for a List of Surrogate Countries, January 16, 2004, at page 2.

Because of such difficulties, the Department has most often (at least with respect to cases involving the People's Republic of China, far and away the non-market economy country against which most antidumping cases have been filed in the United States) resorted to statistical resources that are "basket categories"; that is, the volume and value data contained in those statistical resources are groupings of classes of products, usually defined by HTS category. To take *Certain Color Television Receivers from the PRC* as an example, the Factor Valuation Memorandum lists 223 material inputs valued using Indian HTS import categories.

However, the Department used only 160 HTS categories to value these 223 distinct parts. *That is, the same category was used in many cases to value more than one distinct part.*

Even worse, the Department was forced under its current methodology to use a number of "catch-all" HTS categories, such as "Other Electric Inductors," "TV/RAD APP, Others," "OTHER LOUD SPEAKERS, W/N MNTP IN THR ENCLSRS," "OTHR ELCTRC CNDCTRS FOR A VOLTAGE <=80V," OTHR SCREWS & BOLTS W/N WTH NUTS OR WASHER," "OTHR PORCELN FTTNGS FR ELCTRCL EQPMNT," etc. The range of products that can be included in such categories is evident by the divergent unit values imported from each individual country. To take just a single example, for the category OTHR PORCELN FTTNGS FR ELCTRCL EQPMNT, imports from the UK averaged a per-unit value of 2409 Rupees/KG. Imports from Sweden were less than half that figure, at 1027 Rupees/KG. Imports from Germany were 743 Rupees/KG. Imports from Italy exhibited an even further drop-off, to 628 Rupees/KG. Imports from Spain bottomed out at 497 Rupees/KG. See Attachments 4 and 5 of the Memorandum to the File from The Team: Preliminary Determination Factors Valuation Memorandum Re Certain Color Television Receivers from the People's Republic of China (PRC) ("Factor Valuation Memo"), November 21, 2003. Clearly, suppliers from these (all EU) countries were shipping different products to India, yet they all were used to obtain one average value for Color Television Receivers.

Finally, the Department sometimes must resort to using broader HTS categories, such as at the six digit level rather than the 8-digit level. For *Color Television Receivers*, an

example was the use of 731700 ("NAIL, TACK, ET,N 8305"). See Attachment 5 of the Factor Valuation Memo. Even assuming, *arguendo*, that the use of 8-digit HTS categories could be considered a reasonable approximation of a distinct product's actual price, it is incontrovertible that the use of a six-digit surrogate value for any input that is categorized at the 8-digit level means that, by definition, the surrogate value used will be inherently less product-specific, and thus inherently less accurate, than the use of actual market economy purchases of specific products.[2]

Even in circumstances where a particular surrogate value arguably could be considered to be as specific as the market economy purchase, use of the surrogate value would nevertheless *still* be inherently less accurate than use of that market economy purchase. The reasoning is straightforward: in order to best determine company-specific costs, the Department must examine that company's purchasing behavior. Where free market conditions occur, different companies are able to obtain different prices from their suppliers, due to market-based conditions of supply and demand. A company's purchase of an input from a market economy input provider is the best indication of the market economy price at which

---

2 Indeed, FRA notes that the use of an HTS six-digit category is a very modest example of the Department's sometimes-reliance on overly broad basket categories. For example, in *Hot-Rolled Steel from Romania*, the Department used a four-digit HTS category to value limestone, even though doing so of course brought in values for types of limestone not even used in making steel! See Comment 1 of the Issues and Decision Memorandum for the 2002-03 Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania, accompanying Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005).

that particular company can obtain the input. To rely on a transaction occurring in another country, between completely different parties operating under different market conditions in another part of the world, when there already exists the best indicator of what that specific company would pay for the good in a market economy situation, would be illogical.[3]

The Department is required by law to calculate a dumping margin as accurately as possible. See *Viraj Group Ltd. v. United States*, 162 F. Supp. 2d at 662-63 (Ct. Int'l Tr. 2001) ("Both this Court and the United States Court of Appeals for the Federal Circuit have consistently held that Commerce is under a duty to determine dumping margins as accurately as possible. See, e.g., *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995); *Allied Tube & Conduit Corp.*,127 F. Supp. 2d 207, 218 (Ct. Int'l Trade 2000)."). Because using inherently less accurate data in favor of product-specific, actual transaction data must by definition yield a less accurate result, the Department is proscribed from changing its practice.

B. Less Predictability

As the Department itself acknowledged in its preamble to the current regulations, the U.S. Federal Circuit Court has emphasized the need for "accuracy, fairness, and predictability"

---

[3] FRA notes that the Department itself has expressed its preference for market economy prices as being more accurate than surrogate values. See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 13401 (March 18, 1999); and Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 60980 (October 14, 2004).

in dumping calculations, and it was for this reason that the U.S. Department implemented a specific regulation (19 CFR 351.408(c)(1)) allowing for the use of the market-economy prices. See Preamble to Antidumping Duties; Countervailing Duties; Final Rule ("Final Rule") 62 Fed. Reg. 27296, 27366 (May 19, 1997), which states the following:

> We note that the Federal Circuit has upheld our practice of using prices paid for inputs imported from market economies instead of surrogate values. *Lasko Metal Products, Inc. v. United States*, 43 F.3d. 1442 (1994) ("*Lasko*"). While we certainly do not view this decision as permitting us to use distorted (i.e., non-arm's length) prices, we believe that the Court's emphasis on "accuracy, fairness and predictability" does provide us with the ability to rely on prices paid by the NME producer to market economy suppliers, in lieu of surrogate values, for the portion of the input that is sourced domestically in the NME.

We have already noted above how this proposal would yield inherently less accurate results. Yet beyond the issue of accuracy, DOC's proposal would make it much more difficult for companies to comply with the law, because foreign producers/exporters would be even less able to predict the normal value "benchmark" against which their U.S. sales prices would be compared. Under the current system, companies attempting to monitor their selling activities in the United States are already faced with significant uncertainties with respect to what the Department will determine their selling, general and administrative, financial interest, and overhead expenses "should be." However, foreign companies are at least given a modicum of assurance with respect to their material input purchases where at least a portion of those purchases represent legitimate, market-economy sourcing transactions.

Put another way, Chinese producers, exporters, and U.S. importers rely (as they have, for example, in the *Wooden Bedroom Furniture* case) on a long-standing agency practice as

they monitor their U.S. sales practices under the strictures of an antidumping duty order. FRA knows of no public policy purpose that would be served by disrupting the ability of U.S. companies to purchase goods that are reasonably assured to be purchased at non-dumped price levels.

Any Department change of practice to deny valuation of some of an input using the market economy acquisition prices is, once again, a change toward an inherently less accurate method of predicting what a company's normal value, and hence dumping margin, would be as calculated by the Department. It should not be the Department's mandate to force companies to make wholesale shifts in their sourcing programs to 100 percent off-shore suppliers simply because these companies must protect themselves against the inadequacies of the Department's surrogate valuation methodology.

C. Critical Circumstances - Importer Knowledge of Dumping

The Department's proposal is also unfairly biased against U.S. importers, particularly with respect to "critical circumstances." (i.e., the retroactive application of suspension of liquidation 90 days prior to the publication of the preliminary determination in an investigation). One requirement for an affirmative finding of critical circumstances is "importer knowledge" that a product is likely being dumped. Under the Department's current practice, importer knowledge is assumed as existing where certain dumping margin levels are determined by DOC (15% for CEP sales, 25% for EP sales). See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate

from the People's Republic of China, 62 FR 31972, 31978 (October 19, 2001). Yet any U.S. importer's ability to estimate the possibility of an NME exporter exceeding those thresholds is seriously undermined where the exporter's own ability to estimate any dumping margin is significantly reduced. Once again, fairness and accuracy are compromised, contrary to the above-cited precedent.

Question 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?**

RESPONSE:

If the Department insists on changing its current practice in any respects, it should indeed concentrate solely on what it considers "meaningful" purchases when determining whether market-economy purchases should be used for valuing all consumption of the input.

FRA believes that any purchase is "meaningful" as long as that purchase represents a *bona fide* transaction. As a *bona fide* transaction, the purchase represents the most accurate, product-specific market economy price for that input for the producer, and there is no reason to discount the input price simply because some arbitrary threshold quantitative or percentage-based threshold has not been met for the specific period in question.

Nevertheless, in the event the Department wishes to draw a line somewhere, FRA notes that developing a bright-line threshold at least brings with it the benefit of increased predictability, which as stated above is an emphasis that the Federal Court of Appeals has

articulated and with which the Department has previously agreed. Given the Department's application in other areas of a five percent threshold for determining what is significant, FRA would propose that DOC adopt a five percent (by volume, or value if more appropriate) rule for establishing what is "meaningful."

The Department currently applies a five-percent threshold with respect to the issue of home market viability. The Department's glossary, attached to its standard questionnaire, states the following:

> **"Viability**
>
> To calculate normal value based on sales in the home market, the Department must determine that the volume of sales is adequate in that market and that a "particular market situation" does not make their use inappropriate. To calculate normal value based on sales in a third-country market, the Department must make the same determinations with respect to sales to the third country, and in addition the sales must be "representative." These determinations establish whether a market is viable.
>
> The Department normally finds sales to be adequate if the quantity of the foreign like product sold is **5 percent or more** of the quantity sold to the United States. In unusual situations, the Department may find that sales below the 5-percent threshold are adequate, or that sales above the threshold are not. Also in unusual situations, the Department may apply the 5-percent test on the basis of value, rather than quantity. The terms "particular market situation" and "representative" are undefined in the statute or the regulations. A particular market situation might exist, for example, where there was a single sale in the foreign market that constituted 5 percent or more of the quantity sold to the United States, or where government control of pricing is such that prices cannot be competitively set. (Section 773(a)(1) of the Act; section 351.404(b)(2) of the Department's regulations.)" {emphasis added}

Given the Department's general rule of a five-percent threshold for determining whether a *group of sales* forms an adequate basis for a fair normal value comparison, it follows that a five-percent threshold could equally be used to gauge whether a *group of purchases* (which

are, after all, simply the other "side" of a transaction) forms an adequate basis for making a fair normal value comparison.

Moreover, the Department also uses a five-percent rule with respect to home market affiliated party sales. Specifically, 19 CFR 403(d) states that:

> If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account **for less than five percent** of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section. {emphasis added}.

Explaining its rationale for allowing parties to exclude some affiliated party transactions from the reporting requirements, the Department noted, *inter alia*, that "the accuracy of determinations generally is not compromised by the absence of such sales." See Preamble to the Final Rule at 27356. Analogously, the Department could also determine that a five-percent threshold is indicative of whether accuracy is or is not compromised with respect to market economy purchases.

The Department also uses five percent in other contexts, such as with respect to establishing whether companies are affiliated through stock ownership.

Of course, even where a bright-line threshold has been established, such as with home market viability and home market affiliated party sales, the Department has always reserved the right (and exercised that right as well) to review any case-specific circumstances that may cause the Department to diverge from the bright-line standard. Thus, depending on the

circumstances, the Department could find that, even though the volume of purchases for a specific input fell under five percent, the absolute quantity was significant enough to dispel any concerns that such purchases were somehow not "meaningful." Thus, FRA proposes that the Department could adopt a rule under which purchases from market economy sources would be considered meaningful if they exceeded five percent (by volume or, as appropriate, by value) of total purchases of that input. In that event, the Department would value all purchases using the market economy price. If purchases did not reach five percent, the Department would examine whether the nature of the transactions and absolute quantities purchased nonetheless warranted a determination that such purchases were meaningful.

Question 3 Please provide any additional views on any other matter pertaining to the Department's practice concerning the use of market economy import prices.

RESPONSE:

FRA is concerned with respect to the timing of the implementation of any Department change in practice. Since the preliminary determination in the *Wooden Bedroom Furniture* investigation in June 2004, Chinese companies have been trying to comply with the U.S. dumping law. That is the purpose of the law. To comply with U.S. law, i.e., to reduce or eliminate dumping, foreign companies take acts to raise prices, lower costs, buy inputs from market sources, etc. Moreover, U.S. purchasers, as well as the foreign producers and exporters, have explicitly relied on the Department's current practice as they have made sales and purchases of subject goods since the preliminary determination in the LTFV investigation.

If the Department changes its calculation rules mid-stream, the Department will in effect prevent Chinese companies from complying with U.S. law, and will punish U.S. companies for their reliance on a well-established agency practice. For these reasons, the Department should not retroactively impose any change in its methodology. Any new methodology should apply to investigation and review periods occurring wholly after the publication of the new rules, in keeping with long-upheld principles regarding retroactivity.[4]

A. General Rule Against Retroactive Application

U.S. law generally disfavors the application of new Federal agency regulations, or for that matter the interpretation of existing Federal agency regulations, to have retroactive effect, and that retroactive application is permissible only if explicitly authorized by Congress in the statute granting authority to the Federal agency. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 208, 208-09, 109 S. Ct. 468, 472, 102 L. Ed. 2d 493 (1988) ("a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms"); *Univ. of Iowa Hosps. & Clinics v. Shalala*, 180 F.3d 943, 951 (8th Cir. 1999) ("when Congress delegates legislative authority to an administrative agency, courts will presume that the delegation forbids the agency from creating retroactive prescriptions, and only express

---

[4] See *Princess Cruises, Inc. v. U.S.*, 397 F.3d 1358, 1362 (Fed. Cir. 2005), citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 208, 208-09, 109 S. Ct. 468, 472, 102 L. Ed. 2d 493 (1988), for a most recent reaffirmation regarding the proscription against an agency of applying a rule or regulation "retroactively unless the agency clearly intended that the rule have retroactive effect and Congress authorized retroactive rulemaking."

Congressional authorization will overcome this presumption"); *Jahn v. 1-800-Flowers.com, Inc.*, 284 F.3d 807 (7th Cir.) ("{f}ederal regulations do not, indeed cannot, apply retroactively unless Congress has authorized that step explicitly"), cert. denied, 123 S. Ct. 102, 154 L. Ed. 2d 139 (2002); *Shakeproof Assembly Components Div. v. United States*, 102 F. Supp. 2d 486, 493 (Ct. Int'l Trade 2000) (following *Bowen* rule). The purpose behind the principle against applying agency rules retroactively is that retroactive application would unfairly harm the interests of a private party that had reasonably relied on the agency's previous regulation or position. *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 60 n.12, 104 S. Ct. 2218, 2224 n.12, 81 L. Ed. 2d 42 (1984) ("an administrative agency may not apply a new rule retroactively when to do so would unduly intrude upon reasonable reliance interests"); *Sweet v. Sheahan*, 235 F.3d 80, 89 (2d Cir. 2000) ("we are prohibited from applying a regulation to conduct that took place before its enactment in the absence of clear congressional intent where the regulation would impose new duties with respect to transactions already completed") (internal quotations and citations omitted). Some courts have gone further, concluding that Federal agency rules cannot be applied retroactively because rulemaking under the Administrative Procedures Act only contemplates rules having a future effect. Bowen, 488 U.S. at 216, 109 S. Ct. at 476 (Scalia, J., concurring in the judgment); *Centronix Telemetry, Inc. v. FCC,* 272 F.3d 585 (D.C. Cir. 2001) (following Scalia's concurrence in *Bowen*), cert. denied, 536 U.S. 923, 122 S. Ct. 2589, 153 L. Ed. 2d 778 (2002).

To determine whether an agency rule is retroactive, the test is "whether the new provision attaches new legal consequences to events completed before its enactment." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270, 114 S. Ct. 1483, 1499, 128 L. Ed. 2d 229 (1994). Retroactivity occurs when the provision "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." Id. at 280, 114 S. Ct. at 1505; see also *Nat'l Mining Ass'n v. Dep't of Labor,* 292 F.3d 849, 859 (D.C. Cir. 2002) (outlining essentially same test); *Kearfott Guidance & Navigation Corp. v. Rumsfeld,* 320 F.3d 1369 (Fed. Cir. 2003) (following Landgraf rule); *Disabled Am. Veterans v. Sec'y of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003) (same).

Since the date of the preliminary determination in the LTFV investigation dumping order on wooden bedroom furniture from China, Chinese furniture manufacturers have been and are continuing to make strategic sourcing decisions. Any changes in methodology for the valuation of inputs to be used in the administrative review period will necessarily be retroactive and will cover the current and past action of Chinese manufacturers. The Department has not identified any congressional mandate that would authorize such retroactive application. Thus, based on the legal presumption against retroactive application of laws and regulations and the principle of fundamental fairness, the Department must ensure that any new practice not apply to any investigation or administrative review periods that include *any time period before* the Department's announcement of any new practice.

* * *

Pursuant to the Department's instructions, we hereby submit an original and six copies of this document.

Please contact the undersigned if you have questions regarding this matter.

Sincerely,

William Silverman
Douglas J. Heffner
Richard P. Ferrin
Rick Johnson, *Senior International Trade Analyst*

cc: Lawrence Norton
Anthony Hill

COUNSEL CERTIFICATE

I, William Silverman, of Hunton & Williams, counsel to the Furniture Retailers of America ("FRA"), certify that (1) I have read the attached submission, and (2) based on the information made available to me by the FRA, I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

William Silverman
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
(202) 419-2013