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September 6, 2005

VIA HAND DELIVERY

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

Re: Request for Comments on Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries

Dear Mr. Spetrini:

The purpose of this letter is to provide on behalf of Furniture Brands International, Inc. our comments on the Commerce Department's proposal to change the way it values market economy inputs in antidumping proceedings involving non-market economy countries. The Department requested such comments in an August 11, 2005 Federal Register notice. As requested, we are submitting six copies of this letter, along with an electronic version in PDF format.

On June 24, 2005, we responded to the Department's initial request for comments on whether it should revise its policy with respect to market economy purchases of factors of production. We began from the proposition that the best

measure of the cost of a factor of production is presumptively what the producer has actually paid for it in the marketplace. Accordingly, we commented that there was no reason for Commerce to change its long-standing practice of using market economy purchases of inputs to value a non-market economy producer's use of the input even if some of the inputs were purchased in a non-market economy country, provided certain conditions were met.[1/]

We appreciate the Department's obligation to ensure that market economy input purchase prices are representative of actual production costs. We are also mindful of the Department's obligation to use the best available information. Because our previous letter apparently did not persuade the Department that its current and long-standing methodology is the best way to satisfy those obligations, we offer the additional comments set forth below.[2/]

At the outset we note that we agree with the Department's proposal to the extent that it affirms a willingness both to rely on actual, bona fide market economy purchases and to extrapolate from such purchases the value of an entire input. Where we disagree with the Department is in its creation of an artificial threshold of more than 50% for making such extrapolations. If Commerce is wedded to the idea of a threshold, however, it should be used as a presumption, not as a rule, and should be significantly lower than 50%. A rigid threshold, whatever it is, would invite the very manipulation the Department is seeking to avoid.

1/ Letter from Stanley J. Marcuss to Joseph Spetrini, dated June 24, 2005, enclosed.

2/ We encourage the Department to reconsider the reasoning in our June 24 letter, which is attached to this letter and incorporated by reference.

I. "Bright Line" Tests Invite Manipulation and Restrict Needed Flexibility

As noted in our June 24th letter, an intellectually sound threshold rule for determining "meaningful" purchases of market economy inputs in every case would be impossible to devise. At any given level, a threshold is almost certain to prove too high in some cases, too low in others and contentious in most. A bright line threshold, moreover, will subvert the Department's goal of avoiding manipulation because it will create an incentive for producers to make just enough market economy purchases to meet almost any threshold devised.

The case of *Timken Co. v. United States*, 201 F. Supp.2d 1316 (CIT 2002) is a useful reminder of why it would be wise to retain as much flexibility as possible in evaluating the significance of market economy factor purchases in non-market economy cases. *Timkin* involved a challenge to Commerce's final determination in an administrative review involving tapered roller bearings from the People's Republic of China.[3/] During the period of review, one of the producers purchased a portion of its steel from a market economy supplier and re-sold some to other producers for Chinese currency.[4/] Commerce valued the producers inputs using import prices paid by yet another Chinese producer, PRC Trading Company, as a surrogate.[5/] In assessing the reliability of the PRC Trading Company's import prices, Commerce examined "(1) the value and volume of steel imports, (2) the type and quality of the imported steel, and (3) consumption of

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3/ 201 F. Supp.2d 1316, citing *Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China*, 63 Fed. Reg. 63,842 (Nov. 17, 1998), as amended, 63 Fed. Reg. 71,447 (Dec. 28, 1998).

4/ *Id.*, at 1335.

5/ *Id.*

imported steel by the [non-market economy] producer."[6/] Commerce found that the imported steel was of the same grade and had the same range of sizes used by non-market economy manufacturers to produce the subject merchandise, that the price paid by the trading company was "not aberrational" and that the volume and consumption by the producer was "significant." On this basis, Commerce judged the company's prices were reasonable, and the *Timkin* court upheld the finding.[7/] Had Commerce been hamstrung by an inflexible rule, it could not have performed the analysis that the *Timkin* case so clearly required.

As in *Timkin*, Commerce needs to look to a range of factors in all other cases deciding whether to extrapolate from market economy purchases to the total cost of a given factor of production. Whether purchase volumes are "meaningful" is but one such factor. Others include whether there is corroborating evidence that the purchases in question are reflective of actual market prices or instead are distorted due to subsidies, volume discounts or short-term or regional price aberrations. A bright line threshold test for "meaningful" purchase volumes would eliminate considerations such as these from the analysis in many cases. As important, it would force the Department into accepting artificial surrogate country prices if factor input purchases are below the threshold even though the best information available may be contained in the market economy purchases. There is no rational basis for a rule that says that purchases of 50.1% of an input from a market economy justifies using market economy prices in valuing an input but that 50.0% does not.

6/ *Id.*

7/ *Id.*

II. A 50% Threshold is Contrary to Precedent and Current Law

Commerce regulations provide that "[i]n those instances where a portion of the factor is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Secretary normally will value the factor using the price paid to the market economy supplier." 19 C.F.R. §351.408(c)(1) (2005) (emphasis supplied). The plain meaning of this provision is that, under "normal circumstances" involving market economy purchases of a portion of a factor of production, the entire factor will be valued on the basis of the market economy purchases. Normal circumstances, according to current law, are those where the market economy purchases constitute a "meaningful" share of the total.[8/]

"Meaningful" must be interpreted on a case-by-case basis. *See Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001). In *Shakeproof*, the Federal Circuit Court of Appeals found market economy purchases of 34.7% of steel inputs for certain helical spring lock washers from the People's Republic of China to be "meaningful" and, therefore, an acceptable basis for extrapolating the normal value for all of the steel inputs in that case.[9/] The *Shakeproof* court explicitly endorsed Commerce's long-standing practice of accepting the actual prices manufacturers pay market economy suppliers for materials so long as the payment is in a market

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8/ *E.g.*, *Request for Comments*, 70 Fed. Reg. 30,418 (May 26, 2005). The "meaningful" share requirement is set forth as one of three conditions precedent for valuing all of the given input on the basis of the market economy purchase price. *See also Timken v. U.S.*, 201 F. Supp.2d 1316, 1335 (CIT 2002)(affirming Commerce's use of a three-pronged test encompassing (i) value and volume, (ii) type and quality and (iii) consumption by the producer, to assess the reliability of market economy import prices).

9/ 268 F.3d 1376, at 1378 and 1382.

economy currency, is an arms-length price and the value purchased is meaningful. In doing so, the Court said:

> [W]here we can determine that a [non-market economy] 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.[10/]

The *Shakeproof* holding that 34.7% market economy purchases was "meaningful" is consistent with Commerce's alternative formulation and practice of relying on such purchases so long as they are "not insignificant." *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 Fed. Reg. 61,964, at 61,966 and 61,980 (November 20, 1997) (iron ore imports)[11/]

Commerce's proposal stretches the meaning of the word "meaningful" beyond recognition and is, therefore, contrary both to the holding in *Shakeproof* and to its own regulation. "Meaningful" means "having significance."[12/] Synonyms of "significance," in turn, are "influence," "weight" and "importance."[13/] In the context of a non-market economy antidumping investigation or review, a "meaningful" quantity or share of market economy purchases must, therefore, be something more than a negligible or insignificant portion. But if common English usage is our guide, "meaningful" surely must not be required to signify a predominant or majority

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10/ 268 F.3d. 1376, 1382.

11/ *See also Anti-Dumping; Countervailing Duties Final Rule*, 62 Red. Reg. 27,296, 27,366 (May 19, 1997) (Commerce will not rely on market economy purchases where quantity purchased is "insignificant"); *Antindumping Duties; Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 61 Fed. Reg. 7,308, 7,345 (Feb. 27, 1996) (same).

12/ Webster's Third New International Dictionary, 1976 unabridged edition (G.C. Merriam Co., Springfield, MA).

13/ *Id.*

share or portion. By requiring that a majority of purchases of a factor of production be made in a market economy, Commerce would re-define "meaningful" as "a majority" or "more than 50%."

The proposal, thus, amounts to an assertion that, in cases where non-market economy producers purchase portions of factors of production from market economy suppliers, such producers "normally" purchase a "majority" of such factors from market economy suppliers. Commerce has offered no factual basis for this assertion, and it is undermined by the facts of cases such as *Shakeproof* and the *Certain Cut-to-Length Carbon Steel Plate*, cited above. Unless it can provide a factual predicate for doing so, Commerce cannot adopt a change in practice that would be inconsistent with the plain meaning of current law.

III. Significant Changes in Practice Cannot be Based on Hypothetical Concerns

Commerce has offered two rationales in support of its proposal: First, "it may be possible under current practice," says the Department, "for respondents to source a small amount of an input on favorable terms with the goal of manipulating the Department's margin calculations."[14/] Second, says the Department, "market economy suppliers may sometimes offer limited quantities of an input at prices that are much lower than the price at which respondents could acquire the total amount of the input in question."[15/] Commerce has not, however, identified any instance where either of these hypothetical scenarios has actually occurred.

On numerous previous occasions, Commerce has declined to promulgate rules, institute practices or decide cases based on hypothetical scenarios. In 2002, for example, Commerce

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14/ 70 Fed. Reg. 46,816, 46,817 (August 11, 2005) (emphasis supplied).

15/ *Id.* (emphasis supplied).

modified its methodology in antidumping proceedings concerning the determination of whether sales to affiliated parties in the comparison market are made in the ordinary course of trade and thus may be considered for use in calculating normal value.[16/] In connection with that modification, Commerce received a proposal to exempt respondents from downstream sales reporting where they can show such sales were made at prices below the relevant upstream sale and agree to use the upstream sale in its place. In rejecting the proposal, Commerce said, "[W]e do not believe it would be appropriate to address such hypothetical situations. We will do so if and when such issues are raised in a case."[17/]

In connection with two administrative reviews of its antidumping duty order on tapered roller bearings from Japan in 1998, respondent Fuji Heavy Industries, Ltd. argued that Commerce's "99.5 percent arm's length test," whereby it calculated home market customer-specific weighted-average related/unrelated price ratios and excluded from margin calculations all sales to a home market customer if its ratio is not greater than 99.5%, produced arbitrary results.[18/] Fuji, however, failed to provide a single example from its own data supporting its assertions. Commerce, therefore, rejected Fuji's theoretical examples of why the arm's length test distorted results, stating, "[W]e have no basis upon which to conclude that our test is unreasonable."[19/]

16/ *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 Fed. Reg. 69,186 (November 15, 2002).

17/ *Id.*, at 69,196.

18/ *See Tapered Roller Bearings an Parts Thereof From Japan*, 63 Fed. Reg. 20,585, 20,592 (April 27, 1998)(Comment 8).

19/ *Id.*

Finally, in connection with the promulgation of a final rule on anti-dumping duties and countervailing duties in 1997, Commerce received comments objecting to its treatment of allocated expenses and price adjustments and the interpretation to be accorded language in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act of 1994 ("URAA").[20/] Several commenters argued that, because all allocation methods are defective, Commerce should consider all of them to be inaccurate or distortive within the meaning of the SAA. In rejecting this argument, Commerce said, "the drafters of the URAA and the SAA were not dealing with abstract concepts, but instead were dealing with issues concerning the application of a law to real life factual scenarios. . . . the statute does not deal in imponderables."[21/]

The two rationales Commerce offers in support of its proposal have nothing even theoretically to do with whether inputs constitute a "meaningful" quantity. Instead, the concerns articulated by Commerce logically relate to whether a given market economy purchase is representative of actual market prices and, therefore, constitutes the "best available information" about those prices. These concerns can best be addressed by analyzing whether the purchase in question was arms-length, bona fide and involved an input actually used in the production of subject merchandise and not dumped or subsidized. They should not be based on hypothetical concerns not grounded in reality.

Unless Commerce is prepared to provide concrete examples of ways in which its current practice has been manipulated by respondents to distort the results, there is no basis on which to

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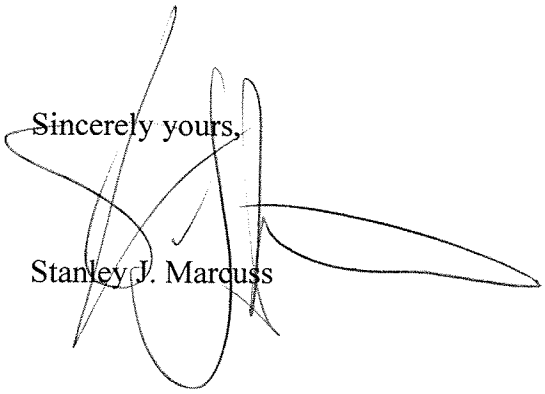
20/ *See Anti-Dumping Duties; Countervailing Duties; Final Rule*, 62 Fed. Reg. 27,296, 27,346 (May 19, 1997).

21/ *Id.*, quoting *Smith-Corona Group v. United States*, 713 F.2d 1568, 1561 (1983).

change that practice. Its proposal, therefore, has all the earmarks of a solution looking for a problem or, worse, a change in the rules for purposes of imposing further unfair burdens on non-marked economy respondents.

Sincerely yours,



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Enclosure

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PUBLIC INFORMATION

June 24, 2005

VIA HAND DELIVERY

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, D.C. 20230

Re: Comments on Regulations Pertaining to Market Economy Inputs in Non-Market Economy Dumping Cases

Dear Mr. Spetrini:

The purpose of this letter is to provide on behalf of Furniture Brands International, Inc. our comments on the Commerce Department's practice regarding market economy inputs in non-market economy cases. The Department requested such comments in a May 26, 2005 Federal Register notice at 30,418. As requested, we are submitting six copies of this letter, along with an electronic version in PDF format.

As amplified below, we see no reason for Commerce to change its long-standing practice of using market economy prices of imported inputs to value a non-market economy producer's use of the input even if some of the inputs are purchased in a non-market economy country. Indeed, to change its regulations or practice along the lines suggested would be contrary to *Lasko Metal Products, Inc. v. United States*, 43 F. 3d 1442 (Fed. Cir. 1994), which held that "using surrogate

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values when market-based values are available would, in fact, be contrary to the intent of the [Tariff Act of 1930]."[1/]

If Commerce is concerned, as it should be, about accuracy in measuring the cost of a factor of production, it should continue its existing practice because there is no better measure of the true cost of an input than what the producer has actually paid for it in the marketplace. No non-market economy producer would pay market economy prices for an input if it were available at a lower cost from a non-market economy supplier. He would turn to the non-market economy supplier instead. His market economy purchases of the input are, therefore, the best indicator of his actual cost for the input. Put another way, they provide the best available information about the cost of that input. For Commerce to ignore information of that kind in favor of hypothetical transactions involving surrogate countries where the imports in question are not even produced would be contrary to its statutory mandate in non-market economy cases to value the factors of production "based on the best information available information regarding the values of such factors in a market economy." 19 U.S.C.A. § 1677b(c)(1) (2005).

There may, of course, be an issue in a given case about whether a market economy purchase truly reflects a producer's costs of production. That is presumably why Commerce reserves the right to determine whether given market economy purchases are "meaningful." It is not possible, however, to establish in advance what is or is not "meaningful" in a given case.

1/ *Lasko*, 43 F.3d at 1446.

Whatever criteria are chosen would simply become a target to aim at, but the results would not necessarily be any more meaningful.

Percentage targets provide the best example. Set the target at 5%, for example, and producers will meet that target. There is no reason, however, to believe that 5% is inherently any more meaningful than 4.9%.

It would, thus, be far better for Commerce to assume that all market purchases are meaningful indicators of an input's cost subject to rebuttal if it can be shown that they are not. This would avoid the fruitless task of attempting to establish *a priori* rules for an concept that requires subjective judgment about an endless variety of circumstances that cannot possibly be anticipated. It would subject the task of valuation to the cauldron of actual experience rather than leave it beholden to arbitrary rules that have no basis in theory or reality.

I. Background

One of the purposes of the Tariff Act is "to facilitate the determination of dumping margins as accurately as possible. . . ."[2/] In making determinations about the foreign market value of merchandise exported from non-market economies, Commerce is required by the Act to value factors of production "based on the best available information regarding the values of such factors in a market economy country. . . ." 19 U.S.C.A. § 1677b(c)(1) (2005). Commerce regulations provide:

2/ *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442 (Fed. Cir. 1994), quoting *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993).

> [W]here 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 nonmarket economy supplier, [Commerce] normally will value the factor using the price paid to the market economy supplier.[3/]

In *Lasko Metal Products, Inc. v. United States*, the Federal Circuit Court of Appeals specifically addressed the issue whether the Tariff Act permitted Commerce "to determine the factors of production using both surrogate country values and actual cost values."[4/] Although the Court noted that the Act did not require "that the factors of production must be ascertained in a single fashion," it quoted with approval the following from Commerce's final determination in the underlying matter:

> Where we can determine that a 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.[5/]

The Court thus upheld the Commerce Department's conclusion that the best available information on the cost of supplies used by the Chinese manufacturers of ceiling fans in that case was the price actually charged for those supplies on the international market even though only a portion of those

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3/ 19 C.F.R. § 351.408(c)(1) (2004).

4/ *Lasko*, 43 F.3d 1442 at 1445.

5/ *Lasko*, 43 F.3d 1442 at 1446, quoting *Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 Fed. Reg. 55,271, 55,275 (Dep't Comm. 1991).

supplies had actually been purchased in a market economy. [6/] The reasoning presumably was that a non-market economy producer could not obtain its non-market supplies at a cost any lower than the price it paid in a market economy. In reaching its conclusion, the Court of Appeals in effect endorsed existing Commerce Department practice because it produced "accuracy, fairness, and predictability."[7/]

Almost nine years ago during the process of formulating the rule now codified at 19 C.F.R. § 351.408(c)(1) (2004), Commerce addressed concerns similar to those raised in the recent request for comments to which this letter responds. One commenter then objected that prices paid by non-market economy producers for factors imported from a market economy (i) are not publicly available, (ii) are not internally coherent with other values included in the calculation, (iii) might contain distortions attributable to barter transactions or centralized purchasing and (iv) should be used, if at all, only in valuing the specific transactions to which they pertain.[8/] With respect to the last point, the commenter reasoned as follows: "[R]elying solely on the price paid to the market economy supplier to value the input is inappropriate because it assumes that the NME producer could purchase all of its needs at this price. . . ."[9/]

6/ *Lasko,* 43 F.3d 1442 (Fed. Cir. 1994), citing *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993).

7/ *Lasko*, 43 F.3d at 1446. *See also* 61 Fed. Reg. 7307, 7344 (Feb. 27, 1996).

8/ *See* 62 Fed. Reg. 27,295, 27,366 (May 19, 1997).

9/ *Id.*

Commerce rejected these suggestions citing *Lasko* and noting further that it "would not rely on the price paid by an NME producer to a market economy supplier if the quantity of the input purchased was insignificant. Because the amounts purchased from the market economy supplier must be meaningful, this requirement goes some way in addressing the commenter's concern that the NME producer may not be able to fulfill all its needs at that price."[10/] Commerce continued to take the position, as it had done in *Lasko*, that "accuracy is enhanced when the NME producer's actual costs can be used."[11/] Nothing has changed in the interim to question this conclusion.

II. Questions Raised by Commerce

A. 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?

A central purpose of the dumping laws is to determine dumping duties as accurately as possible. Commerce's practice, developed and applied over many years in order to promote accuracy, fairness, and predictability, is consistent with that purpose and has been upheld by the Federal Circuit Court of Appeals. In quoting Commerce's own conclusion in the final determination in the underlying matter, the *Lasko* Court found that "using surrogate values when

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10/ *Id.*

11/ 61 Fed. Reg. at 7344 (Feb. 27, 1996).

market-based values are available would, in fact, be contrary to the intent of the law."[12/] Accordingly, a departure from the Commerce Department's long-standing practice of using market economy import prices paid in bona fide transactions for meaningful quantities of imported merchandise to value an entire input would be contrary to law.

Commerce's regulations and practice, moreover, are consistent with the general proposition that actual, arms length, bona fide commercial transactions are inherently more reliable as an indicator of actual value than a statistical sample from a theoretical basket of products from a surrogate.[13/] Indeed, it is and should be Commerce's preference to use as many actual transactions as possible in making determinations across the full range of issues involved in antidumping matters. This preference is and should be rebuttable, of course, but as a general matter the burden should be placed on the party that opposes using evidence of actual free market transactions to explain why in a given case such transactions are not reliable.

In its request for comments, Commerce has offered no compelling reason why it should end its long-standing practice in this area or amend its regulations contrary to *Lasko*. Instead, it notes two hypothetical "concerns" without offering a factual predicate for either. Both of these concerns can be addressed easily under the current regulatory framework and existing practice.

12/ *Lasko*, 43 F.3d 1442 at 1446, quoting *Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 Fed. Reg. 55,271, 55,275 (Dep't Comm. 1991). *See also Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001).

13/ *See, e.g.*, 19 C.F.R. § 351.407(b)(3) (2004); 19 U.S.C.A. § 1677b(a)(1)(B) (2005) (arms length affiliated party transactions used as basis for determining normal value).

The first concern is that "basing an 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."[14/] This is essentially identical to one of the concerns raised by a commenter to the proposed regulations in 1996. The reason Commerce rejected the comment then, namely that Commerce could exercise its discretion not to rely on the price paid by a non-market economy producer to a market economy supplier if the quantity of the input purchased were insignificant,[15/] applies with equal force now. This concern is further mitigated by Commerce's policy and practice of requiring that average input prices paid by respondents to market economy suppliers be calculated on the basis of bona fide sales of inputs actually used in the production of subject merchandise and by disregarding all inputs Commerce has reason to believe or suspect might be dumped, subsidized or produced in a non-market economy and sold through a market economy.[16/]

The second concern is that Commerce's "current practice may allow parties to manipulate the Department's margin calculation by sourcing just enough of an input from market economy suppliers so that the market economy price is used to value the entire input."[17/] This concern also is mitigated by Department's current practice of examining market economy purchases to ensure

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14/ 70 Fed. Reg. 30,418 (May 26, 2005).

15/ 62 Fed. Reg. at 27,366 (May 19, 1997).

16/ *See* 70 Fed. Reg. 30,418 (May 26, 2005). *See also, e.g., Certain Helical Spring Lock Washers from the People's Republic of China*, 70 Fed. Reg. 28274 (May 12, 2005) (declining to use market economy prices where they may have been subsidized); *Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 Fed. Reg. 34,125 (June 18, 2004) (declining to use prices of inputs produced in a non-market economy but sourced from a market economy supplier); *Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 Fed. Reg. 60,980 (October 14, 2004) (declining to use market prices for input not actually used in production of subject merchandise).

17/ 70 Fed. Reg. 30,418 (May 26, 2005).

that they are bona fide and actually used in the production of subject merchandise and by disregarding inputs that either are produced in a non-market economy and sold through a market economy or reflect dumped or subsidized prices.[18/]

Commerce must exercise its judgment based on the facts of a given case. To abandon the current practice in favor of hard and fast rules would be to abandon the exercise of judgment that is essential to accurate measurement.

B. 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 input price to be used to value all of the input?

Commerce currently enjoys considerable discretion in this area. An intellectually sound threshold rule for determining "meaningful" shares or volume of market economy inputs, moreover, would be impossible to devise. At any particular level, a threshold would likely prove too high in some cases, too low in others and contentious in many. It would, moreover, easily be subject to manipulation as producers would face irresistible incentives to make just enough market economy purchases to meet the threshold.

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

Neither of the concerns raised in the request for comments is of any less significance in antidumping proceedings involving market economies than it is in non-market economy cases.

18/ *See cases cited in note 17, supra.*

Yet in market economy cases, the Tariff Act provides for costs of production to be based on actual data for costs of (i) materials, fabrication and processing, (ii) selling, general and administrative expenses and (iii) containers and coverings.[19/] Such costs are normally based on records of the exporter or producer of the merchandise provided such records are kept in accordance with the generally accepted accounting principles of the producing or exporting country and they reasonably reflect the costs associated with the production and sale of the merchandise.[20/] Nothing in the Tariff Act or Commerce regulations or practice would prevent reliance on a single invoice documenting the purchase of an actual factor of production. Any concerns the Department has about the reliability of market economy purchases of inputs in non-market economy cases should be dealt with in the same way they are dealt with in market economy cases.

III. Retroactivity

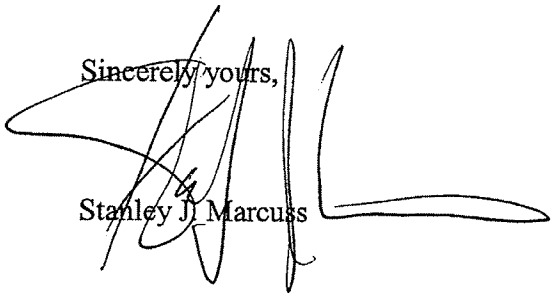
To further its stated policy of predictability, Commerce should not institute any change in regulation or practice retroactively or with respect to any existing investigation or period of review. Our client and others involved in the Chinese wooden bedroom furniture matter have relied and continue to rely on the existing regulations and the long-standing Commerce practice of applying them. As we are now preparing for the first administrative review in that case, our client would be adversely affected by any significant change in regulation, policy or practice if it were applied to the current period of review. No doubt, other parties with matters before Commerce have similar concerns.

19/ *See* 19 U.S.C.A. § 1677b(b)(3) (2005).

20/ See 19 U.S.C.A. § 1677b(f)(1) (2005).

Thank you for the opportunity to comment.

Sincerely yours,



Stanley J. Marcuss