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Via Hand Delivery

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

Re: Comments on Market Economy Inputs Practice in Antidumping Proceedings involving Non-Market Economy Countries

Dear Mr. Spetrini:

These comments are submitted pursuant to the Federal notice of August 11, 2005, 70 FR 46816-46817, to address the question of whether the Department should change its current practice in non-market economy ("NME") country antidumping proceedings of using the average price paid for the inputs sourced from market economy suppliers to value all of that input.

As explained in that Federal Register Notice, the Department normally will use the average price paid for the inputs sourced from market economy suppliers to value all of that input only when four conditions are met:

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1. When the volume of the imported input is “meaningful” in relation to the total purchases from all sources, determined by the Department on a case-by-case basis;
2. When the average import price reflects arms-length, bona fides sales;
3. When the Department does not have reason to believe or suspect the imported input has been dumped or subsidized; and
4. When the imported input could have been used in the production of the subject merchandise during the period of investigation or review.

The Department is considering a possible change in its established practice as a result of concerns raised by certain commentators that the current practice does not insure that prices paid by respondents for the portion of the input from market economy suppliers are an accurate valuation of the entire input, in particular, “that it may be possible for respondents, under the Department’s current practice, to source a small amount of an input on favorable terms with the goal of manipulating the Department’s margin calculations.” Alternatively, these parties claim “market economy suppliers may 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.”

It is unclear why the Department’s current practice is inadequate to address this issue, which is premised on “small amounts” of an input being sourced “on favorable terms. In these situations, the Department properly can reject the use of the average price paid for the inputs sourced from market economy suppliers to value all of that input because the volume of the input is not “meaningful” and because the average price does not reflect “arms-length, bona fides sales.” Similarly, it is not a normal practice for market economy suppliers to sell smaller

quantities at lower prices than the prices at which they sell larger quantities, and, again, in the unlikely situation where this occurs, the Department can reject the use of the average price of the imported input to value all of that input on the basis that the volume was not "meaningful" in that case.

Given the Department's authority to address these concerns under its current practice, there is little to be gained from abandoning that practice and much to be lost. As the Department itself explained in its "Notice of proposed rulemaking and request for Public Comments," establishing its regulations, 61 FR 7307-7392, February 27, 1996, the Department's current practice is intended "to promote the accuracy, fairness and predictability of the factor valuation process":

Factor Valuation: Once a surrogate country (or countries) has been selected, the next step is to assign values to the actual factors or inputs used by the NME producer. In choosing these values, the Department has developed practices that emphasize "accuracy, fairness, and predictability." *Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55271, 55275 (October 25, 1991), cited with approval in *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442 (Fed. Cir. 1994). The Department continues to believe that these goals should guide the factor valuation process, and, consequently, is proposing rules to further this.

Two important practices have arisen to promote the accuracy, fairness and predictability of the factor valuation process....

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The second important practice that has developed involves situations where an NME producer uses inputs which are: (1) Imported from a market economy producer, and (2) paid for in a market economy currency. In these instances, the Department has used the price actually paid by the NME producer in lieu of a price in the surrogate country. This practice has been upheld by the Federal Circuit in *Lasko*. Paragraph(c)(1) clarifies the Department's authority to continue this practice.

The regulation also clarifies two aspects of this practice. First, in situations where a portion of the NME producer's input is sourced from a market economy source (and paid for in a market economy currency) and the remainder is sourced from producers within the NME, paragraph (c)(1) makes clear that the price paid to the market economy supplier should normally be used to value the input, not the price derived from a surrogate. ***This reflects the Department's position that accuracy is enhanced when the NME producer's actual costs can be used.*** However, where the amount purchased from a market economy supplier is insignificant, that price may be disregarded. (Emphasis added)

(61 FR 7344-7345)

The Department's stated preference for using an NME producer's actual cost to enhance the accuracy of the factor valuation process reflects the practical problems inherent in using surrogate value data.

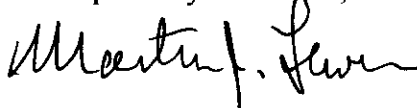
Often, the only available surrogate value information reflects pricing for a generic input without regard to quality or narrower specifications for the input actually used in the production process. In other situations, no surrogate value information is available during the period of investigation or review and generalized inflators are employed to adjust surrogate value from an earlier period. Still in other situations, the final surrogate value depends on subjective decisions regarding the representativeness of alternative sources of surrogate value information.

While the Department often is required to use this information because it does not have reliable actual costs of inputs in NME cases, where reliable actual costs exist, it makes no sense to ignore them by establishing an inflexible rule predicated on speculative potential problems that can be addressed under the current rules.

Apart from issues of accuracy, using the average price paid for the inputs sourced from market economy suppliers to value all of that input, where appropriate, provides a measure of predictability for foreign NME producers seeking to avoid dumping. Under the current system, foreign NME producers often do not know the surrogate value of inputs used in the production process at the time of production and therefore are unable to determine whether their export prices are at or above normal value. The use of imported inputs provides a predictable benchmark to allow NME foreign producers to avoid pricing below normal value and therefore serves an important remedial function consistent with the underlying intention of the antidumping law.

Under the circumstances, strong policy reasons exist for maintaining the current practice of using the average price paid for the inputs sourced from market economy suppliers to value all of that input, subject to the four conditions the Department has adopted to insure that problems of the sort raised by certain commentators are avoided. There is nothing to suggest that the current system is broken and requires fixing at the cost of accuracy, fairness and predictability in the factor valuation process.

Respectfully Submitted,



Martin J. Lewin