



MINISTRY OF TRADE
THE SOCIALIST REPUBLIC OF VIETNAM

Free Translation

September 6, 2005

The Honorable Carlos M. Gutierrez
Secretary of Commerce
U.S. Department of Commerce
Washington, D.C. 20230

Attn: Mr. Joseph 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 the Department's Proposed Changes to Its Practice of Valuing Production Factors in Non-Market Economy Antidumping Cases with Actual Market-Economy Purchases Prices

Dear Secretary Gutierrez,

The Ministry of Trade of Vietnam provides these comments in response to the Department's request for comments on proposed changes to its methodology of valuing factors of production in non market-economy ("NME") antidumping cases.

On May 26, 2005, the Department initially requested comments on whether it should change its practice of valuing NME respondents' production inputs with the actual prices paid for these inputs. As provided in its regulations, the Department stated that it will normally use the prices paid by NME respondents to market-economy suppliers for a portion

of their purchases for a particular input to value all consumption of the input.¹ In such cases, the Department values all consumption of an input with these prices as long as (1) they represent a “meaningful” quantity of purchases; (2) they were made at arm’s length; and (3) the Department has no reason to suspect that the purchased inputs were dumped or subsidized.

On June 24, 2005, the Ministry of Trade provided extensive comments as to why the Department should not restrict its practice of using NME respondents’ actual market-economy purchase prices to value all of the respondent’s consumption of a particular input. Specifically, the Ministry provided three central arguments:

(1) the practice of using the market-economy prices that NME respondents’ actually paid for production inputs satisfies the U.S. Antidumping Statute’s mandate of using the “best available information”;

(2) the Department should follow its precedent in market-economy antidumping proceedings and determine that a single arms-length, bona fide transaction represents a “meaningful” quantity of such purchases; and

(3) the Department should revise its NME practice so that market-economy purchase prices are used as often as possible - including to value production inputs for those NME respondents that did not have market-economy purchases during the period of investigation or review.

On July 26, 2005, in response to comments submitted by other parties, the Ministry of Trade submitted additional comments on the Department’s practice of using actual prices paid by NME respondents to value the factors of production. In these additional comments, the Ministry of Trade asserted the following:

¹ See 19 C.F.R. § 351.408(c)(1).

(1) the Department's practice of using market-economy prices does not allow NME respondents to "game the system";

(2) publicly available data from surrogate countries are not more accurate than the actual market-economy prices that NME respondents have paid for production inputs;

(3) a percentage benchmark is unnecessary when the Department has determined that an actual market-economy price is bona fide;

(4) the U.S. Antidumping Statute does not require or imply a preference for valuing the factors of production with surrogate values.

On August 11, 2005, the Department published in the *Federal Register* a proposed modification to its practice of using actual market-economy prices to value production inputs in NME antidumping proceedings. The Department stated that it would continue to value all of an NME respondent's consumption of a particular input with prices paid to market-economy suppliers if these prices satisfied certain conditions. Specifically, the Department stated that it would need to be satisfied that these purchases were "meaningful," arm's length, *bona fide*, not dumped or subsidized, and used to produce the subject merchandise during the period of review or investigation.

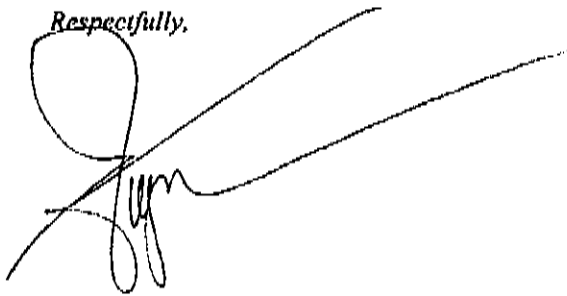
In addition to these requirements, the Department also proposes to require that a majority, or over 50 percent, of an NME respondent's consumption of a particular input be sourced from market-economy suppliers before using the market-economy price to value all consumption.

The Department must not adopt its proposed policy of a 50 percent threshold for several reasons. First, using surrogate values when actual, market-economy prices are available violates the U.S. Antidumping Statute's mandate to use the "best information available" as well the Department's regulations. Second, the Department must focus on the *quality* rather than the *quantity* of market-economy prices when deciding whether the prices

are the “best available information.” Finally, if the Department ultimately decides to adopt a new policy on using market-economy purchase prices to value the factors of production, it must only apply such a policy prospectively for NME antidumping investigations initiated after such a policy becomes effective.

The Ministry of Trade appreciates this opportunity to provide additional comments on the Department’s NME methodology and the valuation of the factors of production in NME antidumping proceedings.

Respectfully,

A handwritten signature in black ink, consisting of a large loop at the top left, followed by a series of connected strokes that form the name 'Truong Dinh Tuyen'.

Truong Dinh Tuyen
Minister
Ministry of Trade
Socialist Republic of Vietnam



BỘ THƯƠNG MẠI
CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM

Ngày 6 tháng 9 năm 2005

Kính gửi: Ông Carlos M. Gutierrez
Bộ trưởng Thương mại
Bộ Thương mại Hoa Kỳ
Washington, D.C. 20230

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*V/v: Ý kiến bình luận về những thay đổi do Bộ Thương mại Hoa Kỳ đề xuất đối với
thông lệ định giá các yếu tố sản xuất trong các vụ kiện nền kinh tế phi thị trường
bằng giá mua nguyên liệu đầu vào thực tế từ nền kinh tế phi thị trường*

Thưa Ông Bộ trưởng Gutierrez.

Phúc đáp thông báo trưng cầu ý kiến của Quý Bộ (DOC) về những đề xuất thay đổi phương pháp định giá các yếu tố sản xuất trong các vụ kiện chống phá giá liên quan đến nền kinh tế phi thị trường (NME), Bộ Thương mại Việt Nam đưa ra những ý kiến bình luận kèm theo thư này.

Ngày 26 tháng 5 năm 2005, DOC lần đầu tiên yêu cầu các bên liên quan đóng góp ý kiến về việc liệu DOC có nên thay đổi thông lệ hiện nay là sử dụng giá mua đầu vào thực tế

để định giá các yếu tố đầu vào sản xuất của bị đơn NME. Như quy định trong chính quy chế của DOC, DOC đã nêu rõ rằng DOC thông thường sẽ sử dụng mức giá thực tế mà các bị đơn NME trả cho các nhà cung cấp thuộc nền kinh tế thị trường để mua một phần một loại nguyên liệu đầu vào cụ thể để định giá toàn bộ lượng sử dụng loại nguyên liệu đó của bị đơn NME.¹ Trong những trường hợp này, DOC định giá toàn bộ lượng sử dụng một loại nguyên liệu đầu vào bằng giá thực tế nếu đáp ứng những điều kiện sau (1) giá đó đại diện cho một lượng mua nguyên liệu đầu vào “đáng kể”; (2) giá được xác định theo điều kiện thương mại thông thường; và (3) DOC không có lý do để nghi ngờ rằng nguyên liệu đầu vào đó đã được bán phá giá hoặc được trợ giá.

Ngày 24 tháng 6 năm 2005, Bộ Thương mại Việt Nam đã đưa ra bản bình luận gồm nhiều vấn đề nêu lý do tại sao DOC không nên hạn chế việc sử dụng giá thực tế mà các bị đơn NME thanh toán cho việc mua nguyên liệu đầu vào từ nền kinh tế thị trường để định giá toàn bộ lượng sử dụng yếu tố nguyên liệu đầu vào tương ứng của bị đơn đó. Cụ thể, Bộ Thương mại Việt Nam đã đưa ra những lập luận trọng tâm sau:

- (1) thông lệ sử dụng giá kinh tế thị trường mà bị đơn NME thực trả cho các yếu tố đầu vào sản xuất là đáp ứng yêu cầu về sử dụng “thông tin sẵn có tốt nhất” của Luật Chống phá giá Mỹ;
- (2) DOC nên đi theo tiền lệ của mình trong các vụ kiện chống phá giá đối với nền kinh tế thị trường để xác định chi cần một giao dịch *ngay tình* trong các điều kiện thương mại thông thường là đủ để đáp ứng tiêu chí lượng nguyên liệu đầu vào mua từ nền kinh tế thị trường “đáng kể”; và
- (3) DOC nên sửa đổi thông lệ hiện nay trong các vụ kiện NME để giá mua nguyên liệu từ nền kinh tế thị trường được sử dụng càng nhiều càng tốt – bao gồm sử dụng giá kinh tế thị trường của các bị đơn khác để tính toán cho cả những bị đơn không mua nguyên liệu đầu vào từ nền kinh tế thị trường trong giai đoạn điều tra hoặc xét lại.

Ngày 26 tháng 7 năm 2005, phản hồi những ý kiến bình luận do các bên liên quan khác đệ trình, Bộ Thương mại Việt Nam đã đưa ra ý kiến bình luận bổ sung về thông lệ của

¹ Xem 19 C.F.R. § 351.408(c)(1).

DOC là sử dụng giá thực tế thanh toán của các bị đơn NME để định giá các yếu tố sản xuất. Trong bản bình luận bổ sung này, Bộ Thương mại Việt Nam đã khẳng định những nội dung sau:

- (1) thông lệ sử dụng giá kinh tế thị trường thực tế của DOC không cho phép các bị đơn NME “bóp méo quy chế”;
- (2) thông tin sẵn có công khai từ nước thay thế không thể chính xác hơn giá kinh tế thị trường mà bị đơn NME đã thực trả để mua nguyên liệu đầu vào sản xuất;
- (3) một tỷ lệ làm chuẩn là không cần thiết khi mà DOC đã xác định một mức giá mua nguyên liệu đầu vào thực trả là giá theo giao dịch *ngay tình*;
- (4) Luật Chống phá giá Mỹ không quy định hoặc có hàm ý ưu tiên sử dụng giá trị thay thế để định giá các yếu tố sản xuất.

Ngày 11 tháng 8 năm 2005, DOC đã đăng trên *Công báo Liên bang* đề xuất sửa đổi thông lệ sử dụng giá kinh tế thị trường thực trả để định giá các yếu tố nguyên liệu đầu vào sản xuất trong các vụ kiện chống phá giá NME. DOC cho biết sẽ tiếp tục sử dụng giá thực trả cho người cung cấp thuộc nền kinh tế thị trường để định giá toàn bộ lượng sử dụng loại nguyên liệu đầu vào đó của bị đơn NME nếu các mức giá đó đáp ứng một số điều kiện. Cụ thể là theo DOC, những điều kiện cần đáp ứng bao gồm: lượng mua nguyên liệu đầu vào phải “đáng kể,” giá phải xác định theo điều kiện thương mại thông thường, trên cơ sở giao dịch *ngay tình*, không phá giá hoặc trợ giá, và lượng nguyên liệu mua theo giá đó phải được sử dụng để sản xuất sản phẩm bị kiện trong giai đoạn điều tra hoặc xét lại.

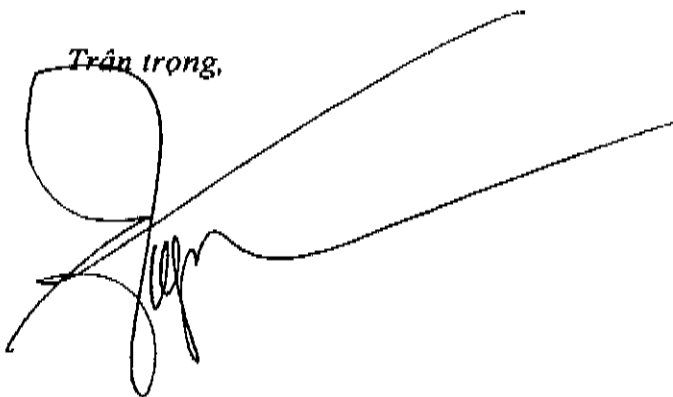
Ngoài những yêu cầu nói trên, DOC cũng đề nghị áp dụng mức ngưỡng đa phần, hay trên 50% lượng sử dụng một loại nguyên liệu đầu vào đó được mua từ người cung cấp thuộc nền kinh tế thị trường thì giá kinh tế thị trường thực trả mới được sử dụng để định giá toàn bộ lượng sử dụng nguyên liệu đầu vào đó.

DOC không nên sử dụng chính sách mới đề xuất là áp dụng ngưỡng tối thiểu 50% vì một số lý do. Thứ nhất, sử dụng giá trị thay thế trong khi sẵn có giá kinh tế thị trường thực trả

sẽ vi phạm yêu cầu của Luật Chống phá giá Mỹ cũng như quy chế của DOC là sử dụng “thông tin sẵn có tốt nhất”. Thứ hai, DOC phải tập trung vào vấn đề *chất* hơn là vấn đề *lượng* đối với giá kinh tế thị trường khi xác định các mức giá đó là “thông tin sẵn có tốt nhất.” Cuối cùng, nếu DOC vẫn quyết định thông qua chính sách mới về sử dụng giá mua nguyên liệu đầu vào từ nền kinh tế thị trường để định giá các yếu tố sản xuất, thì DOC chỉ nên áp dụng chính sách đó về tương lai đối với những vụ điều tra chống phá giá NME được khởi xướng sau khi chính sách này có hiệu lực.

Bộ Thương mại Việt Nam trân trọng cảm ơn DOC đã tạo cơ hội cho các bên nêu ý kiến bình luận về phương pháp định giá các yếu tố sản xuất của DOC trong các vụ kiện chống phá giá NME.

Trân trọng,



Trương Đình Tuyển
Bộ trưởng
Bộ Thương mại
Cộng hoà Xã hội Chủ nghĩa Việt Nam

**UNITED STATES DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION - IMPORT ADMINISTRATION**

**Comments on the Department's Proposed Changes to Its Practice of
Valuing Production Factors in Non-Market Economy Antidumping Cases
with Actual Market-Economy Purchases Prices**

**GOVERNMENT OF VIETNAM
MINISTRY OF TRADE**

September 6, 2005

I. INTRODUCTION

On May 26, 2005, the Department published in the *Federal Register* a request for comments on whether it should change its long-standing policy of using the actual market-economy prices paid by NME respondents for certain inputs to value all consumption of such inputs. On June 28, 2005, the Department published on the Import Administration website comments submitted by parties on possible changes that the Department could make to its practice of using actual market-economy prices to value the factors of production.

On August 11, 2005, following its receipt of these public comments, the Department published in the *Federal Register* an additional requests for comments on its practice of using market-economy purchase prices in NME cases. Specifically, the Department stated that it was proposing a new policy for valuing all of an NME respondent's consumption of a particular input with the actual market-economy purchase prices paid for the input. Under the Department's new proposal, it would only value all of an NME respondent's consumption of a particular input if a majority (or over 50 percent) of the input was sourced from countries considered to be market economies by the Department.

For those NME respondents that did not source a majority of a particular input from a market-economy country, the Department would derive a value for such an input using actual purchase prices and surrogate values. According to the Department's proposal, it would weight-average the portion purchased from market economies, valued with the actual purchase prices, with the portion sourced from NME sources in the NME market, valued with surrogates.

As stated in the Government of Vietnam's June 24, 2005 comments, we believe that using the actual market-economy prices paid by NME respondents to value the factors of production increases the accuracy of antidumping determinations. This position is supported by the U.S. Antidumping Statute, the Department's regulations, U.S. court precedent, and the

Department's case determinations. In its previous submissions, the Ministry of Trade has thoroughly demonstrated why the Department should not restrict in any way its use of actual market-economy prices in NME antidumping proceedings. Although each of these arguments is not repeated, the Ministry of Trade requests that the Department carefully reconsider its comments submitted on June 24, 2005 and July 26, 2005.

The Ministry of Trade asserts that the Department should refrain from adopting its proposed policy on using market-economy purchase prices in NME cases for the following three reasons:

- (1) valuing production factors with surrogate values when actual, market-economy prices are available contravenes the U.S. Antidumping Statute and the Department's regulations;
- (2) the Department must focus on the *quality* (i.e., the *bona fide* nature of the purchase price) rather than the *quantity* (requiring over 50 percent) when determining whether the purchase prices are the "best available information";
- (3) any change in the Department's policy must be prospective and should only apply to investigations initiated after the adoption of such a policy.

1. Valuing production factors with surrogate values when actual, market-economy prices are available contravenes the U.S. Antidumping Statute and the Department's regulations.

To require that an NME respondent purchase a majority of its inputs from market-economy sources before using the market-economy prices to value all of the respondent's consumption of the input would violate the U.S. Antidumping Statute.

The U.S. Antidumping Statute specifically directs the Department to value NME respondents' factors of production with the "best available information regarding the values of such factors in a market economy country or countries considered appropriate by the administering authority."² As interpreted by U.S. courts, this mandate requires that the

² 19 U.S.C. § 1677b(c).

Department use the market-economy prices paid for the particular input to value all of an NME respondent's consumption of the input when such prices are available. Only by using these prices can the Department value the particular production factors with the "best information available" to ensure the most accurate dumping determinations and margin calculations.

The U.S. courts have consistently upheld the use of actual market-economy prices to ensure that the Department relies on the "best information available" for valuing NME respondents' production factors. First, the Federal Circuit Court of Appeals held that where

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.³

Second, the Court of International Trade specifically has held that

{w}hile Congress has left it within Commerce's discretion to develop methodologies to enforce the antidumping statute, any given methodology must always seek to effectuate the statutory purpose -- calculating accurate dumping margins. Whether Commerce's use of imported prices to value an entire factor of production is reasonable is inextricably linked to whether the methodology promotes accuracy.⁴

In addition to the U.S. courts, the Department has also specifically stated that using market-economy prices over surrogate values contravenes the mandate of the U.S. Antidumping Statute to use the "best available information." Specifically, the Department has stated that

³ *Lasko Metal Prod., Inc. v. United States*, 43 F.3d 1442, 1446 (quoting *Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 Fed. Reg. 55,271, 55,275 (Dep't of Commerce Oct. 25, 1991) (final det.)). The CIT has also noted that "the use of surrogate values by Commerce has been determined to be contrary to the intent of the law 'where we can determine that an NME producer's input prices are market determined, accuracy, fairness and predictability are enhanced by using those prices.'" *Luoyang Bearing Corp. v. United States*, 347 F. Supp. 2d 1326, 1340 n.8 (Ct. Int'l Trade 2004) (quoting *Lasko*, 43 F.3d at 1446).

⁴ *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 59 F.Supp. 2d 1354, 1358 (July 29, 1999) (citing *Lasko Metal Prod., Inc. v. United States*, 810 F. Supp. 314, 317 (Ct. Int'l Trade 1992)).

{i}n general, the purpose of the antidumping statute is to 'determine margins as accurately as possible.' *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1991). More specifically, in the case of a firm operating in an NME, the purpose of section 773(c) is to determine what the firm's prices or costs would be if such prices or costs were determined by market forces. *Requiring the use of surrogate values in a situation where actual market-based prices incurred by a particular firm are available would be contrary to the statutory purpose. Where we can determine that an 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.*

In addition, the goals of accuracy, fairness, and predictability should apply whether a country's economy is market or nonmarket oriented. In antidumping proceedings concerning imports from market economy countries, the Department uses the price of imported inputs when calculating FMV using constructed value methodology. The fact that it is more accurate to use an actual input value for merchandise sourced from a third country should not change simply because the country under investigation is an NME. *Different treatment of an imported input based solely on whether the input is imported into a market or nonmarket economy country is illogical.*⁵

The Department's recognition that arms-length, *bona fide* prices paid by NME respondents to market-economy suppliers will necessarily be the most accurate values for such inputs is reflected in its regulations. The Department's regulations provide that

{t}he Secretary normally will use publicly available information to value factors. However, where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary *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, the Secretary normally will value the factor using the price paid to the market economy supplier.*⁶

⁵ See *Fans from China*, 56 Fed. Reg. at 55,271 at Comment 1 (emphasis added).

⁶ 19 C.F.R. § 351.408(c)(1) (emphasis added).

The Statute, the Department's regulations, legal precedent, and the Department's precedent necessitate that the Department value all of an NME respondent's consumption of a particular input with arms-length, *bona fide* market-economy prices paid for such an input. For this reason, the Department must not adopt its proposed policy.

Instead, because an actual price that an NME respondent has paid for a production input will provide a more accurate value for the particular input, the Department should expand its practice of using these actual prices. In NME proceedings in which certain mandatory respondents did not source a particular input from market-economy suppliers, these respondents' consumption of the input should be valued with a derivation of the actual market-economy prices paid by other respondents.

2. The Department must focus on the *quality* (i.e., the *bona fide* nature of the purchase price) rather than the *quantity* (requiring over 50 percent) when determining whether the purchase prices are the "best available information".

In its August 11, 2005 request for comments, the Department stated that it will use market-economy prices to value an NME respondent's factors of production when it is satisfied that the following criteria have been satisfied:

1. the volume of the imported input represents a "meaningful" proportion of the total purchases of the input;
2. the average import price reflects arms-length, *bona fide* sales;
3. the Department has no reason to believe that the market-economy import value could be dumped or subsidized;
4. the Department has no concerns of whether the particular input was used during the period of investigation or review to produce the subject merchandise.

In proposing a new policy to ascertain that the market-economy prices are free of any "distortions," the Department has apparently focused its efforts on the first criteria that the purchases represent a "meaningful" proportion of total purchases. Arbitrarily, the Department has determined that market-economy purchases will be more "meaningful" and therefore free of "distortions" if they represent 50 percent of an NME respondent's total purchases.

Focusing on the issue of *how much* of an input was sourced from market-economy suppliers will not address the Department's concern of whether such prices are free of "distortions." To determine whether prices are free of "distortions," the Department must engage in a *qualitative* rather than a *quantitative* analysis. Accordingly, in order to address any "distortions," the Department should focus its attention on the second criteria in terms of determining whether the price reflects an arms-length, *bona fide* sale.

In order to demonstrate the arms-length and *bona fide* nature of market-economy input purchases, the Department could develop several different types of tests. Examples include:

- analysis of the market-economy prices paid by NME respondents for particular inputs in the period or review to prices prior to and subsequent to an antidumping proceeding's period of review;
- analysis of the market-economy prices paid by an NME respondent for a particular input as compared with the prices paid by other NME respondents; and
- analysis of the market-economy prices paid by an NME respondent for a particular input as compared with other international prices for the same input.

The Ministry of Trade continues to assert that the price of a single arms-length, *bona fide* market-economy transaction should be used to value all of an NME respondent's consumption of a particular input. This assertion is supported by the fact that the Department

has refrained from applying “quantity-based” rules in administering other aspects of the antidumping law.

In market-economy cases, the Department will use only one above-cost home market sale as normal value for margin comparison purposes.⁷ In addition, the Department does not consider quantity when deciding the best value under its “major input rule.”⁸ Because the Department does not rely on quantity-based standards in administering other aspects of the antidumping law, it has no justification for doing so in the context of valuing the factors of production in NME proceedings.

Notwithstanding the legal and logical arguments submitted by interested parties as to why the Department should not restrict its use of market-economy purchase prices, the Department may decide to enact a quantitative standard when valuing all of an NME respondent’s consumption of a particular input. If so, it cannot adopt the unreasonably high 50 percent threshold. At most, the Department should follow its precedent. In previous cases, some as recent as a couple of months ago, the Department stated that market-economy purchases constituted a “significant amount” if they represented 7 percent of a NME producer’s total purchases of the input.⁹ This threshold has also been recognized by U.S. petitioning companies when arguing that the Department should value particular production inputs with market-economy purchase prices.¹⁰

⁷ See *Silicomanganese from Brazil*, 62 Fed. Reg. 37,869, 37,877 (Dep’t Commerce July 15, 1997) (final results of antidumping duty administrative review) (emphasis added).

⁸ 19 C.F.R. § 351.407(b).

⁹ *Helical Spring Lock Washers from the People’s Republic of China*, 70 Fed. Reg. 28,274, Cmt. 7 (Dep’t Commerce May 17, 2005)(Final Results Issues Memo).

¹⁰ See *Seamless Standard, Line, and Pressure Pipe from Romania*, 68 Fed. Reg. 12,672, Cmt. 1 (Dep’t Commerce Mar. 17, 2003) (Issues and Decision Memo).

3. Any change in the Department's policy must be prospective and should only apply to investigations initiated after the adoption of such a policy.

The Ministry of Trade asserts that the comments filed by interested parties on the issue of using market-economy prices in NME antidumping proceedings clearly demonstrate that the Department should not restrict its use of market-economy prices. However, in the event that the Department ultimately decides to implement a new policy, the Department should apply such a new policy only for prospective antidumping investigations initiated after such a policy becomes effective.

Historically, the Department has implemented new policies on its application of the antidumping laws on a prospective basis. Applying policies on a prospective basis allows interested parties a certain degree of predictability in their expectations of how the antidumping laws will be administered and how their interests will be affected.

When the Department enacts a new policy, it stipulates that such a policy will be effective on a prospective basis. For example, the Department implemented its new policies on determining "separate-rate" status for NME respondents, as well as the new NME exporter-producer "combination margin rates" policy, on a prospective basis.¹¹ Specifically, the Department stated that these policies were only effective for NME antidumping *investigations initiated on or after the date* on which the new policy was published in the *Federal Register*.

In addition, the Department's new policy on applying interest provisions to entries under a subsequently rescinded new shipper bond was effective for new shipper reviews that

¹¹ *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, Import Administration Policy Bulletin Number 05.1 (Dep't of Commerce Apr. 5, 2005).

were initiated after the date on which the policy bulletin was signed.¹² Following its precedent, any change in the Department's policy on using NME respondents' arms-length, *bona fide* purchase prices in NME antidumping proceedings must be effective only for NME investigations initiated after the new policy's effective date.

II. CONCLUSION

The Department has now issued two requests for comments on proposals to modify its practice of using NME respondents' arms-length, *bona fide* prices paid for particular inputs to value all of NME respondents' consumption of such inputs. However, the Department has not clearly explained why such a change in its policy is necessary. In its latest request for comments, the Department stated that its proposed policy is to "address distortions that have been identified in the Department's market economy inputs practice."¹³

However, the Ministry of Trade has seen no evidence presented by the Department of any distortions concerning the use of arms-length, *bona fide* market-economy purchase prices in NME proceedings. The Ministry of Trade is also unaware of any distortions in any of the Department's past NME antidumping cases. Before adopting a new policy, the Department must first demonstrate and justify the need for a new policy.

In addition, the Ministry of Trade is unconvinced that the Department of Commerce has seriously considered its comments that were submitted on June 24, 2005 and July 26, 2005. The Department should provide a written response to the comments filed by the Ministry of Trade and the other interested parties on this issue. In addition, the Department

¹² *Application of the Interest Provisions in Section 778(a) of the Tariff Act to Entries Made Pursuant to a Subsequently Rescinded New Shipper Bonding Privilege*, Policy Bulletin Number 03.3 (Aug. 26, 2003).

¹³ *Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 70 Fed. Reg. 46,816, 46,817 (Dep't of Commerce Aug. 11, 2005).

should afford interested parties the opportunity to present their positions at an administrative hearing before the Department takes any further action on this important issue.

The Department has offered no explanation as to why the price of a single arms-length, *bona fide*, market-economy transaction does not constitute the best available information for valuing all consumption of a particular production factor. Nor has it offered any explanations as to why a 50 percent threshold is necessary or renders such *bona fide* purchase prices more reliable.

The Department is contemplating a significant break in its precedent on using actual, market-economy purchase prices to value the factors of production in NME antidumping proceedings. It would do so only against the weight of statutory, regulatory, court precedent, and its own precedent on this issue. The only justification for adopting such a policy would be to ensure greater predictability in NME antidumping proceedings. However, considerations of accuracy and using the "best available information" necessarily override such a concern and dictate that the Department abandon its proposed policy. The Department must continue to value all of NME respondents' consumption of particular inputs with the market-economy prices paid for these inputs.