



June 24, 2005

**PUBLIC DOCUMENT**

BY HAND DELIVERY

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

Re: Proposed Change in Policy Regarding Market Economy Input Prices

Dear Mr. Spetrini,

This letter is being filed in response to the May 26, 2005 Request for Comments on the Commerce Department's proposed change in policy regarding market economy input purchase prices.<sup>1</sup> This letter is filed on behalf of Coaster Company of America; Collezione Europa, USA, Inc.; Fine Furniture Design & Marketing, LLC; Guildcraft of California; Hillsdale Furniture, LLC; Largo International; Magnussen Home Furnishings Inc.; L. Powell Company; RiversEdge Furniture Company; Woodstuff Manufacturing Inc., d/b/a Samuel Lawrence Furniture; Schnadig Corporation; Standard Furniture Manufacturing Company; and Trade Masters LLC. These companies (importers and domestic manufacturers) have a keen interest in opposing this proposed change in policy because such change would result in distorted antidumping margins in nonmarket economy ("NME") cases. They oppose the proposed change in policy because it would

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<sup>1</sup> Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 70 Fed. Reg. 30,418 (May 26, 2005).

be contrary to the statute and takes the Department further from its mandate of calculating dumping margins as accurately as possible.

At a minimum, the Department has the responsibility to administer the antidumping laws in accordance with World Trade Organization agreements and the Tariff Act of 1930, as amended. We recognize that the Department also administers the antidumping laws with particular attention to U.S. interests. The companies on whose behalf we file these comments would like to respectfully remind the agency that there are many interested parties in the United States. U.S. interested parties include not just “petitioners” but also U.S. manufacturers and importers -- entities that significantly contribute to the U.S. economy. These are companies whose business interests rely on the fair application and predictability of U.S. antidumping policy.

#### **Comments on Department’s Concerns**

The Department states that it is trying to address “a concern that basing the 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.”<sup>2</sup> The assumption behind this concern is that the company may in fact be paying a *higher* price on an item from its nonmarket economy sources than it is paying on its market economy purchases. This is an improbable—illogical—proposition. Yes, it is true that the market economy purchases may not be made at the same price as all purchases of that input. The market economy price actually paid is, however, more reflective of reality than if the Chief Procurement Officer of the company got on a plane, flew to India, bought a carton of similar, but mostly unusable inputs, and brought them back to a non-market economy – the

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<sup>2</sup> See *id.* at 30,419.

equivalent of the surrogate value methodology. The proper inquiry for the Department is not whether the factors are valued at the price paid for the NME purchase, whether higher or lower, but whether the factor is valued at market economy determined prices.

The Department also states that it is trying to address the “further concern that our current practice may allow parties to manipulate the Department’s margin calculations by sourcing just enough of an input from market economy suppliers so that the market economy price is used to value the entire input, even though the party does not source the entire input from foreign (market economy) suppliers in the normal course of business.”<sup>3</sup> The practice of purchasing market economy goods is not “manipulation” of the antidumping law; rather it is compliance with it. This concern is akin to a concern that foreign manufacturers may actually increase their prices (or decrease their costs) to “manipulate” their dumping margin. If the Department’s concern is, as stated, that it fears this policy can lead to manipulation, the appropriate measure would be to examine the *bona fides* of the market economy purchases. In fact, the Department already examines the *bona fides* of the sales through extensive verification procedures. Therefore, any change to this policy is unnecessary. Moreover, the proposed change would not address the stated concerns of the Department.

#### **Response to Department’s Questions**

- 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?**

The proposed change in policy is not appropriate. A change in policy would defy the statute, which requires that the valuation of factors of production be based “on the

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<sup>3</sup> Id.

best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.”<sup>4</sup> The absolute best information available is, of course, an actual price paid by the NME producer for a product from a market economy country, as opposed to a value that is derived from surrogate country data. Indeed, the courts have concluded that “[u]sing surrogate values when market-based values are available would, in fact, be contrary to the intent of the law.”<sup>5</sup>

A change in policy would also drive the Department further from the purpose of the statute, which is to construct the product’s normal value as it would have been if the NME country were a market economy country.<sup>6</sup> Actual prices paid for a market economy-produced input in a market economy currency are the best indicator of what it would actually cost an NME producer for a particular input, and, hence, normal value, because that NME producer is paying the same as a market economy producer would in such an instance. In fact, the Department has previously acknowledged as much in stating that a market economy purchase price “is a more accurate reflection of what [the NME producer’s] costs might be if it were operating in a market economy setting” than a surrogate value.<sup>7</sup> Where a producer purchases market economy inputs in a market economy currency, there is no reason to exclude such purchases just because that

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<sup>4</sup> 19 U.S.C. § 1677b(c)(1).

<sup>5</sup> Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (quoting Oscillating Fans and Ceiling Fans from the People’s Republic of China, 56 Fed. Reg. 55,271, 55,275 (Oct. 25, 1991) (final determination)).

<sup>6</sup> Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343, 1351 (Ct. Int’l Trade 2001).

<sup>7</sup> Certain Helical Spring Lock Washers from the People’s Republic of China (Sept. 27, 1999) (final results of remand redetermination).

producer happens to be in a country that the United States considers an NME. In such cases, the NME producer is paying the same as would a producer located in the United Kingdom or Japan.

A change in policy would also contravene the requirement that the Department calculate a respondent's antidumping duty margin as accurately as possible.<sup>8</sup> The courts have consistently maintained that it is axiomatic that a fair and accurate determination is fundamental to the proper administration of the antidumping laws.<sup>9</sup> The Department itself has acknowledged on many occasions that market economy prices ensure greater accuracy than reliance on surrogate values.<sup>10</sup> This is because actual market prices are "determined by market economy forces" whereas surrogate values "at best" represent "only an estimate" of what the NME producer might pay for the input.<sup>11</sup>

As the Department is well aware, the import statistics that are frequently used as the basis for determining surrogate values often include entire basket categories of inputs, rather than just the input used by the NME producer. For example, in the recent

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<sup>8</sup> See Rubberflex SDN. BHD v United States, 59 F. Supp. 2d 1338 (Ct. Int'l Trade 1999).

<sup>9</sup> See, e.g., Koyo Seiko Co., Ltd. v. United States, 746 F. Supp. 1108 (Ct. Int'l Trade 1990); see also Ipsco Inc. v. United States, 14 CIT 265, Slip Op. 90-37 (Ct. Int'l Trade April 16, 1990).

<sup>10</sup> E.g., Issues and Decision Memorandum for Hand Trucks and Certain Parts Thereof from the People's Republic of China, Comment 4, at p. 19 (Oct. 6, 2004) (stating that "[n]ormally, market economy inputs provide more accurate values."); Certain Helical Spring Lock Washers from the People's Republic of China, 64 Fed. Reg. 13,401, 13,403 (Mar. 18, 1999) (final results) (acknowledging that the Department "believe[s] that reliable import prices for the same input are a better means of valuing an input than surrogate values").

<sup>11</sup> Certain Helical Spring Lock Washers from the People's Republic of China (Sept. 27, 1999) (final results of remand redetermination).

antidumping investigation of wooden bedroom furniture from China, the Indian import statistics category used for mirrors was in dispute because it included rearview mirrors used in automobiles and mirrors used in telescopes and that used for paints was in dispute because it included paints for automobiles, computers and ships.<sup>12</sup> A flat, landscape mirror used to produce wooden bedroom furniture is much less sophisticated a material than the specialized glass needed to produce rearview mirrors and telescopes. The hardy, long-wearing paints necessary for coating automobiles and ships, moreover, perform an entirely different function from the more delicate, decorative paints used in furniture.

These egregious examples from the wooden bedroom furniture case demonstrate how distortive the surrogate value method can be. Had there been appropriate market economy purchases this distortion could have been averted because there would have been no need to resort to the fictitious price derived from Indian import statistics. Using import statistics or other proxies to develop a surrogate value such as published prices in the surrogate country over actual market economy prices for the precise input used undermines the requirement that the Department calculate dumping margins as accurately as possible. Changing the policy to restrict the use of market economy purchase prices even further would only lead to even further inaccurate results.

2. **Assuming the Department continues its long-standing practice of using market economy input 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.**

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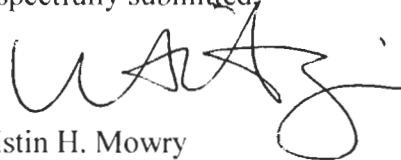
<sup>12</sup> See Issues and Decision Memorandum for the Less-than-Fair-Value Investigation of Wooden Bedroom Furniture from the People’s Republic of China at Comment 2, p. 24, Comment 25 (Nov. 8, 2004).

We do not propose any particular share or threshold. There is a sound basis, however, on which the Department may rely on even a single purchase from a market economy supplier to value an entire input because even a single purchase is a more accurate measure of what that input would have cost if the NME country were a market economy country than the distortive values often derived from import statistics that are overly broad.

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In accordance with the instructions set forth in the Department's Request for Comments, we are filing an original and six copies of this document. An electronic copy of this submission is also being provided to the Department via electronic mail. Should the Department have any questions regarding these comments, please feel free to contact the undersigned.

Respectfully submitted,



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