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June 24, 2005

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Acting Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Ave. and 14<sup>th</sup> St. N.W.  
Washington, D.C. 20230

**Re: Market Economy Input Practice, NME Country Cases**

Dear Mr. Secretary:

The Law Offices of Stewart and Stewart is a frequent participant in antidumping proceedings that involve imports from China. We are presenting here our comments in response to the Department's May 26, 2005 notice concerning proposed changes to its method for valuing raw material inputs obtained from market-economy sources in non-market economy proceedings. See [Market Economy Input Practice in Antidumping Proceedings Involving Non-Market Economy Countries](#), 70 Fed. Reg. 30,418 (May 26, 2005).

**Question No. 1:**

The Department's first question is:

- (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?

Notice, 70 Fed. Reg. at 30,419.



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The answer to this question is that the Department can significantly improve its methodology for determining normal value in NME cases by valuing only the portion of an input obtained from market sources with market values.

The statute specifically provides for the Department to use surrogate country values to price inputs purchased in a non-market economy. *See* 19 U.S.C. § 1677b(c)). The statute specifies no other approach, thus conveying a strong preference for the surrogate country approach. This preference is premised on the presumption that the actions of the state so affect the pricing and availability of domestic inputs in NMEs that their sales prices are not true measures of the market value of the inputs. Some producers in non-market economies purchase inputs produced and sold in market economy countries. Under its present practice, the Department has treated such purchases, so long as they are in “meaningful quantities,” as the most accurate measures of what the inputs would cost absent the involvement of the state. *See* 19 C.F.R. § 351.408(c)(1). It has used the purchase price of meaningful quantities of market inputs for all inputs when the subject merchandise has been produced using a mix of market and domestic inputs. *Id.*

We strongly believe that the Department should 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. Such an approach would be a significant improvement in existing practice for a number of reasons, including the following.

First, it would more closely align Commerce practice with the realities of market economies. Under present practice, the Department ignores in part the operation of the markets for many inputs. Basic products that are used for product inputs are often sold in world markets at spot prices that are extremely low due to particular market conditions. Such

spot prices are typically available for limited quantities at limited times. Thus, an NME producer may be able to buy on the spot market a limited quantity of an input at a very low price. Such a price is not an accurate measure of the market price for larger quantities of the input purchased over longer periods of time; it is an accurate measure simply of a market price for the amount purchased. Moreover, increased demand in a market in the form of an NME producer seeking to source all of its inputs from a market source may well result in increased prices.

Second, such an approach would significantly eliminate the possibilities for gaming by NME producers whose U.S. exporters are subject to antidumping duty orders. Under the present system, such a producer has incentives to game the system by entering into collusive contracts for the purchase of limited quantities of inputs at prices that do not accurately reflect market prices. Giving such a producer pricing credit only for the portion of an input for which it has paid a market price will significantly reduce such incentives.

Third, because this approach would increase the incentives for an NME producer to open itself to buying increased input quantities from sources outside of the NME country, it would foster an increase in trade between the NME and other economies and so broaden the opening of the NME economy to the world.

**Recommendation:** For these reasons, we recommend that the Department improve its practice by abandoning the use of market prices of meaningful quantities of an input as the market price for all of the input when portions of it have been purchased domestically. It should value only that portion of its inputs obtained at market prices with those prices.

**Question No. 2:**

The second question on which the Department sought comments is:

- (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?

Notice, 70 Fed. Reg. at 30,418.

For the reasons expressed above, we strongly believe that the Department should not continue its long-standing practice. However, if it chooses to do so, it should implement changes that address the problems of that practice. We would recommend at a minimum that the Department not only adopt a threshold but also allow for challenges to alleged market prices.

The Department should set a threshold that would reduce the incentives and opportunities for gaming and the use of aberrational prices for all purchases.

Even with such a threshold, there will still be situations where an NME producer may be able to obtain an input at a price that is not reflective of the actual market prices of such inputs. Thus, domestic parties should have the right to challenge any such prices by providing evidence (*e.g.*, worldwide spot market prices for the input) that would demonstrate that the alleged “market” price is aberrational and hence should not be used to value all inputs. By setting a relatively high threshold and providing for challenges, the Department will be addressing some of the primary problems of its current approach.

**Recommendation:** The limitation of credit for market prices to the actual goods purchased in the market would be the best policy approach that Commerce could adopt, and we strongly urge the Department to do so. If despite its benefits, Commerce rejects such an approach, it should adopt measures that address the primary problems that burden its current

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approach, including establishment of a significant threshold level and provision for fact-based challenges to alleged market prices by petitioners.

Thank you for your consideration of our comments.

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