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JUN 24 2005
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IMPORT ADMINISTRATION

June 24, 2005

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, DC 20230

Re: Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries

Dear Mr. Spetrini:

In response to the Department's May, 26, 2005, announced consideration of changes to its policy and practice in antidumping proceedings concerning the use of prices paid by nonmarket economy respondent to market economy input suppliers (70 Fed. Reg. 30418), we provide the following comments.

We believe that in those instances in nonmarket proceedings when a respondent purchases a portion of a factor from a market economy supplier and the remainder from a nonmarket economy supplier, the Department should not change its regulations and end its practice of valuing the nonmarket economy-sourced portion using the price paid to the market economy supplier. See 19 C.F.R. §351.408(c)(1). In the commentary process that accompanied the implementation of the above-mentioned regulation, the Department specifically rejected a suggestion that it use market economy input values only "for the specific transactions to which

they pertain.” 62 Fed. Reg. 27296, 27366 (May 19, 1997). The Department defended its practice, explaining that its practice had already been upheld by the Federal Circuit, and that its proposed regulation achieved increased accuracy. Id. Since the implementation of 19 C.F.R. §351.408(c)(1), this regulation has helped the Department achieve greater accuracy in dozens and dozens of cases. Nothing has changed that would justify the Department changing its practice now.

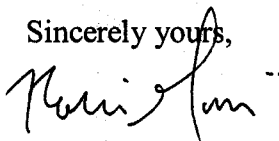
In its request for comments, the Department noted that “there is further concern that our current practice may allow parties to manipulate the Department’s margin calculations by sourcing just enough of an input from market economy suppliers so that the market economy price is used to value the entire input.” 70 Fed. Reg. at 30418. Such concern is unwarranted. First, in advance of the initiation of an antidumping proceeding, respondent nonmarket economy companies often do not know whether their exports even will be subject to review. Second, they also certainly do not know what “just enough” is; that is, because the Department makes its “meaningful” portion decisions on a case-by-case basis, parties cannot know in advance just how much of an input must be purchased from market economy suppliers in order for their entire consumption of that input to be valued at that market economy price. Third, parties also cannot know in advance what the surrogate value for a particular factor during the period of review will be. A surrogate value ultimately selected by the Department in a review or investigation could easily be chosen more than two years after any actual importation occurred. Parties have no way of knowing in advance whether the surrogate value ultimately selected will be higher or lower than their actual market economy import price, and thus are not in a position to “manipulate” the calculations. Fourth, the Department’s concern that market economy prices might “not be reflective of actual prices” is misplaced. Actually, market economy import prices are the *only*

prices the Department does consider to be "actual" and reliable (surrogate values are not the actual costs of a nonmarket economy producer, and domestic nonmarket economy prices are deemed unreliable). Finally, to the degree that market economy import prices could add any degree of predictability to the antidumping process, any efforts to achieve this goal should be applauded and encouraged. The purpose of the antidumping law is to avoid the selling of products in the United States at dumped prices, and if nonmarket economy producers can control their costs and establish pricing behaviors that eliminate dumping, the Department's regulations should strengthen their ability to do so, not weaken it.

Regardless of any changes contemplated by the Department with regard to using actual market economy factor prices to value an entire input, we also recommend that the Department not incorporate in its regulations any changes that reflect the practice of not accepting factor prices when the Department believes that the transaction was not conducted at arm's length or when the Department has reason to believe or suspect that the market economy factor is dumped or subsidized. Like the Department's current case-by-case approach to determining whether the share or volume of a given input sourced from a market economy supplier is "meaningful," the acceptance or rejection of market economy factor prices because of reliability- or distortion-related concerns also should be made on a case-by-case basis.

In accordance with the Department's request for comments, we are filing the original and six copies of this public document. Thank you very much. Please let us know if you have any questions regarding this submission.

Sincerely yours,



Robert G. Gosselink, Esq.
Keir A. Whitson