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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Docket No. 120424022-3616-02

RIN: 0625-XC001

Use of Market Economy Input Prices in Nonmarket Economy Proceedings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Rule.

SUMMARY: The Department of Commerce (“Department”) is modifying its regulation which states that the Department normally will use the price that a nonmarket economy (“NME”) producer pays to a market economy supplier when a factor of production is purchased from a market economy supplier and paid for in market economy currency, in the calculation of normal value (“NV”) in antidumping proceedings involving NME countries. The rule establishes a requirement that the input at issue be produced in one or more market economy countries, and a revised threshold requiring that “substantially all” (*i.e.*, 85 percent) of an input be purchased from one or more market economy suppliers before the Department uses the purchase price paid to value the entire factor of production. The Department is making this change because it finds that a market economy input price is not the best available information for valuing all purchases of that input when market economy purchases of an input do not account for substantially all purchases of the input.

DATES: This final rule is effective [insert date 30 days following the publication of this document in the *Federal Register*]. It is applicable for all proceedings or segments of

proceedings (*e.g.*, investigations and administrative reviews) initiated on or after [insert date 30 days following the publication of this document in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Wendy Frankel at (202) 482-5849, Albert Hsu at (202) 482-4491, or Scott McBride at (202) 482-6292.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 28, 2012, the Department published a proposed modification to its regulations regarding use of market economy input prices in NME proceedings.<sup>1</sup> The *Proposed Rule* explained the Department's proposal to modify its regulations to establish (1) a requirement that the input at issue be produced in one or more market economy countries, and (2) a revised threshold requiring that "substantially all" (*i.e.*, 85 percent) of an input be purchased from one or more market economy suppliers before the Department uses the purchase price paid to value the entire factor of production. The Department received numerous comments on the *Proposed Rule* and has addressed these comments below. The *Proposed Rule*, comments received, and this Final Rule can be accessed using the Federal eRulemaking Portal at <http://www.Regulations.gov> under Docket Number ITA-2012-0002. After analyzing and carefully considering all of the comments that the Department received in response to the *Proposed Rule*, the Department has adopted the modification and amended its regulations.

##### Explanation of Modification to 19 CFR 351.408

The second sentence of 19 CFR 351.408(c)(1) states that "{w}here a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary

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<sup>1</sup> See *Proposed Modification to Regulation Concerning the Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 77 FR 38553 (June 28, 2012) ("*Proposed Rule*").

normally will use the price paid to the market economy supplier.” To implement this rule, the Department is modifying the existing sentence as follows:

“{w}here a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s) if substantially all of the total volume of the factor is purchased from the market economy supplier(s). For purposes of this provision, the Secretary defines the term ‘substantially all’ to be 85 percent or more of the total volume purchased of the factor used in the production of subject merchandise.”

We view these additions as necessary to specify which inputs qualify under this change to our regulations.

The current third sentence of 19 CFR 351.408(c)(1) states “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.” The Department is modifying this sentence to read as follows:

“In those instances where less than substantially all of the total volume of the factor is produced in one or more market economy countries and purchased from one or more market economy suppliers, the Secretary normally will weight-average the actual price(s) paid for the market economy portion and the surrogate value for the nonmarket economy portion by their respective quantities.”

We view these changes as necessary to explain the methodology the Department will apply when a respondent purchases less than substantially all of the input from market economy suppliers, or when only part of the input is produced in one or more market economy countries.

## Response to Comments on the Proposed Rule

The Department received nine sets of comments on the *Proposed Rule* from numerous parties including domestic producers, foreign exporters, foreign governments, and members of the International Trade Bar. As indicated in the “Background” section, these comments can be accessed using the Federal eRulemaking Portal at <http://www.regulations.gov> under Docket Number ITA-2012-0002. The Department analyzed and carefully considered all of the comments received. Below is a summary of the comments, grouped by issue category and followed by the Department’s response.

### *Comment 1: Whether the Department Provided an Adequate Explanation for the Proposed Change*

One commenter asserted that the Department did not adequately justify the need for the “substantially all” (*i.e.*, 85 percent) requirement in the *Proposed Rule*. The commenter stated that the Department has been using market economy input prices to value the entire input when the total quantity purchased from market economy suppliers is “meaningful” (*i.e.*, 33 percent or more of total purchases) for years, and there does not appear to be a reason to stray from that practice.<sup>2</sup> Another commenter argued that the Department in its *Proposed Rule* did not sufficiently explain why it now has concerns regarding the reliability of market economy prices when the quantity purchased is less than 85 percent and questioned why the Department has these concerns, since the Department stated in a recent case that market forces are at play with respect to many prices in China.<sup>3</sup> A third commenter also asserted that the *Proposed Rule* only partially disclosed the reasons for the Department’s proposed change.

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<sup>2</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006).

<sup>3</sup> See *Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China’s Present-Day Economy* (March 29, 2007).

*Response to Comments:* The Department has determined to amend its regulations to only allow the application of market economy purchase prices to value the entire input when substantially all of the firm's purchases of that input have been made from a market economy. Upon review of our past practice, we have determined that when a company's purchases from market economy suppliers represent only 33 percent of its total purchases, this amount does not constitute a sufficient quantity to be representative of the input prices that the company would pay to source all of its purchases from market economy suppliers. This is because, when a company purchases an input from multiple sources in multiple economies at different prices, some type of constraint is usually at work. Otherwise, the company would likely meet all of its needs more efficiently by sourcing from the single, lowest-price input supplier. For example, if certain imports represent the lowest prices available, but are limited in quantity, then the company has no option but to purchase the remainder of its input needs from higher-priced domestic sources. On the other hand, if domestic sources represent the lowest prices, but the domestic sources are limited in quantity, then the company might have no choice but to complete its purchases using higher-priced imports. In both cases, because of the supply constraint at work, valuing all of the input at the market price paid for less than the vast majority of total purchases of that input would either overstate or understate the company's input costs. Further, the meaning of "supply constraint" can be broadened to cover logistics problems and movement costs, and the outcome would be the same -- an overstatement or understatement of the company's costs.

For these reasons, the Department has determined that unless the vast majority of an input need is met with imports from one or more market-based economies, using the market-based purchase prices to value all of a company's inputs (from all sources, foreign and domestic)

would be an inappropriate means of valuing factors of production. Accordingly, consistent with Section 773(c)(1) of the Tariff Act of 1930 (“the Act”), we have concluded that the best available information to value a factor of production using market economy prices is when the market economy input purchases represent substantially all of the total purchases of that input.

*Comment 2: Whether the Proposal Meets the “Best Available Information” Standard and the United States’ World Trade Organization (“WTO”) Obligations*

Some commenters asserted that the Department must undertake an analysis to determine the best available information for use in an NME case on a case-by-case basis, whether it is actual market economy purchase prices or surrogate values. They argued that the *Proposed Rule* would preclude the Department from doing this statutorily mandated analysis to determine the best available information when the purchase quantity from market economy producers is less than 85 percent of total purchases of that input. One commenter asserted that the *Proposed Rule* would result in market economy purchase prices being excluded in favor of surrogate values when the 85 percent threshold is not met, which is contrary to the best available information requirement. It also claimed that market economy prices are more reliable than surrogate values.

One commenter also contended that U.S. WTO obligations with respect to the People’s Republic of China (“PRC”) demonstrate a preference for using primary information (where market economy prices exist) and require that secondary information (*e.g.*, surrogate values) must be shown to be more reliable and accurate than primary information (*e.g.*, market economy purchase prices) in order to be used. Another commenter also asserted that market economy purchase prices are inherently the best available information, and there is nothing in the statute or the WTO agreements that precludes the use of one producer’s market economy purchase prices to value another producer’s factors of production.

*Response to Comments:* The Department finds that this amendment to the Department's regulations comports with U.S. law, and by extension with U.S. WTO obligations, because this modification is designed to ensure that the Department is using the best available information to value the factors of production. As stated in our response to Comment 1 and in the *Proposed Rule*, when market economy purchases of an input do not account for substantially all purchases of the input, the Department finds that a market economy input price is not the best available information for valuing all purchases of that input, particularly since it would not be possible to determine objectively whether the price for the input would have been the same had the firm purchased solely from market economy suppliers. Moreover, the Department will continue to use valid market economy purchase prices<sup>4</sup> if the quantity purchased from market economy suppliers is less than 85 percent of total purchases by weight averaging those values with a surrogate value, using as weights the relative quantities of the input imported and purchased from domestic sources.

We agree with the argument that nothing precludes the Department from using market-based transactions of any number in our calculations, including the statute and WTO agreements. However, just because we are not precluded from using a particular value in our analysis does not mean that the value at issue is the best available or most appropriate on the record. For the reasons stated above, we believe the amended regulation is fully consistent with section 773(c)(1) of the Act.

*Comment 3: Whether the Quantity Purchased Affects the Purchase Price*

Some commenters asserted that the Department typically examines a single company, whose purchases of an input are unlikely to affect the global price of that input. They assert that only the price of certain commodities might change depending on the quantity of that input that

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<sup>4</sup> See Comment 5: Criteria for when the Department will accept a Respondent's Market Economy Purchases.

is purchased, whether that may be due to inelastic supply, or if the input is thinly traded. Thus, these parties contended that the Department has provided no justification to now find that the quantity of an input that a firm can purchase will somehow be able to affect the price of that input. These commenters proposed that, if such circumstances exist, the Department could consider limiting the use of market economy purchase prices in those instances, but that does not justify modifying the regulation to use market economy purchase prices only when the quantity purchased is greater than 85 percent.

*Response to Comments:* As we explained in our response to Comment 1, if a company purchases only a limited quantity of an input from a market economy supplier, it is possible that some supply constraint exists (*e.g.*, the import quantity is limited). Therefore, the Department continues to be concerned that in those cases, the purchased amount does not constitute a sufficient quantity to be representative of the input prices that the company would pay to source all of its purchases from market economy suppliers. On the other hand, if the company is able to purchase the vast majority of the input (*i.e.*, 85 percent or more) from market economy suppliers, the Department does not have such concerns. The Department has therefore concluded that using the market economy purchase price to value all of a company's inputs when those purchases represent only 33 percent of a company's overall purchases of that input would not be the best available information to value the factor of production under examination.

*Comment 4: Whether the Proposal Creates Different Standards for NME and Market Economy Producers*

Some commenters suggested that the proposal would allow the Department to apply different standards in NME and market economy cases with respect to the use of input prices produced in an NME. They asserted that under the proposal, in NME proceedings the Department will no longer accept the price paid by a firm to a market economy supplier if that

input was produced in an NME country. However, these commenters maintained that in market economy proceedings the Department will use a market economy firm's costs of an input that was produced in an NME, unless some exceptions apply. One commenter suggested that if an input was originally produced in an NME that is different from the NME subject to the proceeding, then the Department should accept the purchase price of that input if the firm purchased it from a market economy. Another commenter recommended that the Department accept the market economy purchase price of an input originally produced in an NME unless evidence is presented that shows the NME input producer's records are not kept in accordance with the local GAAP or shows that the price is otherwise distorted.

*Response to Comments:* The Department agrees that there is a difference between market economy and NME practice with respect to the use of inputs produced in an NME; however, this does not reflect a change from current practice, and this difference in methodology is inherent in the statute. In calculating the cost of production or constructed value in market economy antidumping cases, the statute requires that the Department use the actual costs of purchases and makes no mention of limiting those costs by the country from which an input is purchased.<sup>5</sup> Conversely, section 773(c)(1) of the Act provides that in NME cases the Department shall determine the normal value using a factors of production methodology if the merchandise is exported from an NME and the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases normal value on the factors of production because the government's extensive role in the economy renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Accordingly, this argument is not directed at the proposed amendment to the Department's regulations but at the statutory NME

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<sup>5</sup> See section 773(b)(3) and 773(e) of the Act.

provision itself. We therefore find that these comments are outside the scope of the request and to implement such changes would require amendment of the statute. Thus, we have not adopted these suggested changes.

*Comment 5: Criteria for when the Department will accept a Respondent's Market Economy Purchases*

Some commenters support the Department's proposed modification but requested that the Department clarify and/or tighten its current practice with respect to when it will accept a firm's market economy purchase prices. Specifically, some commenters requested that the Department require firms to provide evidence that their inputs were actually produced in a market economy country. These commenters also requested that in finalizing this modification, the Department reiterate that it will not accept market economy purchases: 1) that are dumped; 2) from a country that maintains general export subsidies; 3) that are not "bona fide;" or 4) that are purchased from an affiliate. Additionally, one commenter requested that the Department revise its questionnaire to ask firms for detailed information concerning their market economy purchases to aid in the Department's analysis. This commenter advocated that the Department question whether the input purchased reflects the same type, grade, and quality of the input used in the production of the subject merchandise, and whether respondent can demonstrate that the input was actually used in the production of subject merchandise.

*Response to Comments:* With this modification, the Department will continue its practice of disregarding market economy purchase prices that: 1) may have been dumped (*e.g.*, the country covered by our proceeding has an antidumping measure on the input from the source country); 2) are from a country that the Department has a "reason to believe or suspect" maintains general export subsidies; 3) are not reflective of *bona fide* sales based on record evidence; or 4) are otherwise not acceptable for use in a dumping calculation (*i.e.* record

evidence demonstrates that the purchases are from an affiliate and are not made at arm's length). The Department has therefore determined that there is no further need to clarify or modify the Department's practice in this regard.

With respect to the comment that firms should be required to provide evidence that their inputs were produced in a market economy country, in the standard NME questionnaire the Department currently requests that respondents provide evidence identifying the country of origin for where each input was produced. Therefore, since the Department already requests such information from respondents, we do not find that such a requirement needs to be included in the modification of the regulation.

Finally, the Department is not revising its questionnaire to require respondents to demonstrate that certain inputs were the actual inputs used in the production of merchandise exported to the United States, and therefore subject to an antidumping duty order. The Department calculates a company's costs of production (in market economy cases) and factors of production (in NME cases) based on the merchandise the company has produced, and not on the market in which such merchandise is sold. The inputs used in the production of subject merchandise are often fungible and thus may be used in the production of merchandise destined for the home market, the United States or other export markets. Indeed, it is the Department's experience that while companies may, in some cases, have the ability to distinguish between otherwise fungible inputs based solely on the source and/or price of the input and the destination of the subject merchandise, the calculation of normal value may also be subject to distortion on this basis.<sup>6</sup> Specifically, a determination of normal value should not depend upon a

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<sup>6</sup> See *Sulfanilic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 63834, 63838 (Nov. 17, 1998) (finding that "aniline is a generic, fungible input" and that it did not matter whether it was imported or sourced in China – "the factor to be valued in this case is not 'domestic aniline' but simply 'aniline.'").

respondent's ability to demonstrate that it selected particular inputs for use in the production of merchandise destined for the United States versus the production of merchandise sold in other markets, particularly when such a selection might have been based solely on the price of inputs that were otherwise fungible.

For this reason, the Department's NME questionnaire, at Section D, specifically requires that respondents report factors of production information for all models or product types used to produce one unit of the "merchandise under consideration,"<sup>7</sup> which the Department defines as merchandise that meets the physical description of the scope of the antidumping duty order, "regardless of whether or not destined for the U.S. market."<sup>8</sup> Accordingly, we are not making the requested change to our questionnaire.

*Comment 6: Economic Comparability of Input/Supplier Country*

One commenter asserted that the Department should modify the *Proposed Rule* such that in order for the Department to use a market economy purchase price, the market economy input must be purchased from an economically comparable country that is also a significant producer of comparable merchandise, consistent with section 773(c)(4) of the Act.

*Response to Comment:* The Act contains no requirement that the Department use only market economy purchase prices from a country that is economically comparable to the NME country and also a significant producer of comparable merchandise. Rather, these are requirements imposed when applying surrogate values from a third country. Therefore, we have not adopted this suggested change.

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<sup>7</sup> The Department's Section D Questionnaire, at D-1. *See also* D-4 and D-6, which require that respondents provide not only the factors used to produce all models and product types sold to the United States, but also "the portion of production of those models or product types not destined for the United States."

<sup>8</sup> The Department's Section D Questionnaire at I-6.

*Comment 7: Effective Date*

Two commenters requested that the *Proposed Rule* be applied prospectively in order to give parties a chance to change their purchasing behavior. Specifically, they asserted that any such change in practice should only be applied in investigations and/or reviews that cover entries of subject merchandise that entered the United States after the effective date of the change in practice.

*Response to Comments:* If the Department were to delay implementation as suggested by those commenters, the effect would be a year or more of entries, investigations and reviews not affected by this modification to our regulations. The Department will make this modification effective for proceedings or segments of proceedings that are initiated on or after 30 days following the publication of this Final Rule. This change is intended and designed to ensure that the Department is relying on the best available information to value a firm's factors of production; thus, the Department does not believe that it should delay the effective date of this modification.

*Comment 8: Allegation of Clerical Errors*

One commenter asserted that the Department made clerical errors in the *Proposed Rule* that need to be fixed. Specifically, this commenter recommended that the Department (1) add the word "and" before "purchased," and (2) use a lowercase "i" for the word "if" in the second sentence of its proposed modification of the regulation.

*Response to Comments:* The Department notes that these clerical errors appeared in the section of the *Proposed Rule* entitled, "Explanation of Proposed Modification to 19 CFR 351.408," as printed. However, the proposed revised regulatory text at the end of the *Proposed Rule* did not contain these errors. Therefore, the Department has not made any changes to the

final modification of this regulation, but it has made the explanation of the final modification clearer based on the typographical errors in the *Proposed Rule*.

### Classification

#### *Executive Order 12866*

This rule has been determined to be not significant for purposes of Executive Order 12866.

#### *Final Regulatory Flexibility Analysis*

Pursuant to the requirements of 5 U.S.C. 604, the Department has prepared the following Final Regulatory Flexibility Analysis.

##### 1. A Statement of the Need for, and Objectives of, the Rule

The final rule is intended to revise 19 CFR 351.408(c)(1) to establish that in valuing factors of production in antidumping proceedings involving NMEs, if substantially all of an input is purchased from market economy suppliers as a share of total purchases of that input from all sources during the investigation or review period, the Department will use the weighted-average purchase price paid to market economy suppliers to value all of the input. Further, the final rule is also intended to add a requirement to 19 CFR 351.408(c)(1) that the market economy input at issue actually be produced in one or more market economy countries, and not just be sold through market economy countries.

The legal basis for this final rule is 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; and 19 U.S.C. 1671 *et seq.* No other Federal rules duplicate, overlap or conflict with this final rule.

2. A Statement of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes in the Proposed Rule as a Result of Such Comments

The Department received no comments concerning the Initial Regulatory Flexibility Analysis or the economic impacts of the rule more generally.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Department received no comments from the Chief Counsel for Advocacy of the Small Business Administration.

4. A Description of and an Estimate of the Number of Small Entities To Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The final rule regulates entities that are: (1) producing merchandise in an NME that is exported to the United States and is subject to an antidumping duty order; (2) being individually examined in an antidumping proceeding; and (3) claiming that market economy purchase prices should be used to value a factor of production in the calculation of the exporter's weighted-average dumping margin and antidumping duty assessment rate. The resulting antidumping duty assessment rate determines the amount of antidumping duties to be paid by importers of record of the subject merchandise imported into the United States.

Entities which produce and export merchandise subject to U.S. antidumping duty orders are rarely U.S. companies. Some producers and exporters of subject merchandise do have U.S. affiliates, some of which may be considered small entities under the appropriate Small Business

Administration (SBA) small business size standard. The Department is not able to estimate the number of exporters and producer domestic affiliates which may be considered small entities, but anticipates, based on its experience in these proceedings, that the number will not be substantial.

Importers may be U.S. or foreign companies, and some of these entities may be considered small entities under the appropriate SBA small business size standard. There are no means by which the Department can readily determine whether or not a substantial number of small importers will be impacted by this rule, as the effect of the Department's change in methodology will differ from proceeding to proceeding, on a case-by-case basis, and the importers depositing cash deposits and/or paying antidumping duties will also differ from proceeding to proceeding.

#### 5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The final rule will require exporters or producers to establish on the administrative record that 85 percent or more of an input has been purchased from market economy suppliers from one or more market economy countries as a share of total purchases of that input from all sources (domestic and foreign) during a particular period of investigation or administrative review, if the exporter or producer wishes the Department to use the weighted-average purchase price paid to the market economy supplier(s) to value all of the input (from all sources). Furthermore, the final rule will require that exporters or producers also establish on the administrative record that the market economy input at issue was produced in a market economy, rather than merely being sold through a market economy supplier. There will be no additional reporting or recordkeeping burdens on U.S. importers as a result of this rule.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

As required by 5 U.S.C. 604(a), the Department's analysis considered significant alternatives. The alternatives which the Department considered are: (1) the preferred alternative of modifying 19 CFR 351.408(c)(1) to (a) establish that if substantially all of an input is purchased from market economy suppliers as a share of total purchases of that input from all sources during the investigation or review period, the Department will use the weighted-average purchase price paid to market economy suppliers to value all of the input and (b) require that the market economy input at issue actually be produced in one or more market economy countries, and not just be sold through market economy countries; (2) modify the regulation with respect to (1)(a), but not (1)(b); (3) modify the regulation with respect to (1)(b), but not (1)(a); or (4) maintain the *status quo* with respect to the valuation of inputs purchased from a market economy supplier and paid for in a market economy currency.

Factors of production for the subject merchandise will be assigned a value in the calculation of the weighted-average dumping margin and antidumping duty assessment rate, whether the assigned value is a market economy purchase price, a surrogate value from a market economy country, or a combination of the two. Accordingly, the economic impact of providing information and argument to the Department in relation to the valuation of the factors of production for entities individually examined in the Department's antidumping proceedings is roughly equivalent under each of the above-noted alternatives.

In relation to the possible impact of the alternatives on the amount of antidumping duties to be paid by importers of record of the subject merchandise, the value of a factor of production is one of numerous elements in the calculation of a weighted-average margin of dumping. Whether a particular factor value will have any impact on the resulting weighted-average dumping margin is not certain. To the extent that a small U.S. importer will be economically impacted by this rule, it will only be through an increase or decrease in the cash deposits and duties posted by that importer as a result in the change of a weighted-average dumping margin. In those circumstances where a change in the value of an input as a result of this regulatory modification does have an impact on the weighted-average dumping margin, the impact to the small U.S. importer will depend on whether the publicly sourced value is higher or lower than the market economy purchase price(s).

In this regard, the Department is required by section 773(c)(1)(b) of the Act to rely on the best information available for valuing the producer's factors of production. The modification to the regulation addresses the Department's concerns that a market economy input price may not be the best available information when: 1) market economy purchases of an input are insufficient in proportion to NME purchases for the Department to objectively conclude that the purchase price for the input would have been the same had the firm purchased solely from market economy suppliers and 2) the reported pricing of an NME produced inputs purchased from a market economy supplier (or reseller) can be distorted by NME cost or supply factors. Accordingly, the Department considers that the first, preferred alternative is the only alternative that fully addresses the Department's policy concerns explained in the Background section of this preamble.

*Small Business Compliance Guide*

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, the agency has published a guide to assist small entities in complying with the rule. This guide is available on the Department's website at <http://ia.ita.doc.gov/tlei/index.html>.

*Paperwork Reduction Act*

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

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Paul Piquado  
Assistant Secretary  
for Import Administration

July 22, 2013\_\_  
Date

For the reasons stated, 19 CFR part 351 is amended as follows:

**PART 351 – ANTIDUMPING AND COUNTERVAILING DUTIES**

1. The authority citation for 19 CFR part 351 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. In §351.408, revise paragraph (c)(1) to read as follows:

**§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.**

\* \* \* \* \*

(c) \* \* \*

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s) if substantially all of the total volume of the factor is purchased from the market economy supplier(s). For purposes of this provision, the Secretary defines the term “substantially all” to be 85 percent or more of the total volume purchased of the factor used in the production of subject merchandise. In those instances where less than substantially all of the total volume of the factor is produced in one or more market economy countries and purchased from one or more market economy suppliers, the Secretary normally will weight-average the actual price(s) paid for the market economy portion and the surrogate value for the nonmarket economy portion by their respective quantities.

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[FR Doc. 2013-18547 Filed 08/01/2013 at 8:45 am; Publication Date:  
08/02/2013]