

June 1, 2004

James J. Jochum  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Avenue and 14<sup>th</sup> Street N.W.  
Washington, D.C. 20230

**Re: Separate Rates Practice in Antidumping Proceedings Involving  
Non-Market Economy Countries**

Dear Assistant Secretary Jochum:

Gleason Industrial Products, Inc., and Precision Products, Inc. (collectively “Gleason”), petitioners in the antidumping investigation of hand trucks and certain parts thereof from the People’s Republic of China, are filing this submission in response to the U.S. Department of Commerce’s request for comment on the agency’s separate rates practice in antidumping proceedings involving non-market economy countries. Based on this submission, Gleason separately requests that the Department revisit its preliminary determination in the hand truck investigation concerning Gleason’s separate rate request and issue a supplemental questionnaire that will examine in detail the decisive non-market role played by one or more Chinese governmental entities in the development and expansion of the hand truck industry in Qingdao, China.

Please direct any questions concerning this submission to the undersigned.

Respectfully submitted,



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Comments of  
Gleason Industrial Products, Inc.  
And Precision Products, Inc.

Separate Rates Practice in Antidumping  
Proceedings Involving Non-Market Economy Countries

On March 19, 2004, in the antidumping investigation of hand trucks and parts thereof from the People's Republic of China, Gleason demonstrated a reasonable basis to believe that the Chinese National Government and/or various other Chinese governmental entities played a significant role in the development and expansion of the hand truck industry in Qingdao, China. Gleason asked the Department to issue a supplemental questionnaire designed to elicit detailed information about the government's role and, if the resulting evidence confirmed significant government involvement, deny separate rates for hand truck producers located in Qingdao. In its preliminary determination, the Department dispensed with Gleason's request with the following statement:

The actions allegedly undertaken by the Chinese central, provincial and municipal governments are indicia that the PRC is a non-market economy, a point which is not contested in this case. In applying the separate rates test, however, we are seeking to identify governmental interference in the individual companies' export making decisions.<sup>1</sup>

The Department's statement frames a conundrum that appears in every antidumping proceeding involving non-market economy ("NME") countries: given governmental regulation and control of the economy, how can a company succeed in escaping the non-market conditions created

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<sup>1</sup> Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof From the People's Republic of China, 69 Fed. Reg. 29,509, 29,512 (May 24, 2004).

by the government so as to freely set prices for its exports? The answer to this conundrum for many years has been the Department's separate rates practice: if a Chinese exporter can prove the absence of both *de jure* and *de facto* governmental control over export activities, it is eligible to receive an antidumping rate separate from the normally applicable country-wide rate. The Department's answer, however, focuses too narrowly on one dimension of government interference – micro-controls over export activities. In doing so, it fails to take into account broader market distortions that necessarily impact on export decision-making.

Gleason believes the Department should amend its separate rates practice to consider all market distortions that may impact on export activities. Gleason begins its comments by exploring China's corporate landscape as it exists today.<sup>2</sup> Gleason then suggests that the Department add to its separate rates analysis an examination of broad market conditions. Gleason closes its comments with answers to the specific questions raised by the Department in its May 3<sup>rd</sup> notice.

#### I. China's Corporate Landscape

China does not have companies. In a presentation before the Hong Kong General Chamber of Commerce, Mr. Arthur Kroeber, Managing Editor of the China Economic Quarterly, outlined "two big myths" about China's economy as well as "three core truths." The two big myths are: "1. China's economy consists of moribund state-owned companies and dynamic private companies[; and] 2. [t]he goal of economic reform is to create more private ownership

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<sup>2</sup> Gleason restricts its comments about separate rates to its understanding of China's non-market economy, as it is most familiar with the corporate landscape that exists in that country, but believes its comments have general applicability to other NME countries.

and greater corporate efficiency.”<sup>3</sup> The three core truths are: “1. China does not have companies[;] 2. [e]fficiency does not matter[; and] 3. [p]rivatisation is irrelevant.”<sup>4</sup>

It is very, very important for people to bear in mind at all times that when they are operating in the China market at any level, that the development of the Chinese corporate sector is heavily influenced and will continue to be heavily influenced by state policies which will be vigorously executed by state agencies . . . . [T]he constraints of state policies on all economic actions, be it state-owned enterprises, domestic type companies or foreign companies, will continue to be very, very powerful in some unexpected ways.<sup>5</sup>

According to Mr. Kroeber, China does not have companies because “China does not have corporate entities that really function the way that companies in the Anglo-American environment tend to...”<sup>6</sup> In the state sector, “a lot of economic activity that use to be organized under state ministries basically has now been renamed as happening under corporate entities.”<sup>7</sup>

But, if you look at internal state documents, they don’t talk about state companies, they talk about state assets. And state policy regarding the state-owned sector is very much driven by this notion that they have these collection of assets out there and they bundled some of them and put them into entities they call corporations. . . . [T]hese corporations,... even the international listed ones, don’t really function the same way as an international listed corporation from the U.S. or England would... [T]hat is very important to understand: There is a slow evolution towards making these so-

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<sup>3</sup> “China’s companies; the search for wealth and power,” Presentation by Mr. Arthur Kroeber, Managing Editor of the China Economic Quarterly, Before the Hong Kong General Chamber of Commerce, slide 2 (Nov. 3, 2003) (“Kroeber Presentation”) (Attachment 1). Mr. Kroeber’s slide presentation has been reprinted with his permission. A copy of Mr. Kroeber’s presentation and remarks are also available on the Internet at:

[http://www.chamber.org.hk/info/the\\_bulletin/dec2003/cp.asp](http://www.chamber.org.hk/info/the_bulletin/dec2003/cp.asp)

<sup>4</sup> Kroeber Presentation, Attachment 1, slide 3.

<sup>5</sup> *Id.*, [http://www.chamber.org.hk/info/the\\_bulletin/dec2003/cp.asp](http://www.chamber.org.hk/info/the_bulletin/dec2003/cp.asp).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

called corporations into real corporations, but that is going to take many decades to process and it also has implications for how the state manages these assets.<sup>8</sup>

As for “what are often called private companies,” Mr. Kroeber similarly “prefer[red] to avoid... private sector terms”<sup>9</sup>:

You have a lot of entrepreneurial conglomerates, and these again are called companies. Typically, they are run by entrepreneurs – they can be state owned, or they can be private, or they can be somewhere in between – and again they tend to be fairly opportunistic collections of assets... [But] to describe them as acting in the same way that a company would in... England or the United States, I think is not quite accurate.<sup>10</sup>

Comments filed by parties before the U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, as well as expert testimony before the U.S.-China Economic and Security Review Commission, confirm Mr. Kroeber’s observations that the corporate landscape in China is severely distorted by governmental intervention and interference. As demonstrated below, the Chinese government maintains significant control over means of production, resources, prices and outputs.

- Control over the means of production:
  - “67 percent of PRC GDP is either fully governmentally controlled, or partially governmentally controlled at the state, provincial, and/or local levels.”<sup>11</sup>
  - “A 2001 survey of all enterprises established in mainland China by China’s National Statistics Bureau showed that 30.6 percent of the enterprises were still state-owned and a further 22.8 percent were ‘collectively-owned.’ Moreover,

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> American Foundry Society, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 8 (May 19, 2004).

despite efforts to reform, the government still has strong influences over SOEs' investment, production, and sales.”<sup>12</sup>

- As one example of government control over means of production, “China has undertaken an aggressive industry development plan, backed by policy directives and funding, to speed the development of the pulp, paper, and wood processing industries... China has taken a ‘carrot and stick’ approach to achieve... objectives, adopting tax, investment, and trade policy measures to promote domestic industry development.”<sup>13</sup>
- As another example of such control, “[t]here remains a very significant degree of government ownership and/or control of semiconductor production facilities in China.”<sup>14</sup>
- Control over resources:
  - “Infrastructure services in China are still largely dominated by state monopolies. For example, the Chinese State Power Corporation owns 46 percent of the country’s generation assets, and 90 percent of the total electricity supply assets.”<sup>15</sup>
  - “[T]he Chinese government continues to own or control, *inter alia*, land-use, access to capital markets, and transportation through government regulation or through state-owned or controlled enterprises. The government also controls virtually all aspects of the energy industry, including the ownership or control of oil and natural gas reserves and those companies exploiting such reserves.”<sup>16</sup>

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<sup>12</sup> American Furniture Manufacturers Committee for Legal Trade, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 16 (May 19, 2004) (footnote omitted).

<sup>13</sup> American Forest & Paper Association, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 2 (May 19, 2004).

<sup>14</sup> Semiconductor Industry Association, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 7 (May 19, 2004).

<sup>15</sup> American Furniture Manufacturers Committee for Legal Trade, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 4 (May 19, 2004) (footnote omitted); *see* American Foundry Society, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 10-11 (May 19, 2004) (footnote omitted).

<sup>16</sup> American Furniture Manufacturers Committee for Legal Trade, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 14 (May 19, 2004) (footnotes omitted).

- “The Chinese government exerts total control over one very important resource – land... Because the Chinese government controls land use, it is able to set the terms for leases, which means it can favor or penalize producers by setting low or high lease rates.”<sup>17</sup>
- “ ‘The government remains firmly in control of the banking sector and directs lending to state-favored projects, businesses, and individuals.’ ”<sup>18</sup>
- “[T]he Chinese Government has been using the banking system to funnel moneys to and away from industries[,] which effectively controls a critical resource – capital – and affects output decisions at least on the macro level.”<sup>19</sup>
- As one example of government control over resources, “[r]egional governments and the administering authorities of China’s High-Tech Parks and Industrial and Technical Development Zones in which semiconductor enterprises are located are providing assets and production inputs to those enterprises on preferential terms. Sophisticated infrastructures have been established by regional authorities and Park administrations to support the design and manufacture of semiconductors. Land and structures are provided free or at very low rental rates. Water, specialty gases, electricity and other factors of production are provided on a concessional basis. Design firms are provided with IC design tools on a subsidized basis...”<sup>20</sup>
- Control over prices and outputs:
  - “ ‘China maintains price controls on several products and services covering both state-owned enterprises and private enterprises. These price controls may be in

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<sup>17</sup> Rebar Trade Action Coalition, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 6 (May 19, 2004); see United States Steel Corporation, Comments before U.S.- China Joint Commission on Commerce and Trade Working Group on Structural Issues, 14 (May 19, 2004).

<sup>18</sup> American Foundry Society, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 12 (May 19, 2004), *quoting from* Marc A. Miles, Edwin J. Feuler, Jr., Mary Anastasia O’Grady, and Ana I. Eiras, *2004 Index of Economic Freedom*, 140.

<sup>19</sup> Stewart and Stewart, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 10 (May 19, 2004).

<sup>20</sup> Semiconductor Industry Association, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 7-8 (May 19, 2004) (footnote omitted).

the form of either absolute mandated prices or specific pricing policy guidelines as directed by the government...’<sup>21</sup>

- “[T]he Chinese government also exerts influence over private entities’ pricing behavior by adjusting and controlling the price level of a commodity it deems ‘important.’<sup>22</sup>
- “It is understood that there is ‘guidance’ provided on prices for a wide range of products and that the government sets prices on certain major inputs (*e.g.*, energy pricing).<sup>23</sup>
- “Factories are not allowed to sell other than to the customers they have permits to sell. Some factories can only export product; others are strictly to serve the domestic market. Such strictures on sales distort distribution channels and vastly reduce competition...<sup>24</sup>

Privatization in China does not otherwise signal a transition from non-market controls to market freedom. “The main goal is not to reduce state control of the economy but to make state control of the economy more efficient... The key tactic is *zhuada fangxiao* or ‘seizing the large and letting go the small.’<sup>25</sup>

It is basically the principal of leverage. Once upon a time, the state believed that it had to control 100 percent of the production of the assets of the economy to control the economy. And then they figured out about leverage and... they understand now that maybe they only need to control... 25 percent of the productive assets of

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<sup>21</sup> American Furniture Manufacturers Committee for Legal Trade, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 15 (May 19, 2004), *quoting from* 2003 USTR Report to Congress, 34; *see* United States Steel Corporation, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 15-16 (May 19, 2004).

<sup>22</sup> American Furniture Manufacturers Committee for Legal Trade, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 15 (May 19, 2004).

<sup>23</sup> Stewart and Stewart, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 10 (May 19, 2004).

<sup>24</sup> Cookware Manufacturers Association, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 2 (May 19, 2004).

<sup>25</sup> Kroeber Presentation, Attachment 1, slide 8 (emphasis in original).

the economy... [W]e don't have to control at 100 percent; we can get these foreign investors... to pay a lot of money for minority shares, and if we pick the right assets and control those in a more effective and efficient way, then it doesn't matter about the other 75 percent. *We can still effectively control the economy and make sure it runs the way that we want it to.*<sup>26</sup>

Dr. Peter Hugh Nolan's statement before the U.S.-China Economic and Security Review Commission, corroborates Mr. Kroeber's observations:

China's chosen global giant corporations have been supported through a wide range of national industrial . . . policies, which include: tariffs, which were gradually reduced during the reform years; non-tariff barriers, including limitations on access to domestic marketing channels; requirements for technology transfer and to sub-contract to selected domestic firms as the price for market access; government selection of the partners for major international joint ventures; preferential loans from state banks; privileged access to listings on national and international stock markets; tax relief; privileged access to land; direct support from [sic] R&D from the government budget; government procurement policy; and government mediated mergers and acquisition.<sup>27</sup>

And as for those companies that convert from state-owned operations to so-called private enterprises, the Cookware Manufacturers Association confirms that this transition typically is accompanied by "free equipment, forgiveness of rent, free raw materials, subsidized fuel, cancellation of payroll taxes, and non-enforcement of labor, minimum wage and work standard

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<sup>26</sup> *Id.*, [http://www.chamber.org.hk/info/the\\_bulletin/dec2003/cp.asp](http://www.chamber.org.hk/info/the_bulletin/dec2003/cp.asp) (emphasis added).

<sup>27</sup> *China's Industrial, Investment and Exchange Rate Policies: Impact on the United States: Hearing before the U.S.-China Economic and Security Review Comm.*, 108<sup>th</sup> Cong. 108 (2003) (prepared statement of Peter Hugh Nolan, Ph.D., Sinyi Professor of Chinese Management, University of Cambridge); see United States Steel Corporation, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 12-14 (May 19, 2004).

laws... Absent the payment of true market prices for inputs, these factories can compete in the market place with artificially low prices in predatory ways.”<sup>28</sup>

Finally, control of the corporate landscape in China is not just restricted to the actions of the national government, but forms the modus operandi for provincial and local governments as well:

- “[p]rivate firms suffer from political interference in their operations. Lack of coordination among relevant government agencies requires private firms to spend a substantial amount of time establishing a ‘relationship’ with both central and local government officials. Some domestic companies cited good relationships with local and central government officials as a crucial factor for their success...”<sup>29</sup>
- “The best-known Chinese firm internationally is, probably, the consumer electronics firm, Haier. Apart from the high entrepreneurial capabilities of its CEO, Zhang Ruiming, its growth owes much to the support given by both the Shandong provincial government and the Qingdao city government. . . . The fact that China has joined the WTO has not dimmed the ambition of local provincial and city governments to use industrial policy to nurture local champions...”<sup>30</sup>

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The above discussion about China’s corporate landscape highlights the difficulties associated with drawing a line between the considerable control maintain by the Chinese national, provincial and local governments over companies on the one hand and the impact of that control over an individual company’s export activities on the other. Given the basic market

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<sup>28</sup> Cookware Manufacturers Association, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 1-2 (May 19, 2004).

<sup>29</sup> American Foundry Society, Comments before U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, 15 (May 19, 2004), *quoting from* Asian Development Bank, *Private Sector Assessment: Peoples Republic of China*, 36 (Nov. 2003).

<sup>30</sup> *China’s Industrial, Investment and Exchange Rate Policies: Impact on the United States: Hearing before the U.S.-China Economic and Security Review Comm.*, 108<sup>th</sup> Cong. 109 (2003) (prepared statement of Peter Hugh Nolan, Ph.D., Sinyi Professor of Chinese Management, University of Cambridge).

