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January 12, 2005

Deborah A. Garza, Chair
Jonathan R. Yarowsky, Vice-Chair
Antitrust Modernization Commission
1120 G Street, N.W.
Suite 810
Washington, D.C. 20005

Dear Ms. Garza and Mr. Yarowsky:

On behalf of the undersigned companies and associations, we hereby submit comments regarding the issues to be selected for further study by the Antitrust Modernization Commission (the "Commission") at its meeting on January 13, 2005. In particular, we strongly urge the Commission not to include any "reevaluation" or consideration of the antidumping laws as part of its work plan for further study.

As you know, the Commission established several working groups that were tasked with recommending issues to the Commission for further study under the Antitrust Modernization Commission Act of 2002 (the "Act"). On December 21, 2004, the Commission's International Working Group issued a memorandum embodying its recommendations as to the international issues that it was and was not proposing for further study by the Commission. Among the issues that the International Working Group recommended for further study was whether the antidumping laws should be "reevaluated."[1] As demonstrated below, this issue should not be part of the Commission's study program for several reasons.[2]

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[1] Memorandum from the International Working Group to All Commissioners Regarding International Issues Recommended for Commission Study (Dec. 21, 2004) ("International Working Group Memo") at 2, 7-8.

[2] In a July 23, 2004 Federal Register notice, the Commission requested comments from the public by September 30, 2004 regarding the issues that it should select for further study. See Request for Public Comment, 69 Fed. Reg. 43969 (Antitrust Modernization Comm'n July 23, 2004). However, the undersigned had no reason to believe that the "reevaluation" of the antidumping laws would even be a potential area for study by a commission whose mandate is to study and issue a report on the need for modernization of the antitrust laws. The first such indication was in the International Working Group's

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First, this issue clearly exceeds the Commission's statutory mandate. The Commission is charged by the Act with the following duties:

> (1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;
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> (2) to solicit views of all parties concerned with the operation of the antitrust laws;
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> (3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and
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> (4) to prepare and to submit to Congress and the President a report [containing a detailed statement of the Commission's findings and conclusions together with recommendations for legislative or administrative action].[3]

The Commission's Charter also stipulates the same objectives and duties.[4] Thus, the Commission's express mission is to study and prepare a report regarding the modernization of the antitrust laws. The "reevaluation" of the antidumping laws is not, in any way, related to this mission.

To the contrary, the antitrust and antidumping laws are distinct, independent areas of the law, and any attempt to link the two is simply misguided. Indeed, as the U.S. Government itself recognized in a submission to the World Trade Organization (the "WTO"),

> the antidumping rules and competition laws have different objectives and are founded on different principles, and they seek to remedy different problems. If the antidumping rules were eliminated in favor of competition laws or modified to be consistent with competition policy principles, the problems which the antidumping rules seek to remedy would go unaddressed.[5]

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memorandum issued on December 21, 2004. Thus, these comments are responsive to that memorandum.

[3] Antitrust Modernization Commission Act of 2002, Pub. L. No. 107-273, §§ 11053, 11058, 116 Stat. 1856.

[4] Charter of the Antitrust Modernization Commission, available at http://www.amc.gov/pdf/charter/amc_charter.pdf (last visited Jan. 6, 2005).

[5] Communication from the United States to the Working Group on the Interaction between Trade and Competition Policy, WT/WGTCP/W/88, Aug. 28, 1998 ("U.S. Government Paper"), at 1; see also id.

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Although the antitrust and antidumping laws both generally seek to set rules for competition in the market, they have vastly different specific objectives. The antitrust laws are designed to ensure that consumers are not harmed by private collusive activity aimed at eliminating competition. In contrast, the antidumping laws have the broader objective of counteracting unfair trade practices caused by foreign government industrial policies and other artificial advantages provided to foreign producers and seek to provide relief to U.S. industries and workers injured by such practices. Antidumping duties are designed to offset the artificial advantages realized by foreign producers so that U.S. producers may compete on a level playing field in their own market. The United States is not alone in this endeavor. Dumping has been specifically "condemned" not just by the United States but by the world trading system as a whole since 1947,[6] and WTO Members have uniformly agreed that antidumping laws are essential to the maintenance of the multilateral trading system.

The problems that the antitrust and antidumping laws seek to counter are also starkly different. The antitrust laws are aimed primarily at attacking collusion, price-fixing, and other anticompetitive practices by private actors. While the antidumping laws also address certain private pricing practices (i.e., dumping practices), such laws are not intended as a remedy for the predatory pricing practices of firms or as a remedy for any other private anticompetitive practices condemned by the antitrust laws.[7] Rather, the antidumping laws address dumping practices because they normally arise from a foreign government's market-distortive industrial policies or artificial differences in national economic systems that a foreign government has created, promoted, or tolerated.[8] In particular, a foreign government's market-distortive industrial policies may take several

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at 4 ("[C]ompetition laws and the competition policy principles on which they are based are not relevant to an analysis of the antidumping rules.") (emphasis added). It is important to note that several other WTO Members concurred with the United States' assessment of the vast differences in the objectives of the antitrust and antidumping laws and the problems that they seek to remedy. See Communication from Australia to the Working Group on the Interaction between Trade and Competition Policy, WT/WGTCP/W/98, Sept. 21, 1998, at 1-2; Communication from the European Community and Its Member States to the Working Group on the Interaction between Trade and Competition Policy, WT/WGTCP/W/78, July 7, 1998, at 14-15.

6 See General Agreement on Tariffs and Trade 1947 at Article VI:1.

7 It should be noted that the United States previously had a law that addressed predatory pricing by foreign firms in the U.S. market and that allowed for awards of monetary damages to U.S. firms injured by such practices – i.e., the Antidumping Act of 1916 (the "1916 Act"). However, the 1916 Act was found to be an unlawful specific action against dumping by the WTO Appellate Body and has now been repealed. See *United States – Anti-Dumping Act of 1916*, WT/DS136/AB/R, WT/DS162/AB/R, Aug. 28, 2000.

8 See U.S. Government Paper at 2-3.

forms, including market access barriers that create closed domestic markets, domestic price controls, and government subsidization.[9] The artificial advantages provided to foreign producers by these industrial policies enable such producers to increase production and realize increased profits in their home market. In turn, such advantages make possible and often encourage the foreign producers to engage in injurious dumping abroad.[10] The antitrust laws simply do not address any of these problems at which the antidumping laws are directed.

In sum, there are substantial differences in the objectives of the antitrust and antidumping laws and in the problems at which they are directed. Given these vast differences and given the Commission's express mandate to address only the modernization of the antitrust laws, embarking on a study of the "reevaluation" of the antidumping laws would clearly overstep that mandate.

Furthermore, a "reevaluation" of the antidumping laws is simply not within the expertise of the Commission. The Commission does not include a single expert in the area of antidumping law. Rather, in accordance with the underlying purpose of the Commission and the statute creating it, the Commission is comprised of private practitioners and other experts in the area of antitrust law. For any commission or other body to engage in a study of the antidumping laws, it would necessarily have to include individuals with unique experience and expertise with respect to those laws. The fact that Congress and the President did not see fit to appoint any such individuals to the Commission undeniably demonstrates their intent not to have the Commission address issues relating to antidumping. Accordingly, any inquiry into such issues would be plainly improper.

Finally, as described above, the antidumping laws serve a vitally important role – and one that is not at all served by the antitrust laws – in counteracting unfair foreign trade practices and injurious import surges and in ensuring that U.S. firms can compete on a level playing field in their own market. The antidumping laws and other disciplines against unfair foreign trade have been and continue to be a critical factor in obtaining and sustaining necessary public support for the world trading system and new trade initiatives. Thus, there simply is no basis for this Commission to consider whether the antidumping laws should be "reevaluated." In fact, any consideration of this issue by the Commission would only detract from the other important issues that are properly within the scope of its work.

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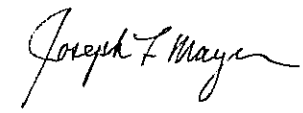
[9] Id.

[10] See id. at 7.

For each of the foregoing reasons, the Commission should decline to include any "reevaluation" or consideration of the antidumping laws as part of its issues for further study.

Respectfully submitted,



Joseph L. Mayer
Chairman, Committee to Support US Trade Laws
President, Copper & Brass Fabricators Council, Inc.

Note: Attached is a partial list of organizations supporting this letter. Time did not allow many additional organizations to respond.

Advanced Micro Devices, Inc.
AFL-CIO
AK Steel Corporation
American Fiber Manufacturers Assn.
American Iron and Steel Institute
Ameristeel Bright Bar
Candle-Lite Division of Lancaster Colony Corp.
Carpenter Technology Corporation
Calif Fresh Garlic Producers Assn.
Charter Wire
Chicago Fire Brick Company
Cleveland-Cliffs, Inc.
Coalition for Fair Lumber Imports
Cold Finished Steel Bar Institute
Committee on Pipe & Tube Imports
Communications Workers of America
Connecticut Steel Corporation
Copper & Brass Fabricators Council
Crawfish Processors Alliance
Fair Atlantic Salmon Trade
Falcon Foundry
Ferroalloys Association
Floral Trade Council
Florida Tomato Exchange
Forging Industry Association
General Wax & Candle Co.
Ingersoll-Rand Co., Ltd.
Int'l Brotherhood of Electrical Workers
Ispat Inland Inc.
Lumi-Lite Candle Co.
Manufacturers for Fair Trade
Maui Pineapple Co., Ltd.
Micron
Municipal Castings Fair Trade Council
National Candle Association
North Dakota Farmers for Profitable Agric.
Nucor Corporation
PMC Specialties Group, Inc.
R-CALF United Stockgrowers of America
Republic Engineered Products
Southern Tier Cement Committee
Specialty Steel Industry of N. America
Steel Manufacturers Association
Stupp Bros. Bridge & Iron Company
The Timken Company
Thoeny Farms, Inc.
United Steelworkers of America
U.S. Beekeepers
U.S. Steel
Ward Manufacturing, Inc.
Wheat Gluten Industry Council