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Thank you Chairman Levin, Ranking Member Herger, and Members of the Subcommittee for inviting me to discuss the “Nonmarket Economy Trade Remedy Act of 2007” (H.R. 1229), introduced by Representatives Davis and English. I appreciate the opportunity to share with you the Department of Commerce’s views on this bill, particularly as it relates to the application of the countervailing duty (CVD) law to China and other non-market economy (NME) countries.

China’s remarkable economic growth in recent years makes it one of the most important engines of the world economy outside of the United States. In trade terms, China is now the United States’ third largest goods trading partner. China represents one of the fastest-growing markets for U.S. goods and services. Our exports to China, which for the most part are high value-added products, totaled \$55 billion in 2006, growing at a rate of 32 percent from the previous year. That makes China our fourth largest export market. At the same time, China is our second largest source of imports. U.S. goods imports from China totaled \$288 billion in 2006, an 18 percent increase over 2005.

To help ensure continued and increased growth of U.S. exports to China, the United States is working proactively to identify and seek removal of barriers to U.S. exports. Unfair subsidies from the central, provincial, and local governments to Chinese companies distort trade conditions for U.S. producers, both here in the U.S. market and abroad. These subsidies are available across manufacturing sectors, so they can provide an unfair advantage to China’s exports of a wide range of products to the United States.

They can also harm U.S. producers hoping to export successfully to China or compete with Chinese exports to third country markets. The Chinese press is rife with examples of subsidies given to various sectors from agricultural products to steel. China clearly employs subsidies; the question is what domestic and international strictures we can use to discipline them.

At the Department of Commerce, we are charged with the enforcement of U.S. trade remedy laws. Before talking about our work at the Import Administration, I want to discuss the work of the Office of the U.S. Trade Representative (USTR), which recently has taken steps to discipline Chinese subsidies that appear to be prohibited under the rules of the World Trade Organization (WTO).

In April 2006, more than four years after its accession to the organization, China submitted its first subsidies notification to the WTO, an annual requirement for all WTO members. China identified over 70 subsidy programs, but the notification was incomplete. Furthermore, China did not indicate any intent to withdraw or reform several notified programs that appeared to be prohibited. On February 2, 2007, USTR requested WTO dispute settlement consultations with China concerning these and other Chinese subsidy programs that appear to violate WTO rules. Six of the challenged subsidy programs appear to be export subsidies, granted on the condition that the recipients meet certain export performance criteria. The remaining three programs appear to be import substitution subsidies, conditioning the grant of subsidies on the recipient's purchase of domestic goods over imported goods. Both export subsidies and import substitution subsidies are prohibited under the WTO Agreement on Subsidies and Countervailing Measures. The United States and China have not yet held WTO consultations on this

matter, but I would like to note that last week China unilaterally rescinded one of the alleged export subsidy programs.

That is the role of USTR – to enforce U.S. rights at the WTO. We at the Commerce Department enforce our domestic anti-subsidy law, the countervailing duty law.

Let's make no mistake about it: Subsidies exist in China and are distorting the playing field. There is no legal bar to Commerce's application of the CVD law to non-market economies, including China, and we will do so, as long as appropriate circumstances warrant such application. As you know, countervailing a non-market economy poses unique challenges, such as calculating benchmarks for subsidy programs. Moreover, applying U.S. countervailing duty law to countries like China that are classified as non-market economies for antidumping purposes raises complex issues of policy and methodology, which could have implications for other aspects of Commerce's trade remedies practice. Nevertheless, current law allows us to countervail China.

Indeed, we are now conducting a countervailing duty investigation of coated free sheet paper (glossy paper) from China that dates from last October. The petition in that investigation was filed by NewPage Corporation, which testified before this Subcommittee in February. We will be announcing our preliminary determination in the glossy paper investigation by April 2, so it would be inappropriate for me to comment upon the merits of that investigation at this time.

I would also note that the Government of China has challenged Commerce's initiation of the CVD glossy paper investigation at the U.S. Court of International Trade and has requested a preliminary injunction. The Court has not yet ruled on that request,

although it did deny China's initial motion for a temporary restraining order that would have prevented Commerce's investigation from going forward.

For more than 20 years, throughout four Administrations, Commerce has maintained a policy of not applying our CVD law to countries that we have classified as non-market economies for antidumping purposes. The basis for this policy was the 1984 Georgetown Steel decision, in which the Court of Appeals for the Federal Circuit affirmed that the Department of Commerce has the discretion to decide whether to apply the countervailing duty law to non-market economy countries. In the circumstances presented by that case, Commerce reasoned that non-market economy firms were not independent, profit-driven allocators of resources and, therefore, could not take into account the impact of government subsidies when making pricing decisions. Since then, Commerce has had a practice of not applying the CVD law to NME countries, including China, and the antidumping law has been a commonly used instrument to address unfair trade practices on the part of Chinese producers and exporters. We currently have 61 antidumping orders against China. Since 2001, we have issued 31 antidumping orders against China, compared to the 24 orders put into place between 1993 and 2000. Our decision to conduct this countervailing duty investigation in no way reverses our decision, reaffirmed last August in the context of the antidumping investigation of imports of lined paper from China, to treat China as a non-market economy country under the antidumping law.

The glossy paper investigation represents the first China CVD petition received by Commerce since 1991, when we initiated investigations on lugnuts and ceiling fans. In both of those cases, Commerce ultimately did not find a basis for applying the CVD

law to the industry in question, consistent with Georgetown Steel. The present investigation provides Commerce an opportunity to review its long-standing policy of not applying the CVD law to NMEs, such as China.

Given the complex legal and policy issues involved in our upcoming decision, on December 15, 2006, Commerce requested public comment on this issue. We received over 50 submissions in response to this request, including comments from a group of Senators, House members, the National Association of Manufacturers (NAM), and various other industry groups. The majority of the commenters cited concerns about the growing problem of Chinese government subsidies and the adverse impact they are having on U.S. producers, workers, and farmers. As such, the majority of commenters encouraged Commerce to begin applying the CVD law to imports from China. At the same time, Commerce also received comments from several U.S. consuming industries encouraging Commerce to maintain its current policy and not to apply the CVD law to non-market economies. Commerce is in the process of carefully reviewing all of these submissions and other relevant information on the record before making its preliminary determination in the glossy paper investigation.

We are committed to identifying and addressing trade-distortive and injurious subsidies from all countries, including those in China. That is a top priority for us. Import Administration will not hesitate to use the tools at our disposal to discipline China's use of unfair subsidies. Make no mistake about it; if we can formulate a methodology for countervailing non-market economies and are provided with the appropriate set of facts, we will not give any country a free pass when it comes to illegal and distortive subsidies.

Commerce has always maintained, and we believe the courts have agreed with us, that we have the statutory authority to apply the CVD law to NME countries. However, if Congress would like to affirm Commerce's authority, as proposed under Section 2 of H.R. 1229, we would welcome the opportunity to work with you, Mr. Chairman, and with this Committee. I should note that, because of the complexity of this issue, it is important for the language of any bill to be crafted with appropriate precision, not only to ensure consistency with our international trade obligations but also to avoid unintended consequences for existing provisions of U.S. countervailing duty law.

Thank you for giving me this opportunity to testify on this important topic today.