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Mr. Paul Piquado
Assistant Secretary for Enforcement and Compliance
U.S. Department of Commerce
14th Street and Constitution Ave, N.W.
Washington, DC 20230

Attn: Charles Vanatta
Melissa Brewer

Re: Comments Regarding the Department's Differential Pricing Analysis

Dear Mr. Piquado:

These comments are filed by Cassidy Levy Kent (USA) LLP, a law firm with extensive experience representing both petitioners and respondents in antidumping proceedings before the U.S. Department of Commerce ("Commerce"). We submit these comments in response to the notice published in the *Federal Register* by Enforcement and Compliance on May 9, 2014, seeking public comment on the Department's "Differential Pricing" analysis.¹ We appreciate the Department's commitment to using all available tools authorized by statute to identify and remedy dumped imports, and are grateful for the opportunity to comment upon the Differential Pricing analysis as the Department continues to refine its practices.

The Department has expended significant resources over the past several years in an effort to refine its practice with respect to the issue of alternative comparison methodologies. Accurate antidumping analysis is, by definition, case-specific. The Department's ability to apply

¹ *Differential Pricing Analysis; Request for Comments*, 79 Fed. Reg. 26,720 (May 9, 2014).

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different methodologies to different situations is, therefore, crucial to fulfilling the Department's obligation to address injurious dumping. To be effective, the Department must use the flexibility it has to adapt its comparison methodology to the facts of each case and, to this end, apply an alternative comparison methodology where appropriate. We believe the Differential Pricing methodology as articulated by the Department provides the necessary flexibility to adapt its analysis to fit the facts of each case, but we want to emphasize the need to use that flexibility.

More specifically, the Department should use the flexibility of the Differential Pricing analysis to determine in each case the most effective way of measuring whether an alternative methodology is appropriate. To be sure, the Differential Pricing methodology uses default group definitions for purchasers, regions, and time periods for determining whether there exists a pattern of prices that differ significantly. However, the Department also encourages parties to argue for alternative group definitions if they believe the default definitions are not appropriate in a particular case — and, when they are made, must take such arguments into account, providing in its determination a full explanation for why it accepted or rejected such arguments.

To illustrate, when defining which products constitute “comparable merchandise” for purposes of the Differential Pricing analysis, the Department cannot routinely limit itself to identical merchandise, *i.e.*, merchandise with the same control number (“CONNUM”). In some cases, CONNUMs are so narrowly configured that comparisons within the CONNUMs across customers, regions, and/or time periods show no differential pricing because the entire CONNUM is composed of differentially priced sales. In such cases, parties must be allowed to demonstrate that sales of *similar* products across different CONNUMs may be masking

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dumping. In such circumstances, the Department should redefine the “comparable merchandise” group for purposes of differential pricing accordingly.

In the relatively short time that it has been employing the Differential Pricing analysis, the Department has departed from the default group definitions only rarely. This is a matter of concern to us. We note, however, in *Seamless Refined Copper Pipe and Tube From the People's Republic of China*, 79 Fed. Reg. 23,324 (Dept. of Commerce Apr. 28, 2014) (fin. results) and accompanying Issues and Decision Memorandum at Comment 6, the Department modified the time period group definition (from quarterly to monthly) based upon an argument from a respondent. We encourage the Department to continue considering alternative definitions when proposed by interested parties.

Moreover, we encourage the Department to be flexible in other aspects of applying the Differential Pricing analysis. For example, although the *Cohen's d* test may often be a reasonable method of determining whether there are prices that differ significantly, the Department should permit parties to explain when that test is not appropriate if the facts of a particular case warrant. That is, the Department should remain open to considering alternative methods of applying its Differential Pricing methodology beyond alternative group definitions. In that way, the Department ensures that it is determining whether to select an alternative methodology in the most effective way possible.

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We appreciate the opportunity to provide these comments.

Respectfully,

Cassidy Levy Kent (USA) LLP