UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of ANTIDUMPING AND COUNTERVAILING DUTIES FOR CABINETS AND VANITIES FROM THE PEOPLE'S REPUBLIC OF CHINA	Nathan L. Gordon's Opposition Testimony with respect to Wooden Cabinets and Vanities 701-TA-620 and 731-TA-1445

Nathan L. Gordon, Casa Cabinets Inc., and Craftmart Cabinets LLC., oppose the implementation of antidumping and countervailing duties of kitchen cabinets originating from the People's Republic of China for the following reasons: 1. Many of the Petitioners have come to the International Trade Commission with unclean hands by either ceasing business with China shortly after receiving substantial imports and then initiating a countervailing duties and an antidumping investigation on their competitors. Or in the alternate, a substantial percentage of the Petitioners continue to do cabinet business with China, or with other non-market economies such as Vietnam, while at the same time complaining that Chinese cabinet imports hurt the American economy. 2. There are issues with respect to the International Trade Commission's questionnaire such that an accurate statistical analysis of imports from China cannot be properly ascertained.

1. The maximum of "unclean hands" applies to proceedings before Federal Agencies and Courts as well as proceedings before the International Trade Commission.

A complainant who seeks justice must come into the court with clean hands or "the doors of the court will be shut." See, Aptix Corp. v. Quickturn Design Sys., Inc., 269 F.3d 1396, 1375 (Fed. Cir. 2001)(quoting Keystone Driller Co. v. General Excavator Co., 54 S.Ct. 146, 147 (1933). The Supreme Court held that the defense "closes the door of a court of equity to one tainted with inequitableness or bad faith . . . ." See, Precision Instrument Mfg. Co. v. Automotive Co., 324 U.S. 806 at 814 (1945) (quoting Bein v. Heath, 47 U.S. 228, 247 (1848)). The Supreme

Court of the United States has described wrongdoing that has a similar negative effect on the judicial process as "a 'flagrant affront' to the truth-seeking function of adversary proceedings." See, CALLMANN ON UNFAIR COMPETITION, TRADEMARK & MONOPOLY § 23:14 (4th ed. 2001) (noting the doctrine of unclean hands "is of special importance in unfair competition cases, for fairness in business . . . is a common duty owed by all to all"). "A court of equity is so jealous in guarding itself against such misuse that it will, *sua sponte*, apply the maxim whenever it discovers the unconscionable conduct," See, Am. Ins. Co. v. Lucas, 38 F. Supp. 896, 921 (W.D. Mo. 1940). The Supreme Court's often cited opinion in Cathcart v. Robinson, 30 U.S. 264 (1831), by Chief Justice Marshall, states that it is clear that conduct constituting unclean hands need not meet the criteria for fraud or misrepresentation. An unfair transaction can constitute unclean hands even if it is within the law. Quoting, Joseph Story's Equity Jurisprudence (14th Ed.) § 98.

All of the elements for fraud need not be present to invoke the clean hands maxim to bar specific performance. "The doctrine does not require the party seeking relief to be guilty of fraud; it is sufficient if he merely acted unconscientiously." See, DuPont v. DuPont, 85 A.2d 724, 725-26 (Del. Ch. 1951). Equity extended the ancient maxim that one should not profit from their own wrong to include situations where it is hard to tell if one was profiting from their own wrong. In certain situations, equity acted on simple negligence. Justice Brandeis' famous dissent in Olmstead v. United States, 277 U.S. 438 (1928), declared that the principle of unclean hands has "long been settled" and referenced contract illegality cases that do not require scienter. Many courts also mandate that the unclean conduct have a connection to the case. See, Keystone Driller Co. v. General Excavator Co., 290 U.S. 240 at 245 (explaining that the violations of conscience must affect the equitable relations between the parties concerning "something brought before the court for adjudication"). In Boca Raton Cmty. Hosp., Inc. v. Tenet Healthcare Corp., 238 F.R.D. 679, 693-94 (S.D. Fla. 2006), the court ruled that unclean hands may be available as a defense to legal relief under federal civil RICO claim for illegal pricing based on the plaintiff's illegal pricing in violation of the statute. In S&E Contractors, Inc. v. United States, 406 U.S. 1 (1972), the Supreme Court endorsed the application of unclean hands. It declared that "[c]ontracts with the United States — like patents — are matters concerning far more than the interest of the adverse parties; they entail the public interest." The Federal Trade Commission in FEDERAL TRADE COMMISSION v. HOPE NOW MODIFICATIONS, LLC, et al. (2011),

Civil No. 09-1204 invoked the maximum of "unclean hands." Therefore "unclean hands" applies to ITC hearings.

A Substantial Percentage of the Petitioners have come to the US ITC with Unclean Hands

A substantial percentage of the Petitioners have come into these proceedings with unclean hands. Specifically, the following Petitioners are either still doing cabinet business with China, a non-market economy, while complaining of Chinese subsidies and antidumping before the US ITC. Or a substantial percentage of the Petitioners stopped doing business with China (within a span of under three months) such that the Petitioners had massive shipments arriving from China right before the Petitioners initiated these proceedings before the International Trade Commission on their competitors.

Specifically, the following of the Petitioners are currently doing cabinet business with Chinese companies while at the same time complaining to the ITC about Chinese cabinetry injuring American cabinet producers:

1. Smart Cabinetry, at or near the initiation of these proceedings, had Cabinets shipped from China, by Xiamen Adler Cabinets, which arrived in the U.S. on 12/23/2018 within a short period of time before Smart Cabinetry became a petitioner in these proceedings. See, Bill of Lading FTNVXMS000027226

2. American Woodmark Corp., at or near the initiation of these proceedings, is having Cabinets shipped from China, by Qingdao Haiyan Drouot Household, Co., which was scheduled to arrive in the U.S. on 3/13/2019, within a short period of time before American Woodmark became a petitioner in these proceedings. See, Bill of Lading UAS17796987550 & UAS17796956409

3. Masterbrand Cabinets Inc., at or near the initiation of these proceedings, had cabinets shipped from China by Qufu Xinyu Furniture Company which is scheduled to arrive in the U.S. on 3/21/2019, within a short period of time before Masterbrand Inc. became a petitioner in these proceedings. See, Bill of Lading COSU6201136630

4. Leedo Cabinetry, at or near the initiation of these proceedings, had Cabinets shipped from China by Crestwood Asia which arrived in the U.S. on 12/5/2018, within a short period of time before Leedo Cabinetry became a petitioner in these proceedings. See, Bill of Lading MFGTSZHOU3002718

5. Jim Bishop Cabinets, Inc., at or near the initiation of these proceedings, had Cabinets shipped from China by Crestwood Asia which arrived in the U.S. on 5/31/2018, within a short period of time before Jim Bishop Cabinets, Inc., became a petitioner in these proceedings. See, Bill of Lading NOVVNDL180400076

Furthermore, a substantial percentage of the Petitioners are now doing cabinet business with Vietnam, another non-market economy.

Masterbrand Cabinets Inc. is currently doing business with Vietnam (another non-market economy) and Masterbrand is currently importing cabinetry into the US from Vietnam while at the same time claiming that imported cabinets injuring the very American industries that they are complaining of. See, Bill of Lading SUDUN9BLH000115X & SUDUN9BLH000152X

The norm of "tu quoque" denies standing to attribute blame to one who also committed the same wrong regardless of the merits of the claim[1].

Petitioner's claim that unfair advantages from non-market economies injure American industries, specifically the cabinet industry. However, these same Petitioners are doing the exact same thing that they accused the Respondents are doing, namely, they switched from importing cabinets from one non-market economy (China) to that of another non-market economy (Vietnam) while not producing or manufacturing similar products in the United States. Vietnam, like China, is also a non-market economy in which the market is controlled and intervened by the government. Also, a substantial percentage of the Petitioners have concealed the fact that they continue to do business with China or that they did not set up industries in America as the Kitchen Cabinet Alliance implies in these proceedings. Rather, a substantial percentage of the Petitioners decided instead to import from another non-market economy (such that they can receive the same benefits they are complaining of – through a non-market government, for example, Vietnam).

[1] See, Ori J. Herstein, A Normative Theory of the Clean Hands Defense, 17 LEGAL THEORY 171, 195-96, 199-200 (2011).

The aforementioned concealments, are tantamount to a fraud on the ITC and are clear evidence that a substantial percentage of the Petitioners have either continued to import from China, during the initiation stage of these proceedings, or in the alternate, a substantial percentage of the Petitioners switched to another non-market economy that offers substantially the same benefits as China offers. Therefore, a substantial percentage of the Petitioners have engaged in unequitable conduct before the ITC which is the gravamen of "unclean hands." As such the ITC should not entertain this Petition and instead, should deny the Petitioner's request.

2. There are issues with respect to the International Trade Commission's questionnaire such that an accurate statistical analysis of imports from China cannot be properly ascertained.

While completing the U.S. Importer Questionnaire we noticed it was impossible to accurately supply the data requested within the targeted time frame of 40 hours. The reason being, the questionnaire specifically asked for sales, purchases and inventory data for Cabinets and/or Vanities only. It failed to accommodate the fact that most cabinet businesses also sell decorative accessory pieces such as vanity mirrors, moldings, fillers, corbels and etc. With the data being specifically targeting cabinets and vanities, importers have to filter out the accessory items from their sales, purchases and inventory reports in order to provide accurate data for the Questionnaire. However, most companies will carry an average of 60-80 types of accessories per color/style. This burdensome work along with time restraint of completing the Questionnaire on time has forced us to estimate the data instead of providing true values for the statistic. We also checked with our factory who had to fill out the Foreign Producer Questionnaire and they had to estimate their numbers as well due to the time restraints. With the long list of US Importers and Chinese producers mentioned in the original petition, these estimated data value will not produce a realistic statistical analysis of the amount of injury on US producers for the following reasons:

Specifically (and technically):

a. To test for an association or the strength of a correlation, the following statistical analysis are employed: correlational test, the Pearson correlation, the Spearman correlation and the Chi-squared test. With respect to the correlation tests, the correlation coefficient (whether being the

simple correlation, Pearson, or Spearman) the test metric assumes that variables are normally distributed (i.e. a bell shaped curve) and that homoscedasticity (the data set is equally distributed) exists throughout the data set. Due to the fact that many importers will have issues separating their full unit cabinets/vanities from their decorative accessories, the normal distribution and homoscedasticity cannot be evaluated making the results from this test to be in error. The Chi-squared test is sensitive to sample size and it is also very sensitive to the distribution (i.e. the mean and mode) of the data. Again, because many importers will have issues separating their full unit cabinets/vanities from their decorative accessories, the distribution would be skewed such that the results from this test would be in error.

b. To test for the comparison of means the following tests are employed: the paired t-test, independent t-test and the ANOVA. With respect to both of the t-tests, the test statistic cannot be properly generated because the dependent variables (due to the separation of cabinets/vanities from decorative accessories) are not normally distributed and there will be many outliers. With respect to the ANOVA test, the independent variable would not be normally distributed (due to the separation of cabinets/vanities from decorative accessories) and there also will be a difference in the homogeneity of variances, thus results from this test would also be in error.

c. To access if change in one variable predicts change in another variable (regression modeling), for each "X value", the probability distribution of "Y" must have the same standard deviation and the "Y" values must be normally distributed. The standard deviation cannot be accurately determined when the mean and mode are skewed due to the fact that many importers will have issues separating their full unit cabinets/vanities from their decorative accessories which would skew the either the mean, mode and/or distribution.

d. The non-parametric tests, which are used when the data does not meet the assumptions required for the parametric tests would not apply because these tests take into account the magnitude and direction of the difference, neither of which can be calculated due to difficulty in ascertaining the mean, mode and/or distribution with respect to the questionnaire.

Even though the public is not in privy to exactly which of statistical test the International Trade Commission intends to create via the questionnaire, the results from any of the statistical analysis would be inaccurate for the aforementioned reasons. Also, besides the inaccuracies in the mean, mode and distribution of the data, due to the separation of cabinets/vanities from

decorative accessories, there are other problems with the ITC's questionnaire which will lead to inaccuracies including: any language barriers (i.e. all of the questionnaires weren't filled out accurately), differences in internal consumption and sales price due to unaccounted for variables (warehousing and warehouse labor), and outliers will corrupt the data leading to a statistical errors.

Respectfully submitted,

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