

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**Mattresses from Cambodia, China,
Indonesia, Malaysia, Serbia, Thailand,
Turkey, and Vietnam**

**Inv. Nos. 701-TA-645 and 731-TA-1495-
1501**

STATEMENT OF INTEREST OF THE UNITED STATES DEPARTMENT OF JUSTICE

The Antitrust Division of the Department of Justice enforces the federal antitrust laws and promotes competition and thereby consumer welfare. To this end, the Department of Justice (“the Department”) often files statements of interest or amicus briefs in cases throughout the federal courts and engages in competition advocacy with other federal, state, and local agencies via comments on rulemakings, adjudications, and legislation, among other means. In this statement, the Department urges the International Trade Commission (“the Commission”) to consider the competitive effects of any action particularly in light of the ongoing national emergency related to Coronavirus Disease 2019 (“COVID-19”) in evaluating allegations of material injury in the domestic market and deciding how to remedy any such injury.¹

See Mattresses From Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations, 85 Fed. Reg. 19503 (March 31, 2020) (inviting participation by nonparties “that may aid the Commission’s deliberations”).

Competition is “[t]he heart of our national economic policy.” *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951). And vigorous competition—from foreign and domestic sources—provides consumers significant benefits, which often includes lower prices.

Cf. Pac. Bell Tel. Co. v. Linkline Commc’ns, Inc., 555 U.S. 438, 451 (2009) (“[C]utting prices is the very essence of competition.” (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 547, 594 (1986))); *U.S. Steel Corp. v. United States*, 33 C.I.T. 984, 997–98 (2009) (“Of all the components that shape competition within the marketplace, prices are generally

¹ At this juncture of the investigation, the Division takes no position on whether, at the end of the current crisis, antidumping or countervailing duties should be imposed on imports of adult and youth mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, Vietnam, and China or whether the domestic mattress industry would be materially injured or threatened with injury if this merchandise is imported. The Department reserves the right to offer such views at a later time as the record becomes more fully developed.

the most influential.”), *aff’d*, 621 F.3d 1351 (Fed. Cir. 2010). Competition also provides consumers other benefits like higher quality goods and better access to those goods.

In considering whether importing merchandise injures domestic industry, Congress has directed the Commission to focus on “all relevant economic factors which have a bearing on the state of the [relevant] industry in the United States.” 19 U.S.C. § 1677(7)(C)(iii).

The Department urges the Commission to consider the consumer and healthcare demands caused by COVID-19 as a “relevant economic factor[]” here because COVID-19 will likely have a significant impact on the domestic mattress industry, along with many other industries.

See Dep’t of Justice & Fed. Trade Comm., *Joint Antitrust Statement Regarding COVID-19* (March 24, 2020), <https://www.justice.gov/atr/joint-antitrust-statement-regarding-covid-19>.

Among other things, it is likely that the demand for mattresses has increased and will continue to increase significantly during the pandemic as communities around the country expand hospital capacity. This demand may outpace domestic supply. If demand outpaces supply, it is possible that American industry will be able to thrive, but additional supplies will be needed, at least in the short term, to fill the gap and immediate need until American manufacturers can ramp up production.

Against this backdrop, promoting competition that provides consumers with better access to mattresses at competitive prices may support the health and safety of millions of Americans. Petitioners allege dumping margins from 48% to more than 1000%. Indiscriminately imposing equivalent antidumping or countervailing duties could significantly increase mattress prices for consumers in the United States, and, more importantly, could potentially affect the supply of mattresses needed in hospitals and other health care facilities. Moreover, the risk that these duties might be imposed retroactively under § 1673b(e) could deter American companies from

importing mattresses to address immediate supply shortages even before a finding of violation. Higher prices and reduced supply may impede hospitals' ability to expand capacity and thereby impede communities' abilities to respond to COVID-19 even in the short term. *See, e.g.,* U.S. Dep't of Health & Human Servs., Office of the Inspector General, *Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23–27, 2020*, at ii (April 2020), <https://oig.hhs.gov/oei/reports/oei-06-20-00300.pdf> (“Hospitals reported that shortages of critical supplies, materials, and logistic support that accompany more beds affected hospitals' ability to care for patients.”). While the Commission's investigation ultimately might find it appropriate to impose duties in this case, it should take the exigent circumstances of COVID-19 and its immediate aftermath into account in crafting a tailored remedy that balances current healthcare needs with the equally important need to protect American industry and workers from unfair imports. For example, in specific circumstances, companies may make “massive imports” of mattresses not to circumvent the antidumping laws but to respond to COVID-19. *See* 19 U.S.C. § 1673b(e)(1)(B).

The ultimate decision to impose duties, even by way of a preliminary decision where an importer need post a cash deposit, should also take the uniquely exigent circumstances of COVID-19 into account. For example, typically the harm of a “false-positive” from a preliminary antidumping or countervailing duty decision is limited by the fact that overpayments can be refunded to an aggrieved party depending on the final determination by the Commission and the Department of Commerce. *See, e.g., Wind Tower Trade Coal. v. United States*, 741 F.3d 89, 93 (Fed. Cir. 2014). Imposing preliminary duties on mattresses during COVID-19, however, may lead to increased prices and lower mattress supply in the short term, which may harm American consumers and patients as it may impede immediate efforts to address COVID-19.

Indeed, if global demand for mattresses is increasing, foreign manufacturers may simply choose to supply other markets. Given the immediate and ongoing demands of COVID-19, this harm cannot as easily be undone as in other instances, by eventually, and later, refunding an aggrieved party. Thus, it is critical to evaluate the domestic injury here, if any, and the appropriate remedy in light of COVID-19.

Accordingly, the Department respectfully requests that the Commission take the competitive effects of the ongoing pandemic and its likely aftermath—including potential effects on mattress prices for hospitals and other consumers and whether domestic supply can meet current demand—into account when assessing the extent to which domestic industry may be harmed by the conduct alleged in this case.

Respectfully submitted,

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Dated: April 22, 2020

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