



December 10, 2007

Hon. David Spooner
Assistant Secretary for Import Administration
Department of Commerce
Washington, D.C. 20230

**Re: Targeted Dumping; Comments of Consuming Industries Trade
Action Coalition**

Dear Mr. Spooner:

This comment letter is submitted in response to the Federal Register notice of October 25, 2007 (72 Fed. Reg. 60651) on behalf of the Consuming Industries Trade Action Coalition (CITAC). CITAC includes U.S. manufacturers, retailers and distributors that are concerned about global competitiveness of United States manufacturers, who require access to globally priced imported goods in the United States market to maintain competitiveness for U.S. industries.

The issue of “targeted dumping” concerns consuming industries even more than other issues of antidumping administration. Targeted dumping essentially accuses foreign respondents of participating in the U.S. market in a way that aggravates sales of products at lower prices than the foreign “normal value.” These “targeted” sales involve customers, regions or periods of time. Consuming industries are in a particularly strong position to comment on the validity of such accusations.

Accordingly, on behalf of CITAC, we urge the Department to establish policies of general and prospective application to give consuming industries an enhanced role in (1) commenting on the allegations of targeted dumping made by petitioners; and (2) participating in the investigation of targeted dumping. These policies should recognize that targeted dumping is an exceptional process in antidumping cases and requires input from consuming industry representatives that bears directly on the existence of targeted dumping and the calculation of any margins of dumping based on that allegation.

Consuming Industries Trade Action Coalition | 2000 L Street, NW | Suite 835 | Washington, DC | 20036
Phone: 202.316.3046 | Fax: 202.466.6205 | www.citac.info

The Request for Comments specifically asked what “guidelines, thresholds and tests” should be applied to determine whether targeted dumping is occurring. In essence, the tests should be a challenge for petitioners to meet, because they are seeking significant changes in the possible measurement of dumping margins and a significant increase of protection. We have the following comments for the consideration of the Department.

First, CITAC believes that the threshold of evidence required to make a sustainable allegation of targeted dumping should be substantially higher than the requirements for allegations of sales below cost. Under the cost standard, the Petitioner must allege sales at less than the cost of production within 20 days after the filing of the relevant questionnaire response (for individual respondents). A targeted dumping allegation, by contrast, is not due until 30 days before the preliminary determination. The additional time provided indicates that Petitioners will have time to gather substantial additional information regarding targeted dumping and the threshold requirements of the Department should take this into account. Moreover, such evidence should not be limited to the questionnaire responses. Petitioners should be required to produce evidence of the market structure in the United States (major customers, regions and/or time periods relevant to the product under consideration) in order to make an effective allegation of targeted dumping.

Second, the Department should adopt as a standard practice that it will make a preliminary determination of targeted dumping, as was done in the one case where targeted dumping was found, the *Korean Coated Freesheet Paper* case. The importance of targeted dumping makes it necessary for the Department to seek the views of all parties. A preliminary determination allows for all interested parties (in the broadest sense of that term) to comment on the Department’s initial findings.

Third, the Department should allow customers to participate meaningfully in the analysis of targeted dumping. While there are regulatory issues to be addressed, the Department should make every effort to allow customers with detailed knowledge of the U.S. market to comment on the targeted dumping allegations of Petitioners. Customers will have such knowledge with regard to proper boundaries for regional markets, identities of customers, where that is relevant; and appropriate time periods. Respondents may not have the detailed knowledge of these issues in the U.S. that customers would have. For this reason, CITAC believes that giving consuming industries the maximum possible opportunity to participate in the Department’s consideration of these issues is absolutely essential to reaching a fair result. We look forward to working with the Department to develop these procedures.

Fourth, in determining whether targeted dumping has occurred, the Department requested comments on the possible definition of a “pattern” of export prices. Here, input from consuming industries in that case would be essential. Price differences between different customers or regions could be due to an erroneous perception about whether regions or customers actually compete. The Petitioners will have an interest in showing that all price differences are part of a “pattern;” customers will likely have information that tends to dispute that point. In fairness, the Department must hear from all sides to arrive at the truth. Moreover, it is quite likely that foreign respondents will not have information that bears importantly on these issues.

Fifth, the Department asked for comments on the appropriate meaning of the term “differ significantly” over customers, regions or time periods. CITAC believes that the term “differ significantly” requires price disparities that cannot be explained by normal market conditions. This requires that an allegation of targeted dumping be accompanied by evidence of price differences that are commercially significant in the marketplace. While no single percentage would necessarily apply to all industries, the difference must be notable. We reiterate that customers would need to have a significant role in explaining what kind of price differences would be “significant” in the context of a particular case.

CITAC also notes that the calculation of targeted dumping is of critical importance in reaching a fair result. Targeted dumping will tend to increase dumping margins, and must be limited to the basis for alleging targeted dumping: significant price differences among customers, geographic regions and time periods.

This imperative leads to two important conclusions:

(1) When dumping is measured on an “average-to-transaction” basis, as the targeted dumping regulation indicates, the Department must calculate normal values on a basis commensurate with the allegation. It would be clearly inappropriate, for example, for the Department to determine the existence of targeted dumping by time period if normal values were calculated for a period that extended beyond the alleged period of time of targeted dumping. The regulations require monthly average normal values, which should be sufficiently narrow. The current regulations do not permit normal values for this purpose to be longer than a calendar month.

(2) The Department may not use targeted dumping as a reason to resort to “zeroing” of negative comparisons. Zeroing is not permitted in targeted dumping analysis, because it negates the very essence of a targeted dumping allegation. The evidence of targeted dumping, which requires a “pattern” of significant price

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differences, indicates that the respondent intended a particular result (perhaps the displacement of U.S. competitors). Any inquiry into such intentional practices must include all evidence tending to show a lack of intent. For example, if a respondent is accused of targeted dumping by selling at significantly dumped prices to a specific customer, the evidence that half or more of the sales to that customer were above normal value would tend to negate an intention to price systematically to displace U.S. competitors. Zeroing is, if anything, more unjustified in a targeted dumping case it is in normal investigations or administrative reviews.

CITAC appreciates the opportunity to submit these comments for the Department's consideration. We look forward to working with you to achieve fair results for all participants in the process.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Alexander", with a long horizontal flourish extending to the right.

Stephen A. Alexander
Executive Director