

June 18, 2008

Via Hand Delivery and Email to [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov)

The Honorable David M. Spooner  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
14<sup>th</sup> Street & Constitution Ave., NW  
Washington, DC 20230

Re: Comments on Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations

Dear Assistant Secretary Spooner:

On behalf of the American Association of Exporters and Importers ("AAEI"), we hereby comment on the methodology proposed by the U.S. Department of Commerce ("Department") to identify and analyze targeted dumping in antidumping investigations. See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment, 73 Fed. Reg. 26371 (May 9, 2008).<sup>1</sup> These comments are timely filed, as the Department extended the deadline for submissions to June 23, 2008. See Extension of Comment Periods, 73 Fed. Reg. 32557 (June 9, 2008).

### **AAEI BACKGROUND**

AAEI has been a national voice for the international trade community in the United States since 1921. Our unique role in representing the trade community is driven by our broad base of members, including manufacturers, importers, exporters, retailers and service providers, many of which are small businesses seeking to import from or export to foreign markets. With promotion of fair and open trade policy and practice at its core, AAEI speaks to international trade, supply chain, export controls, non-tariff barriers, and customs and border protection issues covering the expanse of legal, technical and policy-driven concerns.

As a trade organization representing the private sector, including manufacturers, forwarders, importers and exporters engaged in and directly impacted by developments pertaining to international trade, AAEI is deeply interested in the Department's proposed methodologies for identifying and analyzing targeted dumping.

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<sup>1</sup> We hereby incorporate the background information from the Federal Register notice, rather than repeating the proposed targeted dumping methodologies or the history of how the Department has developed such methodologies.

## COMMENTS

For many years, the Department's targeted dumping provision has been an obscure and neglected rule, as the Department acknowledges in noting that its "experience with regard to analyzing targeted dumping claims is limited." See 73 Fed. Reg. at 26371. However, the use of the targeted dumping provision has recently emerged as a salient trade issue because - according to current policy - the Department may still use zeroing techniques to calculate a dumping margin in an investigation when it determines that an exporter has engaged in targeted dumping (whereas zeroing, a technique that necessarily results in higher dumping margins, is otherwise no longer used in investigations).<sup>2</sup> In short, many petitioners have seen targeted dumping as a backdoor to zeroing (and higher antidumping margins) and have filed numerous targeted dumping allegations, especially following the Department's finding that respondents had engaged in targeted dumping in the investigation of coated free sheet paper from the Republic of Korea. See Notice of Final Determination of Sales at Less than Fair Value: Coated Free Sheet Paper from the Republic of Korea ("CFS Paper from Korea"), 72 Fed. Reg. 60630 (Oct. 25, 2007).

However, targeted dumping (and the concurrent use of the average-to-transaction methodology for calculating a dumping margin) should be used only in exceptional circumstances. The Department has three methodologies for calculating dumping margins in an investigation. See 19 C.F.R. § 351.414. The Department "normally will use the average-to-average method" for calculating a dumping margin, and "will use the transaction-to-transaction method only in unusual situations." Id. at § 351.414(c). Notwithstanding these preferences, the Department may still use a third methodology - *i.e.*, the "average-to-transaction methodology" - if the Department uses "standard and appropriate statistical techniques" to find that there is targeted dumping and also concludes that the targeted dumping "cannot be taken into account" using the standard methodologies for calculating a margin.

Because the targeted dumping rule is designed for application only in exceptional circumstances, we applaud the Department's rejection of the test used in CFS Paper from Korea, which created an exception that swallowed the rule. Moreover, although it is difficult to comment precisely until the new test has been applied to a wide range of fact patterns, it appears that the Department's proposed test properly limits the application of the average-to-transaction methodology to circumstances where there truly is a pattern of significant price differences by customer, region, or time period, as required. The new methodology is a true test. Under the new methodology, some targeted dumping allegations will fail, whereas others will succeed, as demonstrated in the recently-completed investigations for nails from the People's Republic of China and the United Arab Emirates.

Nevertheless, AAEI still has some concerns that the proposed methodologies may still be over inclusive and may still result in a finding of targeted dumping when no such finding is justified. For example, under the Department's test, it appears possible that the Department may find targeted dumping (for example, by customer) even in instances where an alleged target never receives the lowest price for any

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<sup>2</sup> The Department has said that it will no longer engage in zeroing (*i.e.*, assigning a zero to negative dumping margins) in investigations when calculating dumping margins using the standard average-to-average methodology or transaction-to-transaction methodologies.

product (for example, there is always at least one other non-targeted customer that receives a lower price). If there are lower prices for another customer (or region or time period) than the allegedly targeted customer (or region or time period), then it is difficult to see how a finding of targeted dumping could be justified. Indeed, such a finding would be directly contrary to the Court of International Trade's recognition that: (a) targeted dumping - by purchaser - occurs only when "the allegedly targeted purchaser would receive a lower average price than each allegedly non-targeted purchaser;" and (b) targeted dumping should not be found where any price differences are actually "attributable to non-targeting factors such as product type, level of trade, time of sale, or terms/conditions of sale." Borden, Inc. v. United States, 23 CIT 372, 375 (CIT 1999) (emphasis added). As a result, the Department should add a step to the proposed methodology in which the Department can fully consider other factors in determining whether positive test results (*i.e.*, a preliminary finding of targeted dumping) should be adopted.

### CONCLUSION

Overall, the AAEI applauds the Department's proposal that would properly restore the targeted dumping provision to be an exception, rather than the rule. However, AAEI also urges the Department to address concerns that the proposed test may still be over inclusive - for example, by reserving the discretion to override a positive test when other relevant factors indicate that targeted dumping does not exist. AAEI would be happy to discuss this issue with you at your convenience.

Sincerely,



Hallock Northcott  
President & CEO

cc: Michael Rill, Director, Antidumping Policy, Import Administration, U.S. Department of Commerce; Anthony Hill, International Economist, Office of Policy  
Charlene Stocker, Chair, American Association of Exporters and Importers  
Jerry Cook, Co-Chair, AAEI Textiles Committee  
Doug Hyland, C-Chair, AAEI Textiles Committee