

TELEPHONE (202) 785-4185

TELECOPIERS

(202) 466-1286/87/88

LAW OFFICES

STEWART AND STEWART

2100 M STREET, N.W.

WASHINGTON, D.C. 20037

E-MAIL

GENERAL@STEWARTLAW.COM

WWW.STEWARTLAW.COM

June 23, 2007

Honorable David Spooner  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Ave. and 14<sup>th</sup> St., N.W.  
Washington, DC 20230

Total pages: 18

Re: Comments in Response to Federal Register Notice, *Targeted Dumping in Antidumping Investigations* (“*Targeted Proposal*”), 73 Fed. Reg. 26371 (May 9, 2008)

Attn: Mr. Anthony Hill, International Economist, Office of Policy  
Mr. Michael Rill, Director, Antidumping Policy

Dear Assistant Secretary Spooner:

The Law Offices of Stewart and Stewart are responding to the U.S. Department of Commerce’s request for comments on a proposed methodology for determining whether targeted dumping is occurring in antidumping duty investigations.

#### **A. Introduction**

We strongly support the development by the Commerce Department of methods and procedures that will allow domestic interested parties to address the significant problem of targeted dumping with predictability. We believe the Department should evaluate its proposal (and any comments) against the matrix of (1) whether the methodology will permit an identification of all of the types of targeting of concern to Congress (and to US negotiators during the Uruguay Round) and to domestic parties, (2) whether the procedures envisioned do not significantly increase the burden on domestic parties concerned about unfair trade practices

from having the issue of targeting considered in an investigation, (3) whether the approach is transparent, (4) whether the approach adopted improves the ability to capture the full measure of dumping occurring through selective pricing (targeting), and (5) whether the modifications to the other statutory options (weighted average to weighted average or transaction to transaction) where targeting is raised to test whether modifications to the other approaches will permit addressing the concerns of domestic parties are automatic and based on equivalence of outcome. As the Department knows, the negotiators added the targeted dumping provision to the Uruguay Round Antidumping Agreement to respond to U.S. concerns that dumping would be masked if weighted averages were compared to weighted averages.<sup>1</sup> See Terence P. Stewart, Susan G. Markel, and Michael T. Kerwin, *The GATT Negotiating History (1986-1992)*, Vol. I, "Antidumping" at 96, Kluwer Law & Taxation Publishers, 1993. The provision has been incorporated into U.S. law at 19 U.S.C. § 1677f-1(d)(1)(B).

In the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, the Administration noted the Commerce Department's existing preference for comparing an average normal value to individual export prices in both investigations and administrative reviews. *Uruguay Round Agreements Act, Statement of Administrative Action*, at 172, 103d Cong., 2d Sess., H.R. DOC. NO. 103-316, Vol. 1, (1994), *reprinted in* 1994 U.S.C.C.A.N. Vol. 6, 4040 ("SAA"). It stated that the Department had been reluctant to use an average-to-average methodology based on a concern that such a methodology could conceal "targeted dumping." *Id.* The SAA explained the new statutory provisions providing for the

---

<sup>1</sup> This context is critical to the Department's choice of a targeted dumping methodology. The United States agreed to alter its laws to adopt weighted average to weighted average or transaction to transaction comparisons in investigations. As a trade-off, it bargained for a targeted dumping provision to prevent masking. The Department should ensure that it implements that provision in a manner that will address all instances of masked dumping.

computation of margins using average-to-average comparisons as well as via transaction-to-transaction comparisons, noting that the latter approach was likely to be used far less frequently than the former. *Id.* at 172-73.

The SAA then described the statutory provision for using average-to-transaction provisions where targeted dumping may be occurring. *Id.* at 173. It further noted that “in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.” *Id.* (emphasis added). We believe that it is important that Commerce evaluate its proposed methodology to ensure that the SAA articulated concern that “small differences” that may be significant for a particular industry is not lost through proposals. The U.S. has the right to a robust implementation of the law so that the concealment of dumping through selective price aggression is prevented. Commerce should ensure such an implementation through any regulatory measures it adopts.

When the SAA was adopted and the law changed, the only masking that could occur was among the sales of a particular model and then only if DOC used weighted average to weighted average prices. When the Department computed a weighted-average price for a model sold in the U.S., low-priced sales of the model could be masked by higher-priced sales of it. Because the Department did not offset dumping margins found for one model with the non-dumped prices found for another model, there was no masking between models.

When the Department changed its calculation methodology for original investigations at the end of last year,<sup>2</sup> it noted:

---

<sup>2</sup> We note that the United States is negotiating in Geneva to preserve U.S. rights to capture the full extent of dumping and that there are judicial challenges to the changes in the Department’s margin calculation methodology described in this notice. The comments presented here are

Prior to this modification, when aggregating the results of the averaging groups in order to determine the weighted-average dumping margin, the Department did not permit the results of the averaging groups for which the weighted-average export price or constructed export price exceeds the normal value to offset the results of the averaging groups for which the weighted-average export price or constructed export price is less than the weighted-average normal value.

*Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Duty Investigation*, 71 Fed. Reg. 77,722 (Dep't Comm. Dec. 27, 2006) (final modification) ("*Commerce Offset Methodology*"). While the statute has provided the right to pursue targeting within a model since the change in law in 1995, in most cases petitioners did not pursue that analysis. In the few cases where targeting was pursued, the Commerce approach resulted in no targeting being found. Whatever the merits of Commerce's early experience, the importance of a robust targeting approach by Commerce in 2008 and moving forward is underlined by the extraordinary masking that can occur when dumping within one product can be masked not only by non-dumping of the same product but by any other product sold by the exporters/foreign producer.

## **B. The Need for Flexibility**

Given the provenance of the targeted dumping provision, and the legislature's concern that it be responsive to the dumping of products where small price differences may be significant, the most important element of any implementation must be the Department's flexibility. While we support the Department's establishment of norms and practices for identifying targeted dumping, it must be willing to address particular case situations where targeted dumping may be demonstrated even when standard conditions may not be met. The SAA clearly identifies the alternate methodology as the Department's tool for responding "where

---

intended to address the implementation of a targeting methodology under existing 2006

targeted dumping may be occurring.” SAA at 173. It also requires that the Department collect transaction-specific sales information to ensure that it can determine whether the “exception for targeted dumping is applicable.” Thus, the legislature has made it clear that it did not intend that the Department establish artificial thresholds that would impose a significant burden on the identification of targeted dumping. We have identified situations below where the Department’s proposed approach will not identify targeted dumping and ask for reconsideration of the that approach out of a belief that under them too many instances of targeted dumping will not be identified. However, even with the adoption of better rules, there are likely to be exceptions where targeted dumping that will not be identified. In order for the Department to fulfill the mandate described in the language of the statute and the SAA, it should consider the substance of any allegations of targeted dumping regardless of whether or not the allegation demonstrates that a particular bright-line test has been passed.

### **C. The Department’s Proposed Methodology**

In our view, the Department’s proposal will not meet the statutory purpose or the dumping concerns of domestic producers and should be reconsidered. As described, it would produce results that vary depending on the set of sales being examined, with situations of substantial price differences within products not being found to be “targeted.” We believe that such outcomes are not consistent with the purpose of the law. Accordingly, the DOC methodology should be reconsidered.

We identify first a general concern and then consider each of the stages of the approach proposed by Commerce

1. *The Department Should Analyze both Identical and Similar Merchandise.*

The Department specifies in its notice that the merchandise to be compared under its proposal is identical merchandise. *Targeted Proposal*, 73 Fed. Reg. at 26,372. In excluding similar merchandise from its analysis, the Department ignores the marketplace. It is not unusual for different, but similar, models, or CONNUMs, of subject merchandise to be sold to different customers and/or regions.

Given this practical reality, it is likely that the Department will frequently encounter situations where the targeted sale of a particular model is not matched with a non-targeted sale of the same model. Thus, the Department should compare the pricing of the targeted model to the prices of similar non-targeted models, regardless of what methodology it ultimately selects. As it does for dumping comparisons, the Department may compare the price of targeted models to those of similar models using a DIFMER adjustment based on variable cost. *See Commerce Antidumping Manual*, Chapter 8, p. 49 *et seq.*

2. *Test 1: Identifying a Pattern of Pricing Differences*

The first step of the Department's proposed approach is a "standard deviation test" whereby more than 33% of the sales to the targeted entity<sup>3</sup> (as measured by sales value) have prices that are lower than one standard deviation below the weighted-average prices for all U.S. sales. *Targeted Proposal* at 26,372. All pricing comparisons are performed on a model or "CONNUM" basis between products with identical CONNUMs. *Id.* The purpose of this stage is to identify a "pattern" of pricing differences within the meaning of the statute. Targeted entities

---

<sup>3</sup> A targeted entity may be a customer, region, or a particular time period. 19 U.S.C. § 1677f-1(d)(1)(B). The Department's procedures are equally applicable, regardless of the targeted entity. *Targeted Proposal* at 26,371.

identified by this analysis are then subject to the next stage of the methodology which is meant to determine whether the pricing differences are significant.

Standard deviation is a measure of how widely spread the values in a group are.<sup>4</sup> The more varied the values are, the greater the standard deviation. The Department's test is sufficient to identify a pattern of pricing differences but not necessary. In other words, while the Department's test, if "passed," will identify a pattern of pricing differences; it will not necessarily identify all or most of such patterns. There a number of different circumstances in which a clear pattern of pricing differences will not be identified using the Department's test. In a market where an importer is selling at less than fair value, there are likely to be a broad range of different pricing patterns.<sup>5</sup> Consider Example 1 on the following page. Because of the spread in prices in the non-targeted regions and resulting standard deviation, prices significantly below all prices to non-targeted regions do not pass the 33% test.

Whether deliberately or by design, the Department proposal has further reduced the probability of identifying patterns of pricing differences because it: (1) includes the set of sales making up the targeted group among the sales used to calculate the standard deviation and (2) uses a measure based on value rather than quantity to determine whether there is a sufficient quantity of sales at low prices to constitute a pattern.<sup>6</sup>

---

<sup>4</sup> Ronald P. Cody & Jeffrey K. Smith, *Applied Statistics and the SAS programming Language* 22 (3<sup>rd</sup> ed. 1991).

<sup>5</sup> The use of this test is likely to identify patterns of low prices when the distribution of prices except for the lower prices conforms to the "normal," bell-curve distribution whereby 68% of all prices fall within a standard deviation and 95% within two standard deviations. But, it cannot be said with any certainty that in an environment involving dumping that this will often be the case.

<sup>6</sup> We note that since issuing its solicitation of comments, the Department has apparently decided that it will obtain more accurate results if it weights by quantity rather than value. *See* Investigation of Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum at 22 (June 6, 2008).

Example 1: Targeted region does not pass 33% test		
Price	Region	Alleged targeted dumping
\$170	1	No
\$100	1	No
\$100	1	No
\$100	1	No
\$100	2	No
\$100	2	No
\$100	2	No
\$88	3	Yes
\$85	3	Yes
\$83	3	Yes
	Standard deviation	24.70
	Non-targeted average price	\$110
	Targeted average price	\$85.33
	Threshold for targeted dumping	\$85.30

Targeted sales are, by definition, sales made at lower prices than other sales. Because of this, their inclusion in the group of sales used to calculate the standard deviation will tend to increase the value of the standard deviation and thereby reduce the chances for “passing” the test. Because they are lower, such prices, when they constitute the numerator used to calculate the 33% quantity, are less likely to reach that threshold because the denominator will be dominated by higher-priced sales. Consider Example 2 on the next page.

Thus, in our view, the proposed test does not appear likely to identify all or even a majority of patterns of pricing differences. If the Department relies on this test, it will not be meeting its obligation to address the small pricing differences that may be significant for a particular industry. The “P/2” test employed in Coated Free Sheet Paper from Korea appears to be more likely to identify pricing patterns that may have to be addressed by an alternative margin



Example 2: Targeted entity does not pass 33% test because weighting is based on sales value		
Price	Quantity	Value
\$20	45	\$900 (non-targeted)
\$8	55	\$440 (targeted sales)
Total	100	\$1,340
Percentage of targeted sales by value:		32.8%
Percentage of targeted sales by quantity:		55.0%

calculation methodology. *See* Issues and Decision Memorandum for the Final Determination of the Less-Than-Fair-Value Investigation of Coated Free Sheet Paper from the Republic of Korea at 4-5 (Dep't Commerce Oct. 17, 2007).<sup>7</sup>

Under this test, targeted sales are identified as sales whose prices are 2% lower than the average price of non-targeted sales. The Department finds a 2% difference in prices as significant in a couple of other situations. When the Department calculates a weighted-average dumping margin for an investigation, it relies on those that are 2% or greater while ignoring those of less than 2% as *de minimis*. 19 U.S.C. § 1673b(b)(3). When it applies its arm's-length test to determine whether related-party sales should be excluded from dumping comparisons, the Department rejects as distorted sales with prices that are less or greater than the price to unrelated parties by more than 2%. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 Fed. Reg. 69,186, 69,187 (Dep't Commerce Nov. 15, 2002). Thus, a "bright line" rule set at this level would be appropriate. However, as noted above, regardless of what bright line rule it may adopt, the Department should always be open to a demonstration of targeted dumping that involve "small differences" that are indicate targeted dumping of a particular product.

---

<sup>7</sup> Available online at <http://ia.ita.doc.gov/frn/summary/KOREA-SOUTH/E7-21035-1.pdf>.

A test that is based on a significant but relatively low price difference such as 2% appears more likely to identify a greater number of instances of targeted dumping than a test like the standard deviation test which will not identify patterns of real pricing differences under a number of different scenarios like that identified in Examples 1 and 2, *supra*.

We urge the Department to reconsider its proposal and to adopt the P/2 test or develop a test that has a greater likelihood of identifying patterns of pricing differences, even when U.S. sales prices do not conform to a normal distribution.

At the least, if it continues to rely on a test that involves use of the standard deviation, it should measure the standard deviation among non-targeted sales only and measure the percentage “passing” the test using quantity rather than sales value.

3. *Test 2: Determining that Pricing Differences Are Significant*

Once it has identified a pattern of pricing differences to a targeted entity using the standard deviation test, the Department proposes to determine that the pricing differences are “significant” within the language of the statute using a second test. *Targeted Proposal* at 26,372. Under the second test, the Department would determine the total sales value for which the difference between the (1) sales-weighted average price to the targeted entity and (2) the next higher sales-weighted average price to a non-targeted customer exceeds the average price gap (weighted by sales value) for the non-targeted group. *Id.* The sales to the targeted entity would “pass” this test so that the alternative margin calculation methodology would be used if the share of the sales passing the test exceeds 5% of the total value of the sales of subject merchandise to the targeted entity. *Id.*

The 5% test appears to be another sufficient but not necessary test. As with the 33% test, there a number of different scenarios where the test would not be passed despite significant

pricing differences. Under the Department's 5% test, a small number of prices have to be significantly lower than all other prices. While, again, this is sufficient, it cannot reasonably be considered necessary. Consider, for example, the case where 5% or more of the sales were below the lowest price to a non-targeted entity but none by more than the average gap as shown in Example 3.

Example 3	
<u>Premises model sold to two non-targeted customers and to one targeted customer</u>	
Weighted-average price of model to non-targeted customer X:	30
Weighted-average price of model to non-targeted customer Y:	20
Therefore, price gap for non-targeted sales is:	10
Weighted-average price of model to targeted customer:	10
Price gap for targeted model:	10
Therefore, 5% test not passed.	

Shouldn't this be considered equally sufficient evidence of significant price differences? If the model were sold to the targeted customer at 9 instead of 10, the 5% test would be passed.

Consider another example as shown in Example 4 on the following page. Under the 4-A scenario (identical to the example 3 scenario), the gap test is not passed; under the 4-B scenario, it is passed. The only difference between the two is that there are sales to a third non-targeted customer of the model at a weighted-average price that falls between the weighted-average prices to the other two non-targeted customers. Yet, sales to the third customer do not tell us whether there has been targeted dumping or not.

In fact, it is not clear why any additional test would be needed once the Department identifies a pattern of pricing differences using any approach such as its standard deviation test

Example 4	
<b>Scenario A</b>	
<u>Premises: model sold to two non-targeted customers and to one targeted customer</u>	
Weighted-average price of model to non-targeted customer X:	30
Weighted-average price of model to non-targeted customer Y:	20
Therefore, price gap for non-targeted sales is:	10
Weighted-average price of model to targeted customer:	10
Price gap for targeted model:	10
Therefore, 5% test not passed.	
<b>Scenario B</b>	
<u>Premises: model sold to three non-targeted customers and to one targeted customer</u>	
Weighted-average price of model to non-targeted customer X:	30
Weighted-average price to non-targeted customer of model Z :	25
Weighted-average price of model to non-targeted customer Y:	20
Therefore, price gap for non-targeted sales is:	5
Price, all sales of model X to targeted customer:	10
Price gap for targeted model:	10
Therefore, 5% test passed.	

or the P/2 test. In its Issues and Decision Memorandum for Nails from China, the Department notes as a difference between the P/2 test and the new proposed methodology the fact that the “P/2 test collapses the pattern and significant difference requirements, which are analyzed separately under our new methodology.” “Investigation of Certain Steel Nails from the People’s Republic of China: Issues and Decision Memorandum,” at 25 (June 6, 2008).<sup>8</sup> In fact, a single test is to be preferred over two separate tests. The simplest way to determine whether you have a significant quantity of trees in a particular area that are over 100 feet tall is to count the number

<sup>8</sup> Available online at <http://ia.ita.doc.gov/download/nme-sep-rates/prc-nails/prc-nails-final-memo.pdf>

of 100 foot tall trees, rather than to count the number of tallish trees and then see if a lot of them are taller than the rest.

As we reviewed in our comments on targeted dumping last December, in a couple of different situations, the Department finds that prices differ significantly when they differ by more than 2%. Stewart and Stewart Targeted Dumping comments at 3-5 (12/10/2007) (“*S and S Dec Comments*”).<sup>9</sup> When the Department calculates a weighted-average dumping margin for an investigation, it relies on those that are 2% or greater while ignoring those of less than 2% as *de minimis*. 19 U.S.C. § 1673b(b)(3). When it applies its arm’s-length test to determine whether related-party sales should be excluded from dumping comparisons, the Department rejects as distorted sales with prices that are less or greater than the price to unrelated parties by more than 2%. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 Fed. Reg. 69,186, 69,187 (Dep’t Commerce Nov. 15, 2002). Thus, we have recommended the use of pricing differences of 2% or more as a *presumptive* standard for identifying prices that need to be addressed as targeted. As with any such bright-line rule, the Department should consider allegations of targeted dumping even when the rule has not been met.

#### **D. Additional Questions**

##### *1. Definitions of Regions and Time Periods*

The Department asks to what extent definitions of regions and time periods in a targeted dumping allegation should be reflective of the industry and commercial market in the United States. *Targeted Proposal* at 26,372. While regions and time periods may in many instances reflect the industry and commercial market for subject merchandise in the United States, they will always reflect the choices of the foreign producer/exporter as to what area and/or time

periods it wishes to target. A party may give an especially attractive price to customers in a certain market (e.g., Los Angeles) or an area transportable from a particular port, during a limited period (e.g., two weeks in the fall). The statute provides flexibility for addressing targeting wherever and whenever it occurs. Commerce should remain flexible and accept claims of targeting for any area and any time period and for any individual or group of customers based on the information in a given record. Such an approach would reflect the flexibility of the law. As we also noted in our prior comments, no determination of motivation, intent, or any factor other than the existence of the targeted dumping is required under the statute. As the court of one of our trading partners has observed, “the concept of intent is generally alien to the anti-dumping rules.” Case T-274/02, *Ritek Corp. v. Council of the European Union* ¶ 58 (Oct. 24, 2006). “A finding of dumping . . . is a purely objective comparison between the normal value and export prices . . . That comparison . . . is based on an examination of the economic and accounting data of the undertakings concerned and in no way extends to looking into the reasons for domestic and export price levels.” *Id.* ¶ 59.

## 2. *Multiple Allegations*

The Department also asks how it should handle multiple allegations made with respect to one respondent, e.g. allegations that a respondent has targeted multiple regions and multiple customers or during different time periods. *Targeted Proposal* at 26,372. If an interested party makes allegations of targeted dumping that involve multiple entities<sup>10</sup> and/or different kinds of entities, the Department should treat them as follows. For purposes of determining whether targeted dumping exists, it should analyze the allegation for each entity separately in the same

---

<sup>9</sup> Available online at <http://ia.ita.doc.gov/download/targeted-dumping/comments-20071210/stewart-stewart-td-cmt-20071210.pdf>.

way that it treats allegations of targeted dumping involving a single entity, except that computations and comparisons that involve non-targeted sales should not include sales to other targeted entities. In other words, the Department should compare sales to targeted entities to sales to non-targeted entities. Of course, should any entity alleged to be targeted turn out upon analysis not to be targeted, then sales to it should be included in with non-targeted sales for purposes of analyzing any other entities alleged to be targeted

3. *Threshold for Accepting an Allegation*

The targeted dumping provision of the statute identifies no thresholds. The Department should not impose any of its own.

4. *Application of the Alternative Calculation Methodology*

Any test for identifying the existence of targeted dumping is not likely to identify all of the sales affected by targeting. For example, under the Department's test for identifying a pattern of price differences (the "33%" gap test), only sales made at prices below the standard deviation will "pass." This does not mean that other sales, which may, for example, be sold at prices below the mean but not a standard deviation below the mean, have not been targeted.

Thus, in order to insure that there is no masking and all dumped targeted sales are addressed, the Department should employ as a minimum the alternative methodology to calculate margins for all sales to the targeted entity.<sup>11</sup> The purpose of any test that the Department employs will be to identify sales to different customers or regions, or during

---

<sup>10</sup> The term "entities" as used herein is meant to include all groups of sales which may be targeted: sales to different customers or regions, and/or sales during different time periods.

<sup>11</sup> Moreover, the Department should combine margins determined with the alternative methodology with margins determined using the normal methodology so that the former are not offset by any of the latter. To do otherwise would allow dumping to be masked and reduce the statutory provision providing for the use of the alternative methodology to a nullity.

different time periods, or any combination thereof. All sales in the group or groups identified as being targeted should be computed using the alternate methodology.

Consider the Department's approach to level-of-trade adjustments. The Department employs a test to identify pricing differences at different levels of trade. Not all sales at the different levels have to be different. As the administration has said, "{w}hile the pattern of pricing at two levels of trade . . . must be different, the prices at the levels need not be mutually exclusive; there may be some overlap between prices at different levels of trade. SAA at 830. Even though there may some pricing overlap, the Department applies the LOT adjustment to all sales compared across levels of trade. In the same way, it should at least employ the alternative methodology to all sales to a targeted entity.

In addition, as we have indicated in our Dec. 10, 2007 comments, there are situations where the Department should apply the alternative methodology to all U.S. sales of an exporter. In its current targeting regulations, the Department states that where targeted dumping has been found, the "Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section." 19 C.F.R. § 351.414(f)(2). When it issued regulations implementing the Uruguay Round Agreements Act, the Department said:

The Department contemplates that in some instances it may be necessary to apply the average-to-transaction method to all sales to the targeted area, such as a region, or a customer, or even all sales of a particular respondent. For example, where the targeted dumping practice is so widespread it may be administratively impractical to segregate targeted dumping pricing from the normal pricing behavior of a company. Moreover, the Department recognizes that where a firm engages extensively in the practice of targeted dumping, the only adequate yardstick available to measure such pricing behavior may be the average-to-transaction methodology.



*See Antidumping Duties; Countervailing Duties*, 62 Fed. Reg. 27,296, 27,375 (Dep't Commerce May 19, 1997) (final rule).

The recent change in Commerce practice to allow offsets between models has significantly increased the importance of adopting a robust targeting methodology. The dumping of one model can now be masked by the dumping of any other model. This means that there is a much greater need for the Department to apply the alternate approach to the sales of all models. Thus, we recommend to the Department a standard for applying the alternate methodology to all sales of a foreign producer or exporter.

Under the statute, the Department may disregard normal value sales that have been made below cost when (a) their prices do not permit recovery of all costs within a reasonable period of time and (b) they have been made within an extended period of time in substantial quantities. 19 U.S.C. § 1677b(b)(1). Sales below cost have been made in substantial quantities when the volume of such sales represents 20 percent or more of the sales under consideration. 19 U.S.C. § 1677b(b)(2)(C). Thus, the standard for determining that the normal value data base is sufficiently affected by below cost sales to warrant disregarding them is 20%.

In a similar way, because the dumping of sales of one model may be offset by the fair value sales of any other model, the targeting of 20% or more of U.S. sales means that there are substantial quantities of targeted sales. Given the masking of dumping between models and the existence of substantial quantities of targeted sales, the only way for the Department to prevent significant masking is to use the alternate method of margin calculation for all sales. Thus, we recommend that the Department adopt a 20% test to determine that there are sufficient targeted sales to warrant application of the alternate method to all sales.

5. *When Targeting Is Found, the Alternative Methodology Is Necessary.*

In its solicitation of comments, the Department does not discuss the statutory requirement that the Department explain why patterns of pricing differences cannot be taken into account with either of the standard methodologies. *See* 19 U.S.C. § 1677f-1(d)(B)(ii). We note that elsewhere the Department has correctly recognized that because U.S. prices are averaged when weighted averages are compared to weighted averages, low prices to targeted groups will always be masked by high prices to non-targeted groups. As it said in the South Korea Paper case:

If the Department were to average prices to the non-targeted customers or regions with the prices to targeted customers or regions, those lower prices would be concealed because they would be offset by prices to the non-targeted group. Any pattern of low prices to a targeted group would be covered by averaging the higher prices of the non-targeted group with the lower prices. If that average of the targeted and non-targeted sales were then compared to an average of Korean home market prices, the significant differences that exist between the targeted and non-targeted U.S. prices could not be taken into account.

*Korea Paper Decision* at 12. We recommend that the Department continue to follow the analysis adopted in that proceeding.

Thank you for your consideration of these comments.

Respectfully submitted,

Terence P. Stewart  
William A. Fennell  
Geert De Prest  
Amy S. Dwyer  
STEWART AND STEWART  
2100 M Street, NW  
Washington, DC 20037

Andrew Anderson-Sprecher, Trade Consultant