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Mr. David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street, NW
Washington, DC 20230

Re: Comments Regarding "Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation"

Dear Mr. Spooner:

On behalf of the Coalition for Fair Lumber Imports, we hereby submit comments in response to the Department's March 6, 2006 notice concerning the calculation of the weighted average dumping margin in an antidumping duty investigation.¹

I. THE DEPARTMENT IN ALL INVESTIGATIONS SHOULD CALCULATE THE WEIGHTED-AVERAGE DUMPING MARGIN USING THE TRANSACTION-TO-TRANSACTION METHODOLOGY WITH NO OFFSETS

The Department's request for comments states that, in response to the WTO panel report in *US-Zeroing*, it proposes to no longer use the average-to-average comparison methodology in calculating the weighted average dumping margin in an antidumping duty investigation, without

¹ See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 Fed. Reg. 11,189 (Mar. 6, 2006).

providing offsets for non-dumped comparisons.² The Department has solicited comments on this proposal, as well as “appropriate methodologies” to be applied in future antidumping duty investigations in light of the WTO panel’s report.³

The Coalition endorses the comments filed today by CSUSTL.⁴ However, should the Department abandon its use of average-to-average comparisons without offsets for non-dumped comparisons in calculating the weighted-average dumping margin in an antidumping investigation, we offer the following comments:

First, under no circumstances should the Department abandon its established practice of excluding offsets for non-dumped comparisons in calculating a weighted-average dumping margin in an antidumping investigation. The exclusion of offsets for non-dumped comparisons in calculating the dumping margin is one of the sinews of U.S. antidumping law, and affects the remedial purpose of the statute. Thus, the exclusion of offsets for non-dumped comparisons from the calculation of the dumping margin is not an option. The only “appropriate methodology” available to the Department is one that continues the Department’s longstanding practice of excluding offsets for non-dumped comparisons in calculating the antidumping margin.

Second, to the extent that the Department abandons its practice of employing the weighted-average-to-weighted-average methodology and excluding offsets for non-dumped comparisons, the most appropriate methodology to be applied in future antidumping

² Id.

³ Id.

⁴ Letter to the U.S. Department of Commerce from the Committee to Support U.S. Trade Laws (Apr. 5, 2006).

investigations is the Department's "transaction-to-transaction" methodology, in conjunction with the exclusion of offsets for non-dumped comparisons.

The "transaction-to-transaction" methodology has a number of inherent advantages. First, it is provided for in both the statute and the Department's regulations. Second, the Department has recently employed such a methodology in the recent Softwood Lumber Section 129 proceeding, and is intimately familiar with its operation. Finally, a WTO panel has found the Department's calculation of a dumping margin in the Softwood Lumber Section 129 proceeding by using the transaction-to-transaction methodology and excluding non-dumped comparisons, to be WTO-consistent.

A. The Transaction-to-Transaction Methodology Is Prescribed by Statute and by the Department's Regulations

The statute expressly provides that in an investigation, the Department has the option to determine whether the subject merchandise is being sold in the United States at less than fair value "by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise."⁵ The Department's regulations provide similar authority.⁶

Thus, the "appropriate" alternative methodology proposed herein is consonant both with U.S. antidumping law and the Department's regulations, such that the Department needs not "start from scratch" in devising an untested alternative to its weighted-average methodology.

⁵ 19 U.S.C. § 1677f-1(d)(ii) (2000) (emphasis added).

⁶ 19 C.F.R. § 351.414(b)(2) (2005) ("The 'transaction-to-transaction' method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise").

B. The Department Has Employed the Transaction-to-Transaction Methodology Without Offsets as an Alternative to the Weighted-Average Methodology in a Recent Proceeding

The Department recently used the transaction-to-transaction methodology without offsets in the Softwood Lumber Section 129 proceeding.⁷ In the original Softwood Lumber investigation, the Department had calculated dumping margins using weighted-average-to-weighted-average comparisons without offsets for non-dumped comparisons.⁸ The WTO Appellate Body (“AB”) had found that the Department’s weighted-average-to-weighted-average methodology without offsets for non-dumped comparisons was inconsistent with the WTO AD Agreement.⁹

In light of the AB’s findings and recommendations, the Department in the subsequent Section 129 proceeding applied its transaction-to-transaction methodology.¹⁰ Moreover, the Department did not apply an offset for non-dumped sales in employing the transaction-to-transaction methodology.¹¹ The Department determined that there were “particular benefits from this analysis which do not exist in the context of the weighted-average-to-weighted-average comparisons.”¹²

⁷ Antidumping Measures on Certain Softwood Lumber Products from Canada, 70 Fed. Reg. 22,636 (May 2, 2005) (Notice of Section 129 Determination).

⁸ Id. at 22,637.

⁹ Id.

¹⁰ Id. at 22,637-68.

¹¹ Id. at 23,639.

¹² Id. at 22,638.

The Department noted that U.S. law authorized the use of either weighted-average or transaction-to-transaction comparisons, “with no stated preference.”¹³ The Department recognized that the Department’s regulations, which were adopted in 1997, expressed a preference for weighted-average-to-weighted-average comparisons in investigations, but noted that the preference “was based upon past experiences and an expressed difficulty in selecting appropriate comparison transactions.”¹⁴ The Department correctly noted that these concerns had been overtaken by events in the intervening years:

The Department’s computer resources have improved greatly in the last few years, and many resource and programming difficulties the Department faced in 1994 {when the URAA was adopted}, and even in 1997 {when the Department’s regulations were adopted}, for conducting transaction-to-transaction matching on large databases no longer exist.¹⁵

Thus, the transaction-to-transaction methodology without offsets is not merely a theoretically “appropriate” alternative to the Department’s weighted-average methodology, it is a viable, concrete alternative -- one that is authorized under the statute and the Department’s regulations, and which the Department employed without reservation in the recent Softwood Lumber Section 129 proceeding.

C. **The WTO Panel Has Found the Department’s Use of the Transaction-to-Transaction Methodology Without Offsets To Be Consistent With the AD Agreement**

Canada challenged the Department’s Softwood Lumber Section 129 determination at the WTO. The WTO panel’s final report was released to the public on April 3, 2006. The WTO

¹³ Id.

¹⁴ Id. at 22,639. In adopting the proposed alternative methodology, the Department would need to amend 19 C.F.R. § 351.414(c)(1) to delete the preference.

¹⁵ Id. (emphasis added).

panel found the Department's use of the transaction-to transaction methodology without offsets to be consistent with the WTO Antidumping Agreement. The panel concluded that:

there is no basis to uphold Canada's claim that Article 2.4.2 {of the WTO AD Agreement} required the DOC to establish margins of dumping by aggregating the results of all transaction-to-transaction comparisons, offsetting non-dumped comparisons against dumped comparisons.¹⁶

The panel further concluded that:

the determination of the DOC in the section 129 proceeding investigation is not inconsistent with the asserted provisions of Articles 2.4 and 2.4.2 of the *AD Agreement*.

We therefore consider that the United States has implemented the recommendations and rulings of the DSB in *US -Softwood Lumber V*, to bring its measure into conformity with its obligations under the *AD Agreement*.¹⁷

Thus, the transaction-to-transaction methodology without offsets for non-dumped comparisons in an antidumping investigation has been found to be consistent with the WTO AD Agreement.

II. CONCLUSION

For all of the foregoing reasons, the most appropriate methodology to be applied in future antidumping investigations is the Department's "transaction-to-transaction" methodology, in conjunction with the exclusion of offsets for non-dumped comparisons.

¹⁶ WTO Panel Report, United States - Final Dumping Determination on Softwood Lumber From Canada at ¶ 5.30, WT/DS 264/RW (Apr. 3, 2006) (emphasis added).

¹⁷ Id. at ¶¶ 6.1-6.2 (emphasis added).

The use of the transaction-to-transaction methodology without offsets for non-dumped comparisons effectuates the remedial purpose of the antidumping statute. Moreover, the methodology is consistent with U.S. law and with the WTO AD Agreement. Finally, the Department is comfortable with employing the methodology in antidumping investigations, and has done so in the Softwood Lumber Section 129 proceeding.

In a nutshell, the methodology is lawful, logical, and workable. The Department should apply it in all future antidumping duty investigations.

Please contact the undersigned if you have any questions regarding these comments.¹⁸

Respectfully submitted,



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¹⁸ A CD-Rom containing this submission in electronic form accompanies the required paper copies, in accordance with the Department's instruction.