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April 5, 2006

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DEPT. OF COMMERCE
ITA
IMPORT ADMINISTRATION

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: Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation

Dear Mr. Spooner:

These comments are submitted on behalf of Collier Shannon Scott, PLLC, which represents a number of domestic industries, in response to the Department's March 6, 2006 notice concerning the calculation of the weighted average dumping margin in an antidumping duty investigation. See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 Fed. Reg. 11,189 (March 6, 2006).

I. INTRODUCTION

As a result of a World Trade Organization ("WTO") dispute settlement panel report in United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DS294/R, circulated Oct. 31, 2005, the Department now "proposes that it will no longer make average-to-average comparisons without providing offsets for non-dumped comparisons" and seeks "comments pertaining to this proposal and appropriate methodologies to be applied in future antidumping duty investigations." 71 Fed. Reg. at 11,189.

Overall, we agree with the position presented in the comments being submitted today on behalf of the Committee to Support U.S. Trade Laws ("CSUSTL") and these comments are intended to supplement the CSUSTL comments. As stated in that letter, given that this precise issue is being negotiated in the Doha Round, the Department should not seek to make a change to its practice at this time. The following comments are being provided if the Department nevertheless decides to make a change to its policy.

II. THE STATUTE PROHIBITS THE DEPARTMENT FROM MAKING AN AVERAGE-TO-AVERAGE COMPARISON WITHOUT OFFSETS FOR NON-DUMPED SALES

If the Department determines that it will change its policy as a result of the WTO decision, the Department should not adopt a methodology that includes offsets for non-dumped comparisons. The Department's longstanding exclusion of offsets for non-dumped comparisons in calculating the dumping margin is based not only on statutory requirements, but upon the recognition that price comparisons with "negative" dumping margins reflect an absence of dumping and should not be allowed to offset instances of dumping. This practice satisfies the remedial purpose of the statute by fully capturing all dumping within the calculated margin.

Because the use of offsets for non-dumped comparisons in calculating the dumping margin is not allowed under the statute, the best alternative to the Department's current practice is a transaction-to-transaction methodology, with the exclusion of offsets for non-dumped comparisons. This methodology is expressly provided for in the statute, which gives the Department the option of determining whether 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." 19 U.S.C. § 1677f-1(A)(ii). It is also permitted by the Department's regulations.

19 C.F.R. § 351.414(b)(2). Because the transaction-to-transaction approach is consistent with both the statute and the regulations, the Department should rely on this methodology in original investigations.

III. THE DEPARTMENT SHOULD APPLY A TRANSACTION-TO-TRANSACTION METHODOLOGY THAT COMPLIES WITH THE STATUTE, RESULTS IN THE MOST ACCURATE CALCULATIONS POSSIBLE, AND IS EASY TO ADMINISTER

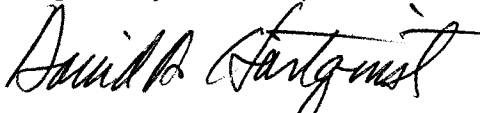
The Department employed a transaction-to-transaction methodology in the Softwood Lumber Section 129 proceeding. Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada, 70 Fed. Reg. 22,636 (May 2, 2005). The WTO panel recently upheld this approach, finding 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.” WTO Panel Report, United States - Final Dumping Determination on Softwood Lumber From Canada at 15, WT/DS 264/RW (Apr. 3, 2006) Thus, there is no question that the Department may implement a transaction-to-transaction methodology without offsets for non-dumped comparisons consistently with the AD Agreement.

Although the methodology used in that case could be applied by the Department, other methodologies would be available. In particular, we concur with the methodology being proposed by Schagrin Associates in its comments because this methodology would allow the Department to calculate margins accurately and in a manner that is transparent and could be easily administered.

IV. CONCLUSION

We appreciate the opportunity to provide these comments to the Department. Please contact the undersigned if you have any questions regarding these comments.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David A. Hartquist".

DAVID A. HARTQUIST