International Advisory Services Group, Ltd.

April 5, 2006

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 on Federal Register Notice of March 6, 2006 Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation

Dear Mr. Spooner:

Please find enclose one (1) original and six (6) copies of Eurofer's comments to the above referenced Federal Register Notice. If you have any questions or required additional information, please do not hesitate to contact me at the address provided below.

Thank you for your attention to this matter.

Respectfully submitted,

Charles H. Blum

Charles H. Blum
U.S. Representative

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

Re: Comments on Federal Register Notice of March 6, 2006
Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation.

Dear Sir:

On behalf of the European Confederation of Iron and Steel Industries (Eurofer), I am writing in response to the above referenced Federal Register Notice. Eurofer is the trade association representing 100 percent of the steel producers of the 25 member states of the European Union. A list of our members is attached.

The subject notice solicits comments from the trade on a proposed response to a WTO dispute settlement panel determination in a case brought by the European Communities (EC) involving 31 different antidumping cases in which "zeroing" had been used. The Panel found "zeroing" inconsistent with Article 2.4.2 of the WTO Antidumping Agreement insofar as determining margins on a weighted average basis in original antidumping investigations. The EC made an appeal to the WTO Appellate Body with regard to certain other aspects of this Panel decision. The EC urges that "zeroing" also be determined inconsistent when applied to antidumping administrative reviews, new shipper and changed circumstances reviews as well as sunset reviews. The Appellate Body will issue its Report on this appeal no later than April 18, 2006.

In submitting these comments we note that European steel producers have experience both as respondents and as petitioners in antidumping proceedings. Our experience underscores the value of clear international rules and to have them fairly applied by all WTO members. Therefore, Eurofer supports the proposed change in antidumping margin "zeroing" calculation methodology as a <u>partial</u> step to bring US rules and regulations into compliance with dispute settlement rulings issued by WTO.

As a matter of law and principle, however, the United States is obliged to go farther. It should end the use of "zeroing" in all stages of antidumping proceedings without further prodding from the WTO. Not only is this a matter of basic fairness, but we submit required so that prior original AD investigations (and Orders) resulting from erroneous "zeroing"

margins can be swiftly corrected by administrative review. This should apply to all outstanding AD cases with the sole exception of those resulting from targeted dumping permitted under WTO rules. [1]

Under Article 2.4 of the Agreement on Anti-Dumping, all WTO members are obliged to make a "fair comparison" between the exporter's export price and its normal value. The practice of ignoring sales that are made at or above normal value – zeroing – inherently distorts the comparison and is therefore unfair. In the recent dispute involving the sunset review on corrosion-resistant carbon steel from Japan, the WTO Appellate body ruled:[2]

> 135. When investigating authorities use a zeroing methodology such as that examined in *EC – Bed Linen* to calculate a dumping margin, whether in an original investigation or otherwise, that methodology will tend to inflate the margins calculated. Apart from inflating the margins, such a methodology could, in some instances, turn a negative margin of dumping into a positive margin of dumping. As the Panel itself recognized in the present dispute, "zeroing ... may lead to an affirmative determination that dumping exists where no dumping would have been established in the absence of zeroing."
>
> 162. Thus, the inherent bias in a zeroing methodology of this kind may distort not only the magnitude of a dumping margin, but also a finding of the very existence of dumping.

WTO law and the logic behind it could not be clearer. There is no place for zeroing in antidumping practice – not in original investigations, not in administrative reviews, nor in sunset reviews**.** In this regard Eurofer awaits the April 18, 2006 Report of the Appellate Body which it believes will be confirming of the EC's position. Further, given the proximity in time of the release of this Appellate Report, Eurofer respectfully requests that the Department extend the comment period so that interested parties have had an opportunity to comment upon this WTO Appellate decision as well. This will allow the Department and interested parties to comment upon the breadth of "zeroing" in antidumping proceedings rather than the limited subject of "zeroing" in the original investigation stage alone.

Further, in abandoning "zeroing" to comply with the WTO decisions, the Department ought not to adopt any further modifications or new methodology beyond effectuating this goal. The Department should continue its present practice of using weighted average price comparisons other than in few instances in which transaction to transaction comparisons are appropriate and effected without zeroing. These latter include instances in which there are very few sales and the merchandise is identical, virtually identical or custom made.[3] This

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[1] Eurofer recognizes a sole and limited exception to this rule against "zeroing" which arises in investigations of "targeted dumping." In such extraordinary cases, zeroing may be permissible under WTO rules. This exception is provided for under Section 777A(d)(1)(B) of the U.S. antidumping statute for those situations in which "an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among producers, regions, or time periods …"

[2] Appellate Body Report, *United States – Sunset Review of AD Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan,* paras. 135 and 162, DS 244 (Adopted Jan. 9, 2004).

[3] Uruguay Round Agreements Act Statement of Administrative Action (SAA), attached to H.R. Rep. No. 103-316 Vol. I (1994) at 172.

SAA language suggests that transaction to transaction comparisons are not appropriate for commercial shipments of fungible products which constitute the vast majority of antidumping proceedings before the Department [given"…the difficulty in selecting appropriate comparison transactions…." *Id*. at 173

We also propose that the Department publish for final comment whatever methodology or changes in practice it plans to adopt in order to implement the 'zeroing" Panel and Appellate decisions. This will allow interested parties to comment on the Department's proposals rather than to merely suggest what those final methodologies might be, as is presently the case.

Eurofer appreciates this opportunity to comment on the proposed policy changes. Please feel free to contact me if you would like to discuss these views in further detail.

Respectfully submitted,

Charles H. Blum
U.S. Representative

NATIONAL ASSOCIATIONS MEMBERS OF
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GERMANY	Wirtschaftsvereinigung Stahl
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GREECE	ENXE
HUNGARY	Magyar Vas- és Acélipari Egyesülés
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