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PUBLIC DOCUMENT

The Honorable Carlos Gutierrez
Secretary of Commerce
U.S. Department of Commerce
Central Records Unit – Room 1870
Pennsylvania Avenue & 14th Street, N.W.
Washington, D.C. 20230

Attn: David Spooner
Assistant Secretary for Import Administration

RE: Calculation of Weighted Average Dumping Margin During an Antidumping Investigation, Request for Public Comments

Dear Mr. Secretary:

These comments are filed on behalf of Florida Citrus Mutual (FCM) of Lakeland, Florida, in response to the notice published by the U.S. Department of Commerce, 71 Fed. Reg. 11189 (Mar. 6, 2006), requesting comments regarding the calculation of the weighted average dumping margin during an antidumping duty investigation. FCM is a

voluntary cooperative association whose active membership consists of more than 9,000 Florida growers of citrus for processing and fresh consumption. FCM represents more than 90 percent of Florida's citrus growers.

FCM believes that the change in dumping margin calculation contemplated by the Department should not apply to administrative reviews of antidumping orders pursuant to Section 751 of the Tariff Act of 1930 ("Act"). In response to a recent WTO dispute settlement report,[1] the Department is proposing to abandon the so-called "zeroing" methodology of calculating weighted-average dumping margins in antidumping investigations, whereas the export price which exceeds normal value for a particular averaging group is considered to be zero rather than offset by the negative number. FCM is concerned that the proposed change in methodology of calculating dumping margins, which is intended to affect only the calculations in the original phase of an antidumping investigation, may also affect the Department's dumping margin calculation in course of the reviews of antidumping orders pursuant to Section 751 of the Act. In administrative reviews, the Department normally uses the average-to-transaction method, comparing the weighted-average normal value with an individual export transaction and "zeroing," rather than offsetting, those transactions where the export price exceeds the normal value.[2]

First, FCM notes that the WTO Panel explicitly found the United States did not act inconsistently with its WTO obligations by using a form of "zeroing" in the

[1] Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("US – Zeroing")*, WT/DS294/R, circulated October 31, 2005 ("*Zeroing*").
[2] 19 CFR § 351.414(b)(3)(c)(2).

administrative reviews at issue.[3] The Panel found that the prohibition on "zeroing" methodology pursuant to the WTO Antidumping Agreement applies only to investigations, and not to duty assessment proceedings such as the U.S. administrative reviews. Moreover, the Panel found that "zeroing" in administrative reviews does not violate the "fair comparison" requirement of Article 2.4 of the Antidumping Agreement.[4] Therefore, it is clear from the WTO Panel decision that the continued use of such methodology in administrative reviews is fully consistent with the United States' international obligations.

Second, the United States courts have consistently upheld the zeroing practice in administrative reviews as reasonable interpretation of the U.S. antidumping statute.[5] Moreover, as explained by the Court of Appeals for the Federal Circuit, the Department's "zeroing" methodology in administrative reviews makes practical sense since it is required to calculate dumping duties on an entry-by-entry basis. [6] This method neutralizes the dumped sales while having no effect on fair-value sales. Offsetting dumping margins with sales greater than normal value would allow foreign companies to practice selective dumping. Consequently, "zeroing" practice applied in administrative reviews legitimately combats the problem of masked dumping, wherein certain profitable sales serve to "mask" sales at less than fair value.

For the foregoing reasons, FCM urges the Department not to apply the contemplated change in "zeroing" methodology to administrative reviews of antidumping

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[3] *Id.* at para. 7.223 (the Panel found that the United States did not act inconsistently with Article 2.4.2 of the AD Agreement when, in the administrative reviews at issue, the Department "used a methodology that involved asymmetrical comparison between export price and normal value and in which no account was taken of any amount by which export prices exceeded normal value.")
[4] *Id.* at para 7.284.
[5] *See Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004)
[6] *Id.*

orders. The WTO Panel report which prompted the Department to change its policy explicitly found that "zeroing" methodology in administrative reviews is consistent with the United States' WTO obligations. The United States courts have likewise found such practice to be reasonable under the U.S. antidumping statute, as well as to make practical sense in its administration of antidumping law.

However, should the Department adopt a change in context of administrative reviews similar to the one now contemplated in course of investigations, FCM believes any such change should be limited to reviews of antidumping investigations initiated after any change in policy has taken effect.

Respectfully submitted,

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