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Mr. David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
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Tel: +1 312 861 8877
Donald.J.Unger@BakerNet.comAttn: Mr. Anthony Hill, Economist, Office of Policy
Mr. Michael Rill, Director, Antidumping Policy, Import Administration

Re: Targeted Dumping in Antidumping Investigations; Request for Comment

Dear Mr. Spooner:

Pursuant to the Department of Commerce's ("the Department") invitation to submit comments on the development of a methodology for determining whether targeted dumping is occurring in antidumping investigations and the standards and tests that may be appropriate in a targeted dumping analysis, 72 Fed. Reg. 60,651 (Oct. 25, 2007), we submit these comments jointly on behalf of NTN Corporation, NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc., NTN-Bower and NTN-BCA Corporation; NSK Ltd., NSK Europe Ltd., NSK Corporation, and NSK Precision Americas, Inc.; JTEKT Corporation and Koyo Corporation of U.S.A.; and Nachi Fujikoshi Corp., Nachi America, Inc. and Nachi Technology, Inc.

As an overarching comment, the parties note that the statutory foundation to every antidumping investigation is that the Department shall determine whether subject merchandise is being sold in the United States at less than fair value by comparing normal value and export prices first, on a weighted average-to-weighted average basis, and second, on a transaction-to-transaction basis. 19 U.S.C. § 1677f-1(d)(1)(A); 19 C.F.R. § 351.414(c). These are the preferred comparison methodologies for the determination of sales at less than fair value, to be used in the first instance. It is only if (1) there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or period of time, and (2) the Department explains why such differences cannot be taken into account using either of the preferred comparison methodologies that the Department may resort to the weighted average-to-transaction methodology. By establishing two preferred comparison methodologies, the statutory framework makes clear that targeted dumping is an exception to the general rule. As such, any methodology to determine whether targeting is occurring should be tailored to find targeting in only a limited number of cases.

With these basic principles in mind, the parties note that the Department earlier this year issued a change of policy whereby it will no longer engage in the practice of zeroing in antidumping investigations that use the average-to-average calculation methodology. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 Fed. Reg. 77722-77725 (Dec. 27, 2006). This commitment is based, of course, on the United States' agreement to implement the World Trade Organization's ("WTO") Appellate Body decision in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins* ("Zeriong"), WT/DS294/AB/R (adopted 9 May 2006). Additionally, however, the United States has agreed to implement the WTO Appellate Body decision in *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (adopted 23 January 2007), which determined that zeroing is contrary to the WTO Antidumping Agreement when used, inter alia, in administrative reviews, which use the weighted average-to-transaction comparison methodology. Together, these commitments mean that the Department will allow "negative" antidumping margins to offset positive margins in all calculations related to antidumping duties, including investigations with allegations of targeted dumping. Therefore, the parties submit that the Department must allow for offsets even when calculating the weighted-average margin for the targeted sales, or when combining margins for targeted and non-targeted sales, in an antidumping duty investigation where allegations of targeted dumping have been proven, contrary to the Department's recent decision in *Coated Free Sheet Paper from the Republic of Korea*. *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*, Oct. 17, 2007, at 19.

Second, the submitting parties contend that the test the Department used in the *Coated Free Sheet Paper* case to demonstrate that price differences between targeted and non-targeted sales are significant is far too easy to satisfy, and its use as a standard or even as a presumption should therefore be rejected. In *Coated Free Sheet Paper*, the Department concluded that a weighted-average net price to a targeted customer or region that is more than 2% lower than a weighted-average net price to a non-targeted customer or region demonstrated a pattern of significant price differences. *Id.* at 10. In many industries, however, a price differential of 2% is insignificant because prices among customers routinely vary by at least that amount. By basing a finding of targeted dumping on a difference of only 2%, the Department is skewing the outcome in favor of finding of targeted dumping, and would lead to the use of weighted average-to-transaction calculations in virtually every investigation. Such a result impermissibly upends the statutory framework.

Moreover, the parties stress that it is important for the Department to proceed on a case-by-case basis when investigating an allegation of targeting and to examine not only price differentials, but also the specific characteristics of each industry. This kind of analysis would also be in accord with the Statement of Administrative Action for the Uruguay Round Agreement Act's statement 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.* at 10 (quoting *Statement of Administrative Action*, Uruguay Round Agreement Act, H.R. Doc. No. 103-316, Vol. 1 (1994)).

Third, the parties also note that the statute imposes a second prerequisite before the Department may resort to the weighted average-to-transaction methodology, by providing that, even if the Department finds that there is a significant price differential, it must explain why the price differential cannot be taken into account using either of the “preferred” (weighted average-to-weighted average or transaction-to-transaction) comparison methodologies. *See* 19 U.S.C. § 1677f-1(d)(1)(B). In *Coated Free Sheet Paper*, the Department gave this required analysis very short shrift, simply stating that “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.” *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*, Oct. 17, 2007, at 12. These conclusory statements do not rise to the level of analysis required by the statute, and could be used in every case to justify resort to the weighted average-to-transaction comparison methodology, thus rendering this second prerequisite meaningless. The Department must apply a more substantial test to determine whether one of the preferred comparison methodologies adequately accounts for the price differential.

Finally, the parties submit that the burden of proving allegations of targeted dumping, including the burden of demonstrating the existence of the prerequisites to a finding of targeted dumping, should be on the party making the allegation. This is in accord with the Department’s regulations, which state that an allegation of targeted dumping “must include all supporting factual information and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.” 19 C.F.R. § 351.414(g). Given these requirements, the Department must dismiss allegations of targeted dumping that do not include supporting factual information beyond allegations of price differences and a bald assertion that the preferred comparison methodologies would “conceal” the lower prices of the alleged targets of the dumping.

If the Department has any questions about these comments, please do not hesitate to contact counsel for any of the undersigned.

Respectfully submitted,

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