



Government of Canada
Embassy of Canada

Gouvernement du Canada
Ambassade du Canada

November 21, 2007

Mr. David Spooner
Assistant Secretary for Import Administration
United States Department of Commerce
Central Records Unit
14th Street and Constitution Avenue NW
Washington DC 20230

Dear Assistant Secretary Spooner:

**RE: Targeted Dumping in Antidumping Investigations
US Federal Register 72 FR 60651
Canadian Response to Request for Comments**

Further to the October 25, 2007 request by the Department of Commerce, International Trade Administration, for public comments regarding the use of targeted dumping in antidumping investigations, Canada offers the attached comments for your consideration.

As per the instructions set out in the above-noted notice in the Federal Register, we have enclosed an original and six copies and have sent an electronic copy to the webmaster at the address indicated in the notice (webmaster-support@ita.doc.gov).

If you require any clarification, please contact either me or Kevin Thompson at 202-448-6548.

Yours sincerely,

Susan Harper
Minister-Counsellor
(Economic and Trade Policy)

**COMMENTS BY THE
GOVERNMENT OF CANADA
TO THE INTERNATIONAL TRADE ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**REQUEST FOR COMMENT
TARGETED DUMPING
IN ANTIDUMPING INVESTIGATIONS**

**U.S. FEDERAL REGISTER 72FR60651
OCTOBER 25, 2007**

**Submitted by:
The Canadian Embassy
Washington, D.C.
November 2007**

INTRODUCTION

Further to the recent Notice in the *Federal Register* (Vol. 72, No. 206 of Thursday, October 25, 2007), the Government of Canada appreciates being afforded the opportunity to provide comments in response to the request by the Department regarding the issue of targeted dumping. In this regard, Canada respectfully offers the following views.

BACKGROUND/CONTEXT

It is Canada's view that the structure of Article 2.4.2 of the AD Agreement and, in particular, the fact that it requires the existence of margins of dumping to "*normally*" be determined on a weighted average-to-weighted average or transaction-to-transaction basis, indicates that the "targeted dumping" methodology is only applicable in situations that are not normal, that is to say, in "exceptional" situations. The exceptional nature of the targeted dumping methodology is reaffirmed by the Article 2.4.2 requirement that an explanation must be provided as to why export price differences among purchasers, regions and time periods cannot be appropriately dealt with under the weighted average-to-weighted average or transaction-to-transaction methodology. For its part, Canada has never applied the targeted dumping methodology.

As the United States has itself acknowledged, the targeted dumping methodology operates as an exception to the symmetrical comparison requirements for investigations as set forth in the first sentence of Article 2.4.2. The exceptionality of the targeted dumping methodology has been recognized in U.S. law and practice. As the Federal Register Notice explains, the Department has normally calculated antidumping duty margins by comparing weighted-average export prices with weighted-average normal values or transaction-specific export prices with transaction-specific normal values, with use of the targeted dumping methodology having been very limited. Indeed, U.S. recognition of the exceptionality of the targeted dumping methodology would appear to date back to the entry into force of the WTO

Agreement. In this regard, the Anti-Dumping Committee's *Ad-Hoc* Group on Implementation, in its October 1999 report entitled "*Practical Issues and Experience in Applying Article 2.4.2 of the AD Agreement*" (G/ADP/AHG/W/75), found, with respect to U.S. practice, that while the Department's regulations provide the opportunity for domestic interested parties to make allegations of targeted dumping "...in only a few cases have parties alleged a pattern of price differences which might support invocation of the exception." Moreover, in all such cases, "...Commerce found that the allegation was insufficiently supported by the facts, and did not satisfactorily explain why the alleged pattern of price differences could not be taken into account using the average-to-average comparison methodology. Thus, since adoption of the Uruguay Round Agreements Act, Commerce has not invoked the targeted dumping exception." Indeed, the Department rejected allegations of targeted dumping in a number of past investigations¹, although it accepted the petitioner's targeting allegation in a recent investigation, i.e., *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, noting that it did so without endorsing the petitioner's test, standards and procedures as a general practice.

COMMENTS/SUGGESTIONS

Canada submits that any guidelines, thresholds and/or tests established to determine whether recourse to the targeted dumping methodology is appropriate should – in consonance with the exceptional nature of that methodology – clearly establish that the pre-conditions set out in Article 2.4.2. of the AD Agreement have been satisfied. With that in mind, Canada would suggest that, in order to constitute a pattern of significant price differences sufficient to provide a reasonable indication of targeted dumping, any guidelines should require:

¹ *Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 Fed. Reg. 10836, 10837 (1998); *Preliminary Determination of Sales at Less Than Fair Value: Fresh Tomatoes from Mexico*, 61 Fed. Reg. 56608, 56610 (1996); and *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 Fed. Reg. 30326, 30329 (1996).

1. that the evidence indicates the occurrence of differential pricing on the basis of clearly discernible, as opposed to random², groupings of i) customers, ii) regions, and/or iii) time periods;
2. that such differential pricing cannot be justified on the basis of normal commercial pricing considerations, excluding competition-based price discrimination between markets, (e.g., transportation costs, purchase volumes, product seasonality, etc.); and
3. that there be a nexus between the differential prices that is logically indicative of a targeting arrangement.

In summary, it is Canada's view that any new guidelines for the use of targeted dumping methodology should reflect the clearly exceptional nature of the situation in which its use may be justified.



Susan E. Harper
Minister-Counsellor
(Economic and Trade Policy)

² As found by the Department in *Pasta*, a mere showing that groups of higher and lower prices are present in reported sales should not, in and of itself, be considered a sufficient basis for invoking the targeted dumping methodology. Rather, there should be a logical and relevant nexus among each grouping.