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David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Targeted Dumping in Antidumping Investigations

Dear Assistant Secretary Spooner:

Thank you the opportunity to submit these comments in response to the request of the U.S. Department of Commerce (DOC) for comments regarding the development of an appropriate methodology to determine whether targeted dumping is occurring in antidumping investigations. The Bureau of Foreign Trade, Ministry of Economic Affairs of my government offers the following points for the Department's consideration.

When DOC uses the alternative methodology in the case of "targeted dumping" to calculate antidumping margins, it should offset the "positive comparisons" by the "negative comparisons," as is now done in the case of average-to-average comparisons. More specifically, to comply with the WTO Antidumping Agreement (ADA), when DOC determines that an exporter is engaging in targeted dumping, and uses the "average-to-transaction" methodology to calculate the antidumping margin, DOC should offset the positive and negative dumping margins resulting from calculations regarding "dumped imports" and "non-dumped imports."

For transactions where it is determined that targeted dumping is not occurring, DOC should appropriately use the "average-to-average" comparison methodology. Use of the "average-to-transaction" methodology should be limited only to those instances where it is determined that targeted dumping has taken place – i.e., where it is determined in the investigation that a pattern of "significant" differences in pricing exist between regions, purchasers or periods of time. For those transactions where no targeted dumping exists, DOC should solely use the "average-to-average" methodology to calculate antidumping margins. This is the practice DOC followed in "Antidumping Duty Investigation of Coated Free Sheet Paper from South Korea – Targeted Dumping."

When the sales model for the exporter being investigated is similar to the U.S. domestic manufacturer's sales model, DOC should assume that targeted dumping is not involved. If the petitioner alleges that specific exporter(s) are engaged in the practice of targeted dumping, petitioner should bear the burden of proof in demonstrating that a pattern of significant differences in price exist across regions, purchasers or periods of time. In reviewing the pattern of transactions as alleged by the petitioner, DOC should also investigate the degree to which U.S. domestic manufacturers employ the same, or similar, sales models. If the sales models of the exporting party and the U.S. domestic manufacturer are indeed found to be similar, a finding of targeted dumping should not pertain. Rather, the sales pattern should be found to be a reflection of prevailing market conditions.

The 2% threshold criterion used by the petitioner and adopted by the DOC in the "Antidumping Duty Investigation of Coated Free Sheet Paper from South Korea – Targeted Dumping" is arbitrary and too low. In this investigation, DOC determined that the sale prices of South Korea's exporters to specific areas and purchasers were "significantly different" from the other general sale prices. DOC determined that targeted dumping existed, because in certain cases the sale prices to specific areas and purchasers by some respondents were more than 2% lower than the sale prices for other areas and purchasers. Although "significantly different" in Article 2.4.2 of the ADA is not specifically defined, it seems clear that "significantly different" should connote a percentage greater than 2%. Indeed, the 2% threshold is the *de minimis* threshold set forth in ADA Article 5.8. Thus, it is reasonable to assume that "significantly different" must refer to a percentage value that is far greater than that which is considered to be *de minimis*.

Thank you again for the opportunity to submit these comments.

Sincerely yours,

Francis K.H. Liang
Director