September 9, 2002

Mr. Faryar Shirzad
Assistant Secretary for Import Administration
Room B-1870
U.S. Department of Commerce
Pennsylvania Ave. and 14th Street, N.W.
Washington, D.C. 20230

PUBLIC DOCUMENT

Attn: Affiliated Party Sales

Re: Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade

Dear Mr. Shirzad:

We are filing these comments in rebuttal to certain submissions filed in response to the Federal Register Notice (67 Fed. Reg. 53,339) dated August 15, 2002 concerning the Department of Commerce's treatment of sales to affiliated parties in antidumping proceedings. We object to the following proposals:

1. Use of a narrower band of sales *e.g.*, 99.5% to 100.5% (*e.g.*, Stewart & Stewart submission);

2. Use of higher minimum and maximum percentages, *e.g.*, 99.5% to 125% (Collier, Shannon & Scott submission); and

3. Automatically Exclude Sales to Affiliate's Parties (*e.g.*, Wiley, Rein & Fielding submission).

1. **Use of Narrower Band of Sales**

This proposed methodology is unreasonable and would have the effect of eliminating the use of sales to affiliated parties in many cases, as the Department itself stated in its notice. It would also not reflect commercial reality, particularly where a number of customers of various types are involved. It would be unusual for sales even to a number of different unaffiliated customers to fall within such a narrow band. Failing to fall within this band would thus by no means be indicative of whether the sales were made at comparable prices to those made to unaffiliated customers.

2. **Use of Higher Minimum and Maximum Percentages**

The obvious flaw in this proposal is that it perpetuates the very lack of evenhandedness the WTO Appellant Body found objectionable. It is nothing more than the current test with an artificially high upper limit to give it the appearance of a change in methodology.

Comments in support of this type of methodology argue that the upper and lower limits do not have to be symmetrical. Regardless of the validity of this argument, any range must be reasonable. None of the comments have given any plausible reason why sales made at substantially higher prices to affiliated parties should be considered comparable, while those made at only 0.6% less than those to unaffiliated parties would not be comparable.

3. **Automatically Exclude Sales to Affiliated Parties**

The Department considered and correctly rejected this alternative as being contrary to the assumptions of the ITA's regulations. This alternative would result in the significant reduction of price-to-price comparisons. Commentators supporting this methodology argue that constructed value and third country sales, or other sales to unaffiliated customers, can form the basis for normal value. In addition, some make an analogy to the treatment of sales to affiliated customers in the U.S. which are automatically excluded. These arguments are meritless and should be rejected because unlike the case of U.S. sales, there is no statutory bar to using sales to affiliates in calculating normal value. Thus, absent a valid reason to exclude such sales, *e.g.*, the relationship between the buyer and seller affecting the price, there is no *prima facie* reason to disregard such sales. While there are alternative bases for establishing normal value, the statutory preference is to use sales in the home market.

Conclusion

We respectfully request that the ITA reject the above proposals and modify its affiliated party test as detailed in our August 30, 2002 submission.

Respectfully submitted,

BARNES, RICHARDSON & COLBURN

By:

Donald J. Unger
Kazumune V. Kano

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