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April 20, 2010

VIA E-MAIL

Honorable Ronald K. Lorentzen
Deputy Assistant Secretary for Import Administration
Room 1870
Department of Commerce
14th Street and Constitution Ave., NW,
Washington, DC 20230

Attention: Mr. Kelly Parkhill, Supervisory Import Policy Analyst

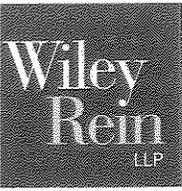
**Re: Report to Congress: Retrospective Versus Prospective
Antidumping and Countervailing Duty Systems; Comments of
Diamond Sawblade Manufacturers Coalition**

Dear Mr. Lorentzen:

The following comments are provided in response to the notice published by the U.S. Department of Commerce ("Commerce") on March 31, 2010, inviting comments and announcing Commerce's intent to hold a hearing regarding retrospective versus prospective antidumping and countervailing duty systems. See 75 Fed. Reg. 16, 079 (March 31, 2010)

The United States has always utilized a retrospective system for the purposes of calculating and assessing antidumping and countervailing duties ("AD/CVD"). The retrospective system ensures that the United States fulfills its legal obligation to apply AD/CVD margins "as accurately as possible." See *Rhone Poulenc, Inc. v United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990). Under the U.S. system, all parties, including importers, have the opportunity to obtain determinations, refunds and collections of duties based on the actual levels of dumping or subsidization that occurred during the period covered by a review.

For the reasons discussed below, we believe that prospective AD/CVD systems are inherently less accurate, result in higher levels of uncollected duties, and are more likely to result in evasion of duties by parties subject to AD and CVD orders. They are easily manipulated, particularly by "non-market economy"



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countries through “new shipper” reviews, and often do not discipline the injurious dumping or subsidization that can occur after an order is imposed. Because of these flaws, the United States would not be well served by a change to a prospective system.

I. DISCUSSION

A. A Retrospective AD/CVD System is Better Equipped to Remedy Injurious Dumped or Subsidized Imports into the United States

A retrospective system is more accurate and fair. The U.S. retrospective system allows authorities to closely calibrate the imposition of antidumping and subsidy margins to the actual levels of dumping or subsidization that occur during the period covered by an investigation and any future or periodic reviews. The U.S. retrospective assessment system affords interested parties, including importers, the opportunity to obtain determinations of duties that are based on information concerning U.S. and home market prices, and costs at the time of importation. It is a two-sided system that remedies injury to a U.S. industry caused by dumping and improper subsidization, while also allowing importers to obtain refunds when they trade at fair market value.

Prospective systems are less accurate, do not appropriately discipline dumped and subsidized imports, and disadvantage those for whom the AD/CVD laws are meant to provide a level playing field. Unlike the U.S. retrospective system, after a review is completed, a prospective system only provides for the refund of overpayments on dumping or subsidy duties, not underpayments. Specifically, Article 9.3.2 of the WTO Antidumping Agreement provides only for prompt refunds of any duty paid in excess of the margin of dumping. The consequences of this provision are significant. Exporters can double or even triple their dumping or subsidy levels over the course of a review period without fear of liability for additional duties, because additional duties will never be assessed in a prospective system. The volume of dumped imports can greatly affect the economic viability of a domestic producer. Commerce has seen a number of cases where an exporter may have a low margin from a prior period, but does not ship to the United States because new sales would be dumped at higher margins. A retrospective system encourages fair trade.

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B. Prospective Systems Increase Uncollected Duties

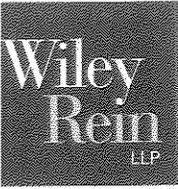
Prospective systems result in additional uncollected duties. After a review, a prospective system only changes the duty rate for future entries. Increased dumping that occurred during the previous period – which would result in the collection of additional duties under the U.S. retrospective system – would never be addressed. This universe of duties amounts, in effect, to uncollected duties. Thus, prospective systems make the “uncollected” duty problem worse by ensuring non-collection and simply defining it away.

C. Retrospective Systems Are More Effective at Reducing Incentives and Opportunities for Importers to Evade Antidumping and Countervailing Duties

Prospective systems create opportunities for duty evasion. Under a prospective system, importers and exporters – from China and other non-market economy countries in particular – have a greater ability to evade an AD/CVD order. Utilizing methods, such as “new shipper” reviews, foreign producers and exporters have the ability to flood the U.S. market during the pendency of their review, and not be penalized. Following the imposition of a dumping or subsidy margin, they could then shift their shipments to a different exporter and avoid any future penalty or discipline on their volumes. Finally, we believe there is just as much fraud and duty evasion occurring as a result of the systems utilized by the EU and Canada.

D. There Would be no Reduction in Administrative Burdens if a Prospective System is Adopted

Administrative burden is a characteristic of both prospective and retrospective systems. Pursuant to Article 9 of the Antidumping Agreement, administration of a prospective system, appropriately applied, will potentially be just as complex as the administration of a retrospective system. Moreover, Article 11.2 requires procedures in both types of systems for periodic reviews of the margins. Consequently, adoption of a prospective system would not necessarily entail any reduction in administrative burdens, particularly if the United States follows its customary practice of using transparent procedures. Indeed, a prospective system might encourage more administrative reviews due to the fact that import volumes will not be disciplined when margins are low. As such, U.S. producers will be more inclined to request reviews to ensure appropriate margins on future entries, and importers with margins would be likely to also request refund



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reviews as they have less to lose if a review does not result in a retroactive margin increase.

II. CONCLUSION

As the above comments demonstrate, a prospective system will only increase incentives for injurious dumped and subsidized imports to enter the United States; it will likely increase, rather than reduce, the amount of uncollected duties; it can provide opportunities for importers to evade antidumping and countervailing duties; and it will not reduce the administrative burden on the U.S. Government.

Simply put, the inherent flaws in prospective systems weaken the U.S. rules-based trading system by putting the interests of sellers of injurious dumped and subsidized imports ahead of those for whom the AD/CVD laws are meant to provide a level playing field: America's producers, manufacturers and workers.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel B. Pickard", written over a large, stylized circular flourish.

Daniel B. Pickard
Counsel to the Diamond Sawblade
Manufacturers Coalition