
EMERGENCY COMMITTEE FOR AMERICAN TRADE

April 5, 2006

The Honorable David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records
Unit, Room 1870
Pennsylvania Avenue and 14th Street, N.W.
Washington, DC 20230

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APR - 5 2006
DEPT. OF COMMERCE
ITA
IMPORT ADMINISTRATION

Re: Weighted Average Dumping Margin

Dear Assistant Secretary Spooner:

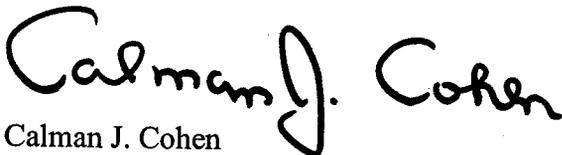
These comments on proposed changes in the calculation of the weighted average dumping margin in antidumping duty investigations are submitted on behalf of the Emergency Committee for American Trade (ECAT), pursuant to the request of the U.S. Department of Commerce in its March 6, 2006, request for comments.

ECAT is an association of leading U.S. business enterprises with global operations that was founded more than three decades ago to promote economic growth through expansionary trade and investment policies. Today, ECAT's members represent all the principal sectors of the U.S. economy – agriculture, financial, high technology, manufacturing, merchandising, processing, publishing and services. The combined exports of ECAT companies run into the tens of billions of dollars. The jobs they provide for American men and women – including the jobs accounted for by suppliers, dealers, and subcontractors – are located in every state and cover skills of all levels. Their collective annual worldwide sales total nearly \$2.4 trillion, and they employ more than five and one-half million persons. ECAT companies are strong supporters of negotiations to eliminate tariffs, remove non-tariff barriers and promote trade liberalization and investment worldwide.

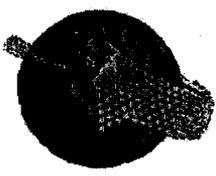
For the reasons set forth in the attached comments, ECAT strongly urges the Department of Commerce to eliminate fully the zeroing methodology from its margin calculations in antidumping cases.

Thank you for your consideration of these comments.

Respectfully,



Calman J. Cohen
President



EMERGENCY COMMITTEE FOR AMERICAN TRADE

COMMENTS OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE ON WEIGHTED AVERAGE DUMPING MARGIN CALCULATIONS

April 5, 2006

These comments on proposed changes in the calculation of the weighted average dumping margin in antidumping duty investigations are submitted on behalf of the Emergency Committee for American Trade (ECAT). ECAT is an association of leading U.S. business enterprises with global operations. ECAT was founded more than three decades ago to promote economic growth through expansionary trade and investment policies. Today, ECAT's members represent all the principal sectors of the U.S. economy – agriculture, financial, high technology, manufacturing, merchandising, processing, publishing and services. The combined exports of ECAT companies run into the tens of billions of dollars. The jobs they provide for American men and women – including the jobs accounted for by suppliers, dealers, and subcontractors – are located in every state and cover skills of all levels. Their collective annual worldwide sales total nearly \$2.4 trillion, and they employ more than five and one-half million persons. ECAT companies are strong supporters of negotiations to eliminate tariffs, remove non-tariff barriers and promote trade and investment liberalization and investment worldwide.

For the reasons set forth below, ECAT strongly urges the Department of Commerce (Department) to eliminate fully the zeroing methodology from its calculation of the margin in antidumping cases.

Zeroing Is an Inherently Unfair Methodology

So-called zeroing is a practice utilized by the Department through which it sets to zero any negative margin (*i.e.*, where the export price exceeds normal value). Zeroing is inherently biased and unfair, by eliminating only those transactions that would reduce or eliminate the margin of dumping. In short, zeroing represents a way to “stack-the-deck” against imported products. The unfair impact of this process not only affects U.S. companies that rely on foreign imports, but could also negatively impact U.S. exports to foreign markets by encouraging other countries to adopt similar methodologies.

Zeroing Is Inconsistent with the United States' World Trade Agreement Obligations

As a founding Member of the World Trade Organization (WTO) in 1995, the United States committed to the provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. The United States was one of the leading architects of the new system of binding dispute settlement that seeks to ensure that obligations agreed to were more

effectively honored than under the predecessor General Agreement on Tariffs and Trade (GATT). The WTO broadly and the dispute settlement system in particular have produced significant benefits for the United States and helped address numerous barriers abroad that undermine U.S. entry into foreign markets.

The European Communities (EC) relied upon the dispute settlement system to challenge the United States practice of so-called “zeroing” in the calculation of antidumping margins. This practice was found to be “inconsistent” with the WTO Antidumping Agreement in *US – Zeroing*.¹ The WTO Appellate Body has reached the same result in the *US – Softwood Lumber* and the *EC – Bed Linen from India* cases.²

Given U.S. commitments and the multiple findings of WTO panels and the WTO Appellate Body, ECAT agrees with the Department’s proposal that it no longer use the zeroing methodology when making average-to-average calculations.

Zeroing Should Be Completely Eliminated from the Department’s Antidumping Calculations

The Department’s traditional investigation methodology is to compare weighted-average U.S. prices to weighted-average home market prices (the average-to-average comparison methodology). The Department’s request for comments and its recent section 129 determination involving softwood lumber from Canada suggests, however, that, rather than cease zeroing fully, it may continue to zero and abandon its historical preference for the average-to-average comparison methodology. This would mean that the Department would more frequently compare the prices of individual U.S. sales to the prices of individual home market sales (transaction-to-transaction methodology). ECAT strongly opposes such an approach.

First, the use of zeroing in a transaction-by-transaction calculation would result in an even more unbalanced calculation than in calculation of a weighted-average margin. Zeroing in a transaction-to-transaction methodology exacerbates the imbalance because this methodology would eliminate the impact of all non-dumped prices in the margin calculation. As a result, zeroing in the context of a transaction-to-transaction methodology would artificially elevate margins even beyond what is produced by zeroing in a weighted average comparison. This is evidenced by the recent section 129 decision in the softwood lumber from Canada case where the use of a transaction-to-transaction methodology appears to have elevated the margin for no other reason than that more non-dumped prices were eliminated from the calculation. This is neither a fair nor commercially reasonable approach and should be rejected.

¹ *United States - Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/R, circulated October 31, 2005.

² *European Communities -- Anti-Dumping Duties on Imports of Cotton-Type Bed Linen From India*, WT/DS141/AB/R, AB-2000-13, circulated March 1, 2001; *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, AB-2004-2, circulated August 11, 2004.

Second, the United States has virtually never used a transaction-to-transaction methodology, given that it raises other significant concerns about its underlying fairness and its feasibility:

- As the United States has explained to the WTO, the transaction-to-transaction methodology is suitable only in very limited circumstances, “such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.”
- The Department has indicated a “strong” preference against the methodology because of the “extreme difficulty in selecting the appropriate normal value transaction to compare to any given export transaction.” Depending upon the merchandise involved, this could involve hundreds of sales in a single day.
- Because of that difficulty, the methodology will create enormous uncertainty. U.S. companies will be unable to determine beforehand whether a foreign company is dumping. Likewise, foreign companies will be unable to determine whether they are dumping or how to stop dumping.
- Most importantly, the transaction-to-transaction approach effectively makes matching the most critical process in determining the extent, if any, of dumping. Given the inherent difficulty in comparing products as the Department itself has recognized, this methodology would create a strong likelihood of arbitrary and faulty margin calculations that inflate, or deflate (or even eliminate), the antidumping margin.

Nor should the recent WTO panel decision in *US-Softwood Lumber*³ be used as justification for adopting such a transaction-to-transaction methodology. In the first instance, this decision is that of a WTO panel, not the Appellate Body, to which this decision may be appealed. The Appellate Body is expected to rule definitively in the *EC-Zeroing* case in April 2006 and in a likely *US-Softwood Lumber* appeal as early as the Summer of 2006. Consequently, at a minimum, it is premature to adopt a new policy before those decisions.

More importantly, the WTO panel is not required to evaluate the policy considerations discussed above with respect to such methodology. Rather, its task was limited to interpreting the WTO Antidumping Agreement. For the reasons discussed above, we strongly believe that the use of a transaction-to-transaction methodology in general is not workable or fair and that the use of zeroing in any calculation of an antidumping margin is itself unfair.

For all of these reasons, the Department should not abandon its strong, longstanding preference for a weighted-average margin calculation as a way to bring back zeroing through the use of a transaction-by-transaction approach.

³*United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/RW, circulated April 3, 2006.

Conclusion

ECAT strongly urges the Department of Commerce to eliminate its zeroing methodology, which creates an unfair balance in the calculation of antidumping margins and has repeatedly been found by WTO panels and the Appellate Body to be contrary to the United States' WTO obligations.