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March 7, 2006

VIA HAND DELIVERY

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

PUBLIC DOCUMENT

Attn: Michael Rill, Mark Barnett

Re: **Request for Comments on the Calculation of Weighted Average Dumping Margin During an Antidumping Duty Investigation**

Dear Mr. Spooner:

We submit the following response to the Department's request for comments on the implementation of offsets in the calculation of weighted average margin calculations during an antidumping duty investigation.¹

On October 31, 2005, the World Trade Organization found that the Department's denial of offsets in calculating weighted average dumping margins was inconsistent with WTO

¹ Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 Fed. Reg. 11,189, 11,190 (March 6, 2006) ("Request for Comments").

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obligations.² Based on the WTO finding, it is evident that the Department's methodology was improper from its outset.

On March 6, 2006, nearly five months after the WTO finding, the Department finally announced that it will "abandon the use of average-to-average comparisons without such offsets."³ Accordingly, the new methodology is long overdue and should be implemented immediately to ongoing investigations through upcoming preliminary and/or final determinations.

The Department's March 6 announcement serves as clear notice that the prior methodology is improper. Therefore, any further application of such methodology in ongoing investigations will lead to determinations based on bad law. Moreover, predictability and expectations of parties are not undermined with regard to ongoing investigations. Since investigations normally are not anticipated by respondents, there is no risk that respondents will have relied on the wrong methodology in structuring their sales so as to comply with US dumping law.

While we appreciate the ability to comment on the decision and are sympathetic to the Department's wish to hear from interested parties, since the Department has already announced that it is abandoning its current methodology, any new methodology should be implemented to

² Panel Report, United States-Laws, Regulations and Methodology for Calculating Dumping Margins ("US-Zeroing"), WT/DS294/R, para.7.32, circulated October 31, 2005 ("Zeroing").

³ Request for Comments at 11,189.

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investigations in process at the time of the Department's March 6 notice rather than months hence. Justice delayed is justice denied.

We appreciate your consideration of these comments. In accordance with the Department's instructions, six copies of this letter have been submitted to the Department, as we as a CD Rom with an electronic version convertible to Word Perfect. Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,

SONNENSCHN NATH & ROSENTHAL LLP

By:

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