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June 23, 2008

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

ATTN: Anthony Hill, Office of Policy Michael Rill, Director, Antidumping Policy

Re: Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment: Comments of Corus Staal BV

Dear Mr. Spooner:

We hereby submit the following comments on behalf of Corus Staal BV ("Corus"), in response to the Department of Commerce's ("Commerce") May 9, 2008 Federal Register notice requesting comments as to the methodology proposed by Commerce for identifying and analyzing targeted dumping in antidumping investigations. See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment, 73 Fed. Reg. 26,371 (Dep't of Commerce May 9, 2008) ("Request for Comments"). Corus notes that the deadline for filing such comments was extended to June 23, 2008, and thus these comments are timely. See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Extension of Comment Period (Dep't of Commerce

June 6, 2008), available at, http://ia.ita.doc.gov/download/cost-avg-comments/cost-avg-cmt-ext.pdf.

Corus submit these comments to reemphasize many of the points set forth in Corus' December 10, 2007 response to Commerce's October 25, 2007 Federal Register notice (72 Fed. Reg. 60,651), requesting public comments as to the methodology Commerce should employ in situations where targeted dumping is alleged, and to address a few additional issues raised by Commerce's proposed methodology for identifying and analyzing targeted dumping, as outlined in the Request for Comment.[1]

Specifically, Corus submits these comments to address the following issues raised by Commerce's Request for Comments: (1) the use of zeroing to calculate dumping margins in investigations in which Commerce employs its alternative average-to-transaction comparison methodology; (2) the appropriateness of requiring petitioners, at a minimum, to set forth a general allegation of targeted dumping in the petition, defining a sales subset that is commercially meaningful and providing sufficient evidence of lower pricing in that sales subset; (3) the necessity of providing respondents an opportunity to contest the targeted dumping allegation prior to the preliminary determination; (4) the need to incorporate a contemporaneous sales standard into Commerce's proposed methodology for identifying and analyzing targeted dumping; and finally (5) the disjunctive nature of the statutory mandate of Section 777A(d)(1)(B)(ii) (19 U.S.C. § 1677f-1(d)(1)(B)(ii)).

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[1] Commerce should not interpret these comments as waiving Corus' right to challenge any aspect of Commerce's targeted dumping analysis or the application of Commerce's alternative average-to-transaction comparison methodology in the context of specific investigations and Corus hereby specifically reserves such right.

I. IT IS IMPROPER FOR COMMERCE TO USE ZEROING TO CALCULATE DUMPING MARGINS IN INVESTIGATIONS PURSUANT TO ITS ALTERNATIVE AVERAGE-TO-TRANSACTION COMPARISON METHODOLOGY

As set forth in Corus' December 10, 2007 targeted dumping comments, it is improper and violative of the World Trade Organization ("WTO") Anti-Dumping Agreement for Commerce to use zeroing to calculate dumping margins in any situation, including investigations in which Commerce employs its alternative average-to-transaction comparison methodology. The WTO Appellate Body ("AB") has clearly stated that zeroing is impermissible in any aggregation of margins in an antidumping proceeding. Each aspect of the targeted dumping methodology, including the computation of a weighted average margin for sales within the targeted subset utilizing the average-to-transaction comparison methodology, the computation of a weighted average margin for sales outside the targeted subset utilizing the average-to-average or transaction-to-transaction comparison methodologies, and the aggregation of those two margins to reach an overall weighted average margin, involves a process of aggregation and is therefore subject to the non-zeroing rule enunciated by the WTO AB. Accordingly, should Commerce find that the statutory thresholds (pursuant to whatever standards are ultimately adopted by Commerce) for utilizing its alternative calculation methodology are satisfied by a particular respondent's sales, zeroing is nevertheless prohibited and thus should not be used by Commerce.

Commerce's practice of zeroing has consistently been found by the WTO AB to be improper and violative of the WTO Anti-Dumping Agreement. See, e.g., United States – Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (WTO App. Body Jan. 9, 2007); United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (WTO App. Body Apr. 18, 2006); United States – Anti-Dumping

Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R (WTO App. Body July 24, 2001). Specifically, in the context of these disputes, the WTO AB has found Commerce's use of zeroing in, among others, average-to-average comparisons and average-to-transaction comparisons to be WTO inconsistent on both an "as applied" and "as such" basis.[2] In short, and based on the consistent body of WTO AB precedent, the impermissibility of zeroing is beyond question.

Corus acknowledges that the findings of the WTO AB with respect to Commerce's use of zeroing in average-to-transaction comparisons were made in the context of antidumping administrative reviews, as opposed to an antidumping investigation. This, however, is a distinction without a difference. Commerce's regulations specify that the average-to-transaction comparison methodology utilized by Commerce in administrative reviews is the methodology to be utilized by Commerce where targeted dumping has been found to exist. See 19 C.F.R. § 351.414(f)(1). Moreover, both the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") and the WTO have ruled that, for purposes of zeroing, the differences between administrative reviews and investigations are not relevant. See Corus Staal BV v. Dep't of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), reh'g denied, 2005 U.S. App. LEXIS 10462 (Fed. Cir. May 18, 2005), cert. denied, 126 S. Ct. 1023 (2006); see also United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan,

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[2] Notably, the average-to-average comparison methodology and the average-to-transaction comparison methodology are the two methodologies that are utilized to calculate an overall weighted average margin where targeted dumping is found to exist. Pursuant to Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 Fed. Reg. 77,722 (Dep't of Commerce Dec. 27, 2006), Commerce no longer zeroes in calculating weighted average margins in investigations pursuant to its average-to-average comparison methodology.

WT/DS244/AB/R at ¶ 135 (WTO App. Body Dec. 15, 2003). Similarly, the U.S. Government and Commerce itself have concluded that the differences between the two are irrelevant for purposes of the applicability of United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (WTO App. Body Apr. 18, 2006). See United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/18, Communication by the United States at ¶ 12 (June 12, 2006); see also Brief of Defendant-Appellee, Department of Commerce at 23-26, Corus Staal BV. v. United States, Fed. Cir. Court No. 04-1107 (Apr. 13, 2004) (the statute's directive "for calculating an overall dumping margin in an investigation and a review are identical"). Indeed, it cannot be disputed that zeroing is categorically prohibited in "all contexts" of antidumping proceedings. See Press Release of the U.S. Mission to the United Nations in Geneva, U.S. Statement at the WTO Dispute Settlement Body Meeting at Item 9 (Jan. 23, 2007), available at http://www.usmission.gov/press2007/ 0123dsb.html.

Accordingly, whether in the context of Commerce's targeted dumping methodology in an investigation, or an administrative review, or indeed for that matter any other segment of an antidumping proceeding, there can be no dispute that zeroing by Commerce is categorically prohibited by international decisional law – a conclusion the United States has repeatedly acknowledged to the international trade community and has repeatedly agreed to implement. Id.

In light of the foregoing, should Commerce find that the statutory thresholds for utilizing its alternative calculation methodology are satisfied by a particular respondent's sales, zeroing is nevertheless prohibited and thus should not be used by Commerce.[3]

II. REQUIRING PETITIONERS TO SET FORTH A GENERAL ALLEGATION OF TARGETED DUMPING IN THE PETITION IS BOTH REASONABLE AND NECESSARY

As also set forth in Corus' December 10, 2007 targeted dumping comments, Commerce's targeted dumping methodology should not be a vehicle for "target shopping," i.e., it should not lead to a situation where a petitioner is permitted to allege general dumping and later, upon examining the respondent's questionnaire response, decide that a margin can only be calculated in a targeted subset.[4] The principle should be that petitioners file antidumping cases to address

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[3] Corus specifically notes that the targeted dumping methodology proposed by Commerce (as clarified by Commerce in Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Fed. Reg. 33,977, Issues and Decision Memo. at cmt. 9 (Dep't of Commerce June 16, 2008), see also 73 Fed. Reg. 33,985) utilizes Commerce's WTO-inconsistent zeroing methodology in computing the weight average margin for sales within the targeted subset and in combining the weight average margin for sales within the targeted subset with the weight average margin for sales outside the targeted subset. While Commerce's proposed methodology does not utilize Commerce's zeroing methodology in computing the weighted average margin for sales outside the targeted subset, the effect of Commerce's use of its zeroing methodology in combining the targeted and non-targeted margins is tantamount to utilizing its zeroing methodology in an average-to-average comparison in an investigation. Accordingly, Commerce's proposed targeted dumping methodology directly contravenes WTO precedent prohibiting the use of zeroing in calculating weighted average margins in investigations pursuant to an average-to-average comparison methodology – WTO precedent which the United States has implemented into US law. While Corus believes that zeroing is prohibited in any aggregation of margins in an antidumping proceeding, it is particularly egregious that Commerce is now utilizing targeted dumping as a mechanism to circumvent WTO decisional law which the United States has specifically implemented.

[4] Similarly, a petitioner should not be permitted to initially allege a particular pattern of targeted dumping – such as among regions and later – after examining questionnaire data, allege a different pattern of targeted dumping, such as among a few selected customers.

problems they experience in the marketplace and it is not at all unreasonable to require them to define the problem in the petition.

Commerce has indeed recognized that petitioners are uniquely situated to identify targeted dumping in the marketplace and to carry their burden thereafter of substantiating any allegation of targeted dumping.

> It is the domestic industry that possesses intimate knowledge of regional markets, types of customers, and the effect of specific time periods on pricing in the U.S. market in general. Without the assistance of the domestic industry, the Department would be unable to focus appropriately any analysis of targeted dumping . . . . Ultimately, the domestic industry possesses the expertise and knowledge of the product and the U.S. market . . . . Fundamentally, the Department needs the assistance of the domestic industry to focus the inquiry and to properly investigate the possibility of targeted dumping.

Antidumping Duties; Countervailing Duties, 62 Fed. Reg. 27,296, 27,374 (Dep't of Commerce May 19, 1997).

Since the effective date of Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 Fed. Reg. 77,722 (Dep't of Commerce Dec. 27, 2006) (expressing Commerce's intent to abandon its zeroing methodology in calculating weighted average margins in investigations pursuant to its average-to-average comparison methodology), and due, in part, to the lack of any requirement that petitioners set forth in the petition a general allegation of injurious targeted dumping in the marketplace, petitioners have abused the targeted dumping statute – a statute that is recognized by the International Antidumping Agreement and the U.S. statute as the exception rather than the general rule. See AD Agreement at Article 2.4.2; see also 19 U.S.C. § 1677f-1(d)(1). The volume of targeted dumping allegations filed since the effective date of Antidumping

Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 Fed. Reg. 77,722 (Dep't of Commerce Dec. 27, 2006) unquestionably demonstrates an intent by petitioners to improperly utilize targeted dumping as a vehicle to "margin shop" or unjustly increase antidumping margins (as opposed to a mechanism to address targeting behavior which has adversely affected petitioners in the marketplace).[5]

Accordingly, requiring petitioners, at a minimum, to set forth a general allegation of targeted dumping in the petition is reasonable and necessary because price differences among purchasers, regions or periods of time (as discussed more fully at Section III, infra) may occur for a number of reasons which have nothing to do with targeting and should thus not provide a basis for petitioners to "margin shop" or unjustly increase antidumping margins. Indeed, Commerce has recognized as much in Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Fed. Reg. 33,977, Issues and Decision Memo. at cmt. 2 (Dep't of Commerce June 16, 2008). Therein, Commerce stated that "we recognize that there may be some merit to [respondent's] argument that other factors not related to targeting, such as LOT or circumstances of sale, may have an impact on price comparability in a targeted dumping analysis." Commerce went on to note that "[w]hile the statute and the regulations provide considerable guidance on comparing U.S. price to NV for determining dumping, they provide no

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[5] In addition to the lack of any requirement that petitioners set forth in the petition a general allegation of injurious targeted dumping in the marketplace, Commerce's continued use of zeroing under its alternative average-to-transaction calculation methodology has also resulted in petitioners improperly utilizing targeted dumping as a vehicle to increase antidumping margins. For this reason, in addition to the reasons set forth in Section I supra, Commerce should abandon the use of zeroing in its alternative average-to-transaction calculation methodology.

comparable guidance in comparing different sets of U.S. prices for purposes of determining the existence of targeted dumping. The Statement of Administrative Action for the Uruguay Round Agreements Act, H.R., Doc No. 103-316, Vol. 1 (1994) ("SAA") at 843 states that "the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of produce, but not for another." Id. Thus, merely identifying a pattern in the questionnaire data submitted by a respondent that satisfies the targeted dumping thresholds adopted by Commerce post facto, is insufficient absent a prior allegation in the petition that the behavior identified is one which has adversely affected petitioner in the marketplace.

In short, where targeted dumping is alleged to be a concern of the petitioner, the petitioner should be required to so declare at the outset, defining a sales subset that is commercially meaningful and providing sufficient evidence of lower pricing in that sales subset. The petitioner should not be permitted, in the absence of an initial targeting allegation, to make such an allegation only after reviewing the respondent's questionnaire data. Neither should the petitioner be allowed to supplement the allegation set forth in the petition. In addition, after the respondent's data are received, the petitioner must be required to further support and particularize its allegation. Corus suggests that Commerce require petitioners, within twenty (20) days of receiving questionnaire data from respondents, to refine their targeted dumping allegations (as initially set forth in the petition) to provide specific allegations of patterns of significant price differences and support for the allegations that the significant price differences

cannot be taken into account using the average-to-average or transaction-to-transaction comparison methodologies.

III. RESPONDENTS MUST BE PROVIDED AN OPPORTUNITY TO CONTEST THE TARGETED DUMPING ALLEGATION PRIOR TO THE PRELIMINARY DETERMINATION

Following a petitioner's initial targeted dumping allegation in the petition and its subsequent filing of a refined allegation based on questionnaire data received, respondents must be given an opportunity to contest the targeted dumping allegation prior to the preliminary determination. Such an opportunity is necessary, because, as indicated above and as recognized by Commerce, price differences among purchasers, regions or period of time may occur for a number of reasons which have nothing to do with targeting.

The methodology proposed by Commerce for identifying and analyzing targeted dumping is strictly numeric and does not take account for normal market pricing differences that occur, for example, between high priced and low priced regions, at different times within the period, between different variations of products within the same CONNUM, due to volume-based or other legitimate discounts,[6] between different levels of trade, et cetera. For example,

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[6] Contrary to Commerce's position that "by using the net U.S. price in [its] price comparisons under the new targeted dumping methodology, [it] has already taken into account any volume rebates or other sales terms adjustments reported by [respondents]," net U.S. prices, which take into account such volume rebates or other sales terms adjustments and satisfy Commerce's proposed targeted dumping test, should not lead to an absolute conclusion of targeted dumping. See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Fed. Reg. 33,977, Issues and Decision Memo. at cmt. 2 (Dep't of Commerce June 16, 2008). As noted above, Commerce has recognized "that other factors not related to targeting . . . may have an impact on price comparability in a targeted dumping analysis." See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Fed. Reg. 33,977, Issues and Decision Memo. at cmt. 2 (Dep't of Commerce June 16, 2008). Accordingly,

and as noted in Corus' December 10, 2007 targeted dumping comments, regional pricing differences are reflected in most products, even commodity products (such as, for example, petroleum), the federal government salary scales, and the federal government price indices.

Moreover, and as also set forth in Corus' December 10, 2007 targeted dumping comments, when Commerce's comparison is done on a CONNUM-specific basis in which each CONNUM represents a basket category that often includes many different products or product variations at different prices (and costs), as is proposed in the Request for Comments, any significant price differential may merely reflect the price levels for the different products within the CONNUM and does not necessarily establish targeted dumping.[7] Because the purchasing patterns (including product specifications) of customers tend to be repetitive and, may be unique to an individual customer, price differentials may exist or be overstated for specific customers or customer groups for reasons totally unrelated to targeting. Similarly, in some instances, product prices may vary slightly due to the geographic area in which they are sold, due to the product

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the targeted dumping allegation should be rebuttable at best and respondents must be given an opportunity to contest the targeted dumping allegation.

[7] To illustrate the potential for attributing price differences to non-targeting factors, Corus utilized facts from the investigation and administrative reviews covering hot-rolled carbon steel flat products from the Netherlands in its December 10, 2007 targeted dumping comments. In Hot-Rolled Carbon Steel Flat Products from the Netherlands, depending on the width of a specific hot-rolled product sold by Corus, there are additional "extra" charges that may apply which are not captured by Commerce's product characteristics (i.e., the CONNUM) because Commerce's width characteristics do not precisely track those recognized within the industry for pricing purposes. Compare the Corus Strip Products IJmuiden, Price List at 8 (2004) (coil price extras of 30 Euro for widths 1100mm<1500mm, and 35 Euro for widths >1500mm) with Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, Questionnaire at Field No. 3.6 (establishing a single code for widths $\geq$ 1016mm (40 inches) but < 1828.8mm (72 inches)). Two separate price extras were contained within a single product characteristic and, therefore, within the same CONNUM. Thus, a simple price comparison of the narrow to the wider coils would erroneously suggest the possibility of targeting.

variations within a CONNUM, and not at all related to targeted dumping. Accordingly, the concept of "identical merchandise" in the antidumping context generally and in Commerce's statement in the Request for Comments that "[a]ll price comparisons would be done on the basis of identical merchandise" specifically, is a misnomer as merchandise within a specific CONNUM does vary in most investigations.[8]

In this regard, Commerce itself has stated that "[i]t would not be consistent with the purposes of Section 777A(d)(1)(B) of the Act for normal variations in customer prices to become the standard basis for targeted dumping allegations." See Redetermination on Remand Certain Pasta from Italy; Final Determination of Sales at Less Than Fair Value, at 19 (Dep't of Commerce Aug. 28, 1998); see also Letter Re: Targeted Dumping Allegation; Light-Walled Rectangular Pipe and Tube from the People's Republic of China (Dep't of Commerce Dec. 10, 2007) (noting that "[t]he price fluctuations [ ] identified [in the allegation] could be due to market fluctuations, customer categories, product differences, channels of distribution, quantities purchased, or other reasons aside from targeted dumping").

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[8] Insofar as Commerce has suggested that it is considering "whether, and under what circumstances, to extend the scope of the targeted dumping analysis to price comparisons of similar merchandise with DIFMER adjustments in future investigations," Corus submits that such an extension of the scope would be improper. See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Fed. Reg. 33,977, Issues and Decision Memo. at cmt. 4 (Dep't of Commerce June 16, 2008). Even the results of Commerce's current targeted dumping methodology, which compares prices of identical products on a CONNUM-specific basis, have a high probability of distortion due to the fact that each CONNUM is frequently composed of a wide variation of products. Extending the scope of the targeted dumping analysis to similar merchandise would undoubtedly result in significant distortions in the targeted dumping methodology and manipulation by petitioners.

Accordingly, Corus suggests that Commerce permit respondents to respond to the refined targeted dumping allegation within twenty (20) days. If the information submitted at that point is insufficient to support a finding of targeted dumping, Commerce must terminate the targeted dumping examination and must so indicate in its preliminary determination. Such a two-step approach is generally consistent with Commerce's methodology for below-cost sales allegations. While that methodology does permit allegations to be made after the petition is filed, such delay is inappropriate for targeted dumping allegations because the U.S. International Trade Commission ("ITC") must be placed on notice as to the fact that it may be called upon to determine injury issues only with respect to a subset of sales. Notice in the petition allows the ITC an opportunity to gather appropriate information and to make the appropriate determinations.

IV. A CONTEMPORANEOUS SALE STANDARD MUST BE INCORPORATED INTO COMMERCE'S PROPOSED METHODOLOGY FOR IDENTIFYING AND ANALYZING TARGETED DUMPING

In addition to the above, and as regards comparing prices at different periods of time during the period of investigation for any alleged pattern of targeted dumping (i.e., among purchasers, regions, or periods of time), Corus also believes that the methodology proposed by Commerce for identifying and analyzing targeted dumping in antidumping investigations should incorporate a contemporaneous sale standard. Similar to the above, such a contemporaneity standard is necessary to neutralize price differentials that are due solely to the period of time in which the sale is made and, thus, which have nothing to do with targeting.

The importance of utilizing sales made in a contemporaneous period for comparison purposes in antidumping proceedings is mandated by the antidumping statute and has

unquestionably been recognized by Commerce. Section 777A(d)(2) (19 U.S.C. § 1677f-1(d)(2)) provides that in an administrative review, "when comparing export prices (or constructed export price) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale." Id.

Pursuant to this statutory mandate, in administrative reviews Commerce compares the export price (or constructed export price) of an individual U.S. sale to an average normal value for a contemporaneous month. See 19 C.F.R. § 351.414(e)(1) ("In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month."). Commerce's preference is to limit the averaging of such prices to sales incurred during the month in which the particular U.S. sale was made. If, however, there are no identical sales in the comparison market for the preferred month, Commerce will employ a six-month window to select contemporaneous sales, first looking to the most recent of the three months prior to the month of the U.S. sale, or, alternatively, looking to the earlier of the two months following the month of the U.S. sale. See 19 C.F.R. § 351.414(e)(2).

The same or a similar contemporaneity progression should be utilized by Commerce to analyze price differentials among purchasers, regions, or periods of time where targeted dumping is alleged. In the absence of a contemporaneity limitation, non-targeting factors such as seasonal price differences, shipment and input costs which vary temporally (particularly in light of recent

developments in the petroleum industry) and other market conditions related to the timing of the sales and unrelated to targeting, potentially taint an allegation of targeted dumping.

V. COMMERCE MAY FIND A PATTERN THAT DIFFERS SIGNIFICANTLY "AMONG PURCHASERS, REGIONS, *OR* PERIODS OF TIME"

In Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 Fed. Reg. 33,977, Issues and Decision Memo. at cmt. 4 (Dep't of Commerce June 16, 2008), Commerce suggested that it may accept allegations and undertake a targeted dumping analysis of "multiple targeted dumping allegations (each of which can have multiple targets) in an investigation." Corus wishes to stress in these comments the disjunctive nature of the statutory mandate, which permits Commerce to base a finding of targeted dumping on price differentials either among purchasers, regions, or periods of time, but not on multiple bases.

Section 777A(d)(1)(B)(i) (19 U.S.C. § 1677f-1(d)(1)(B)(i)) provides that in order for Commerce to utilize its alternative transaction-to-average comparison methodology, Commerce must find that "there is a pattern of export prices (or constructed export prices)" for comparable merchandise that differ significantly among purchasers, regions, **or** periods of time." See 19 U.S.C. § 1677f-1(d)(1)(B)(i) (emphasis added). This disjunctive standard precludes Commerce from collectively analyzing allegations based on purchasers, regions, and periods of time.

Indeed, in the context of targeted dumping, Commerce itself has already opined with respect to and recognized the effect of the disjunctive nature of the congressional mandate. In Coated Free Sheet Paper from the Republic of Korea, Commerce stated:

> As Congress did not intend for broad application of the transaction-to-transaction methodology, it is a reasonable interpretation that the statue requires the Department to have already determined under

> Section 777A(d)(1)(B) of the Act whether the specific facts of the case warrant use of the transaction-to-transaction methodology before reaching a targeting analysis. Thus, given that the agency already has selected a comparison methodology to employ in a given case (Section 777A(d)(1)(B) of the Act), the Department need only explain why that preferred methodology cannot account for the targeting. This is evidenced by the statute's use of the disjunctive term "or" in section 777A(d)(1)(B) of the Act, which signifies that the Department need only explain why one of the listed options (i.e., the weighted average-to-average methodology or the transaction-to-transaction methodology) cannot account for the targeting.

Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 Fed. Reg. 60,630, Issued & Decision Memo. at cmt. 5 (Dep't of Commerce Oct. 25, 20007). While the context is admittedly not identical to that at issue here, it would be unjust and an abuse of discretion for Commerce to interpret a disjunctive phrase as a favorable limitation in one context of the targeted dumping statute and ignore it in another.

In addition, if Commerce were granted the authority to base a finding of targeted dumping on price differentials among purchasers, regions, and periods of time (i.e., on multiple bases), a congressional mandate which (as noted supra) has not issued, petitioners would be free to manipulate the outcome of the targeted dumping test at will. For example, if a particular respondent were to make sizable sales of identical merchandise to a single customer that satisfied Commerce's targeted dumping standards, those sales would likely draw additional sales to that customer into the targeted subset. However, if Commerce were able to base a finding of targeted dumping on price differentials among purchasers, regions, and periods of time, those sales, presuming they were made in the same region or during the same period of time, would also likely draw additional sales in that region and during that period of time into the targeted subset, that could not, on their own, satisfy the minimum threshold for a targeted subset. Clearly

Congress did not intend the targeted dumping statute to be open to such manipulation, a conclusion that is buttressed by the narrow application suggested by Congress.

Accordingly, in identifying and analyzing targeted dumping in antidumping investigations, Commerce may only base a finding of targeted dumping on price differentials either among purchasers, regions, or periods of time. Commerce is statutorily precluded from collectively analyzing and making findings of targeted dumping on multiple bases.[9]

Pursuant to Commerce's request, Corus is filing an original and six (6) copies of this submission. As also requested by Commerce, Corus has attached hereto a CD-ROM containing an electronic version of this submission, in PDF format.

Please do not hesitate to contact the undersigned if you should have any questions regarding this submission.

Respectfully submitted,

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Joel D. Kaufman
Alice A. Kipel
Jamie B. Beaber

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[9] Similarly, if the allegation involves more than one customer, more than one region or more than one time period, Corus submits that Commerce must analyze the sales to each alleged target separately.