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June 23, 2008

Secretary of Commerce
Attn: Import Administration
US Department of Commerce
Central Records Unit, Room 1870
14th Street and Constitution Avenue, NW
Washington, DC 20230

PUBLIC DOCUMENT

Re: Antidumping Methodologies For Proceedings That Involve Significant Cost Changes Throughout The Period Of Investigation (POI)/Period Of Review (POR) That May Require Using Shorter Cost Averaging Periods

Attn: Neal Halper, Taija Slaughter

Dear Mr. Secretary:

Habaş Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. ("Habaş"), a Turkish producer and exporter to the United States of steel reinforcing bar, submits these comments in response to the Department's notice, *Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment*, 73 FR 26364 (May 9, 2008). The information herein is public.

Habaş is the plaintiff in the appeal referenced in the request for comments, *Habaş v. US*, Ct. No. 05-613, Slip Op. 07-167 (CIT Nov. 15, 2007).

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Habaş submits that the criteria effective in 2003, at the outset of the administrative review underlying Habaş' appeal, were lawful and adequate. For single-primary-input products, Commerce ascertained whether there was a significant change in the cost of the primary input during the POI/POR. Having decided that a product had a single primary input, any significant change in the cost of that input would, *ipso facto*, be significant to the cost of manufacture.

Under the test as it existed at the time of Habaş' above-referenced administrative review, if the change in cost of the single primary input was significant, then cost could be calculated quarterly; cost could be calculated monthly; or DIRMAT could be calculated quarterly or monthly, while conversion costs would continue to be calculated on a POR-average basis. Any of these methods provides accurate costing.

If the Department prefers to base its decision on whether there was a significant change in cost of manufacture (COM) over the POI/POR, rather than a significant change in the cost of the single primary input. Habaş would point out that such a change in COM will always be of a smaller magnitude than a change in the cost of the input. Therefore, the threshold for deciding whether the cost change was "significant" should be adjusted accordingly, For example, if a 28% change in the cost of the primary input results in a 20% change in COM over the POI/POR, and if a 28% change in input cost is considered *prima facie* significant, then a 20% change in COM should also be considered *prima facie* significant.

The progenitor of the shorter-cost-averaging-period cases, *Brass Sheet and Strip*, also grounded use of shorter costing periods on the fact that, in that case, raw material cost was linked to sales price. As the precedents evolved, the issue of a linkage between cost and price was not central to the inquiry. For example, in *Thai Pineapple Canning Industry Corp. v. United States*, 273 F.3d 1077 (Fed. Cir. 2001), and the underlying cases at the Court of International Trade, *Thai Pineapple Canning Industry Corp. v. United States*, 23 C.I.T. 286 (Ct. Int'l Trade, 1999), 24 C.I.T. 107 (Ct. Int'l Trade 2000), Commerce never argued that the case was unworthy of a shorter costing period because there was no direct link between cost and price. Furthermore, the result in *Fujitsu General Ltd. v. United States,* 88 F.3d 1034 (Fed. Cir. 1996), in no way relied on any linkage between input cost and selling price; in fact, *Fujistu*'s silence on this point suggests that the linkage test was, at most, secondary.

A linkage of cost and price should not be a primary test for a shorter cost-averaging period. If cost is increasing significantly, then the respondent's business is affected in such a way as to render a shorter cost-averaging period appropriate. There may be unusual cases where a significant increase in input cost might not require a shorter cost period – for example, cases where the production cycle is extraordinarily long. However, in most cases, the production cycle is sufficiently short that a significant increase in input cost will, in fact, drive the cost of the output sold in the given month or quarter.

If the Department judges it to be necessary to have an objective criterion to measure the relationship between cost and price, the Department can readily use its SAS applications package to determine the statistical correlation coefficient between cost and price from the respective COP and HM sales databases. This is an objective measure that will lend predictability to the decision.

The remaining secondary issues mentioned in the precedents – for example, raw material and finished goods inventory turnover periods – could be retained as secondary tests, but in Habaş' view such secondary criteria are unnecessary in a case where the cost of the single primary input has increased significantly and there is a reasonable correlation between cost and price. Of the secondary criteria, Habaş suggests that only two are critical: raw material inventory turnover and finished goods inventory turnover. These two criteria are sufficient to enable the Department to decide whether goods are actually sold within a month or quarter of their production.

In its filings in the *Habaş* appeal, the Department acknowledged the aptness of the analogy between the instant issue and the question of whether the economy of the respondent's country was hyperinflationary. Habaş agrees. This suggests that, if the Department desires a clear numerical test of whether to consider shorter costing periods, it could frame the test as whether the cost of the raw material in question changed at an annual rate of more than 25 percent within any month or quarter of the POI/POR. Thus, in Section A of the questionnaire, the Department might ask:

> Please inform the official in charge if the product under consideration has a single primary input and if the cost of that input changed by more than 25% per annum during any month or quarter of the POI/POR.

A change of this magnitude in a given month or quarter would not compel the use of a shorter cost period, but it would flag whether such costing might be appropriate.

If a shorter costing period is appropriate, the issue is then what period and what cost. In general, Habaş believes that quarterly costing will ensure a close link between cost and price, but that monthly costing may provide too tight a frame for cost and price. For example, if the finished goods inventory turnover period were 20 days, then costs in the third week of the month would be reflected in prices during the next month. Under this scenario, prices during three weeks of the month would reflect costs in the previous month. In the experience of Habaş' counsel, it is unusual to see finished goods inventory holding periods of less than two weeks, and so it would be better to use quarterly cost than monthly cost.

As for methodology, the quarterly calculation of all elements of cost is appropriate, provided that accruals are properly attributed to all quarters. However, in many cases, it will be more convenient, more verifiable, and equally accurate to calculate conversion and packing cost on a POR-average basis, while calculating only DIRMAT for a shorter costing period. This is generally the most practicable approach, in counsel's experience. In countries where the chart of accounts structure is appreciably different from that of the United States, it could be extremely burdensome to calculate full cost on a monthly basis. In these cases, it would be equally accurate and more readily verifiable to calculate conversion costs on a POR basis, and use a shorter period only for raw material cost.

In cases where the Department applies a truncated costing period, the matching period should not exceed the costing period, so that a US sale will be matched to normal value in the same costing period. This mirrors the application in hyperinflation cases.

Respectfully submitted,

David L. Simon / Ayla Önder
Counsel to Habaş