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December 10, 2007

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: 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's October 25, 2007 Federal Register notice (72 Fed. Reg. 60,651) requesting public comments as to the methodology the Department of Commerce ("the Department") should employ in situations where targeted dumping is alleged. Corus notes that the deadline for filing such comments was extended to December 10, 2007. See http://ia.ita.doc.gov/ia-highlights-and-news.html.

The Department's Targeted Dumping Methodology Must Be Derived, in a Principled Manner, from the Rationale for Dealing Differently with Targeted Dumping than with Other Dumping Practices

The concept of "targeted dumping" hinges on the fact that an exporter's practice of dumping, rather than being a general practice in all of that exporter's U.S. sales, is "targeted" at a geographical region, a time period,[1] or at particular customers. Notably, the International Antidumping Agreement and the U.S. statute recognize that a targeted dumping analysis is the exception rather than the rule, since both state that "normally" or "in general" a different analysis will be used. See AD Agreement at Article 2.4.2; see also 19 U.S.C. § 1677f-1(d)(1).

This underlying rationale has a number of consequences for the development of an appropriate methodology for investigations involving allegations of targeted dumping:

First, since this methodology will address dumping within a limited subset of sales, as opposed to generalized dumping, the petitioner must adequately allege the nature of the dumping that gives rise to the petition, including a commercially coherent description of the subset of sales being dumped. Simply claiming that some sales are priced lower than others, which is characteristic of almost all competitive marketplaces, does not define a targeting practice.

Second, at least a general allegation of targeted dumping must be made in the petition. If it is targeted, rather than generalized, dumping that is the concern of the petitioner, the petitioner must clearly 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

[1] As discussed below, Corus believes a sales subset defined by a limited time period poses issues that are more difficult and qualitatively different from customer or region subsets. Therefore, Corus urges that the Department initially develop standards for targeted dumping by region and customer, and then revise those standards at a later date to address targeting by time period.

permitted, in the absence of an initial targeting allegation, to make such an allegation only after reviewing the respondent's questionnaire data. What should also be required, however, after the respondent's data are received, is for the petitioner to further support and particularize its allegations (as discussed in more detail, infra).

Third, since a targeted dumping case aims at dumping limited to a defined subset of sales, use of a targeted dumping methodology is inappropriate where there is not only dumping in the subset, but generalized dumping – perhaps at lower margins – outside the subset. In such a circumstance, a normal dumping methodology is the appropriate course.

Fourth, the volume and value of sales in the subset should not constitute a major percentage of the exporter's total U.S. sales. Corus submits that the subset should constitute no more than 35% of the total U.S. sales.

Fifth, the price differential (i.e., percentage by which prices of sales to the subset are below prices of the exporter's other U.S. sales) must be sufficiently "significant" to make clear the existence of a "targeted" pricing practice. For purposes of alleging targeted dumping in the petition, the average price differential between the targeted and non-targeted sales must be "significant" – at least 20%. For purposes of perfecting the allegation after the questionnaire responses are filed, however, more must be required.

Sixth, in all computations – the weighted average margin within the subset, the weighted average margin for sales outside the subset and the combining of the in-subset and outside-subset average margins – the Department should apply its normal methodologies except to the extent that there is a principled basis for deviating from those normal methodologies. See 19 C.F.R. § 351.404(f)(1), which already reflects such a concept.

Finally, all aspects of the targeted dumping methodology – including questions relating to the use of zeroing – must be consistent with the United States' obligations under the WTO Antidumping Agreement. These obligations mandate, inter alia, a fair comparison, a set of standards for assessing the existence of targeted dumping that does not undermine the exceptional nature of the use of a targeted dumping methodology, and that the calculations and methodologies (including computer programs) used by the Department must be fully transparent.

Comments on Specific Issues Relating to Targeted Dumping

1. There Is No Principled Basis for Zeroing in Any Aspect of a Targeted Dumping Methodology

First, the WTO Appellate Body ("AB") has clearly stated that zeroing is impermissible in any aggregation of margins in an antidumping proceeding. Second, each aspect of the proposed targeted dumping methodology – the computation of a weighted average margin for sales within the subset, the computation of a weighted average margin for sales outside the subset and the aggregation of those two average 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 AB. Unless there is a principled, conceptual basis – not just a "reason" based on text – for determining that a non-zeroed analysis would fail to satisfy the objectives of U.S. law and/or of the Antidumping Agreement, zeroing should not be used in any aspect of the targeted dumping methodology.

2. The Department Should Not, Without Extensive Further Consideration, Use a Targeted Dumping Methodology Where the Allegedly "Targeted" Subset is a Time Period Within the Period of Investigation

Time-based price fluctuations may result from a number of different factors totally unrelated to dumping. For example, there is much greater uncertainty as to whether a lower

price during a limited time period reflects a practice of dumping or whether it is attributable to fluctuations in supply and/or demand, to exchange rate swings, to differences in customer or product mix, product quality or other factors. Moreover, duty imposition in such a case raises serious issues. If the time-based dumping existed over a discrete period and ceased before the end of the period of investigation, should an order be issued even if a non-de-minimis margin results? If an order is issued, would the order be limited to the time period during which dumping was established, i.e., would duties be assessed in each review period only on sales made during the time-defined "subset"? These and other complications render time-based targeting allegations different from the other types of targeting.

3. The Alleged Targeting Must Be Tied to Market Realities

This methodology should not be a vehicle for "target shopping," where a petitioner alleges general dumping and later, upon examining the respondent's questionnaire response, decides that dumping only exists in one or more targeted subsets or a petitioner alleges regional targeting and later, after examining questionnaire data, alleges instead that a few selected customers constitute the real "target." The principle should be that petitioners file cases to address problems they experience in the marketplace and it is not at all unreasonable to require them to define the problem in the petition.

As previously stated, in the petition, the petitioner must allege and show an average price differential between the targeted and non-targeted sales of at least 20%. Within 20 days of receiving the respondent's questionnaire data, however, the petitioner must refine the targeted dumping allegation to provide a specific allegation of a pattern of significant price differences and support for the allegation that the significant price differences cannot be taken into account

using average-to-average or transaction-to-transaction price comparisons. See 19 C.F.R. § 351.414(f)(1). Subsequent to the petitioner's filing of a refined targeting analysis, the respondent must be given 20 days to refute that refined targeted dumping allegation. If the information submitted at that point is insufficient to support a finding of targeted dumping, the Department must terminate the targeted dumping examination and must so indicate in its preliminary determination. Such a two-step approach is generally consistent with the Department'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.

Furthermore, at the later post-questionnaire-response stage, average price comparisons cannot be the only means that the Department utilizes to measure whether "significant price differentials" exist. At this time, the targeted dumping allegation must also demonstrate that the targeted prices are low relative to all prices in the market for this product, that the price differences exceed normal price differences in the market, and that the price differences occur frequently and with regularity. Only then, can a finding of a "pattern of significant price differences" properly be made.

Moreover, the existence of some sales prices that are lower than others cannot, by itself, constitute targeting. Rather, the lower prices must be contained in a subset of sales, defined so that the subset both fits one of the permissible types of targeted dumping subsets (customer,

region) and shows a pattern that reflects a marketing practice by the respondent. Thus, the fact that an exporter charges low prices to one of its six U.S. distributors and to two of its fourteen end users would not constitute "targeting." It is for this reason that the Department has considered the frequency of substantial price deviations as part of its targeted dumping analyses in prior cases. See, e.g., Redetermination on Remand – Final Determination of Sales at Less Than Fair Value Certain Pasta from Italy, Inv. No. A-475-818 at 16 (Dep't of Commerce Aug. 28, 1998) (Remand from the Court of International Trade in Borden, Inc. v. United States, Consol. Court No. 96-08-01970, Slip Op. 98-36 (Ct. Int'l Trade Apr. 1, 1998)).

In addition to the frequency of the alleged targeted sales, the Department should also consider the volume of the targeted transactions. Corus submits that, at a minimum, the targeted sales must constitute at least 20% of a respondent's U.S. sales. A 20% threshold is consistent with the Department's determination in cases involving sales below cost of production, where less than 20% of the sales are below the cost of production; the Department considers all of the sales to be made in the ordinary course of trade. See 19 U.S. C. § 1677b(b)(2)(C). Similarly, if the alleged targeted transactions do not constitute at least 20% of the U.S. sales during the period of investigation, the Department should consider the targeted transactions as being made in the ordinary course of trade, such that targeting has not been established.

Conversely, the targeted subset should not constitute a major portion (by volume or value) of the respondent's overall sales. This is consistent, for example, with the Court's reasoning in Borden, Inc. v. United States, Consol. Ct. No. 96-08-01970, Slip Op. 99-50, 1999 WL 397968 (Ct. Int'l Trade June 4, 1999) ("Borden"), when it stated that "... if the majority of the purchasers are sold goods at less than fair value, the risk that weighted average price

comparisons will mask dumping evaporates." Borden, Slip Op. 99-50, 1999 WL 397968 at *1 n.1. Similarly, where, for example, 60 percent of a respondent's volume is sold at the lower price, it makes no sense to call this a subset, and the Department should simply conduct a normal antidumping investigation. Corus would suggest a rule of thumb that the volume/value outside the targeted subset should be at least 65% of the total volume/value of sales in the market. Such a rule would be consistent with the Department's interpretation of the "exceed substantially" language regarding the special rule for simplified reporting of U.S. sales of merchandise with value added after importation. See 19 U.S.C. § 1677a(e) and 19 C.F.R. § 351.402(c). Thus, Corus contends that the targeted subset must constitute at least 20% but not more than 35% of a respondent's U.S. sales.

Furthermore, the percentage by which the in-subset price is less than the exporter's non-subset prices or overall weighted average price should be sufficient so that it clearly evidences a practice of discriminatory pricing. Moreover, use of a targeted methodology where the differential is small creates the risk of an exercise in futility, owing to the effect of the de minimis principle. Thus, where the targeted subset represents 20 percent of the respondent's total U.S. sales, any differential less than 10 percent will result in a de minimis determination when the 10 percent subset margin is spread over all the respondent's U.S. sales. Corus suggests that a minimum 20% differential would be a good rule of thumb.[2] The 20% test is consistent

[2] The differential employed by the Department in the recent coated paper case, of 2%, (see Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, Inv. No. A-580-856, 72 Fed. Reg. 60,630, Issues and Decision Memorandum at Cmt. 3 (Dep't of Commerce Oct. 25, 2007), is unworkable, even for a commodity product, because it does not allow for normal market pricing differences that occur, for example, between the mid-Atlantic region, known for higher prices, and other regions where prices are typically lower. Notably, federal government salary scales and price indices recognize

with the Department's normal DIFMER cap and the statutory 20% cost test rule. That is, the Department normally will not compare products where the difference in cost between the two is greater than 20% because such a difference is considered great enough to render the products dissimilar. For there to be a significant price differential so as to show a pattern of dissimilar pricing, Corus suggests a 20% threshold is also appropriate. Likewise, if 20% or more of a respondent's home market sales of a product are below cost, the Department will disregard sales of that model (see 19 U.S.C. § 1677b(b)(2)(C), defining substantial quantity as 20% or more); if fewer than 20% are made at below cost, all of the sales of that model will be used. In other words, less than a 20% deviation is considered to be sufficiently normal as to render the transactions within the ordinary course of trade.

Corus also submits that a price differential of less than 20% is normal and ordinary and cannot establish targeting, particularly where the Department'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). This is

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such phenomena. Moreover, the Department's justification for use of the 2% rule – i.e., its use in the 98-102 arm's length test – is inapposite with respect to targeted dumping. The antidumping law presumes that sales to affiliates are at "suspect" prices – only if a respondent can rebut that presumption, by demonstrating that the sales to affiliates are at prices comparable to prices to others, will that presumption be discarded and the sales used. Under such circumstances, perhaps a narrow tolerance can be justified (although Corus does not support the 98-102 tolerance). As to targeted dumping, however, there exists no presumption, and dissimilarity must be shown, not similarity. It therefore does not follow that, if a 2% or less deviation proves comparability, that a deviation of more than 2% proves a significant difference or targeting. Further, because the statute disregards margins below 2% as de minimis, and thus establishes 2% as a baseline for when dumping will found, this does not mean that a dumping margin of 3%, for example, is significant. The existence of a measurable difference does not establish a pattern of significant differences.

frequently the case where the Department establishes product characteristics based on ranges of data rather than a specific data element.

The product characteristics and resulting CONNUMs defined by the Department in the Hot-Rolled Carbon Steel Flat Products from the Netherlands antidumping investigation and administrative reviews, in which Corus was a respondent, exemplify this issue. 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 the Department's product characteristics (i.e., the CONNUM) because the Department'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) (excerpt attached hereto at Tab 1) (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 (excerpt attached at Tab 2) (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.

Similarly, there may be price parameters that are not in any way reflected in the Department's product characteristics and, therefore, may and may not be reflected in every CONNUM. For example, depending on the amount of hot-rolled product contained in the individual coils sold by Corus to a particular customer, additional "extra" charges may also apply which are not captured by the CONNUM. See Corus Strip Products IJmuiden, Price List at 8 (2004) (excerpt attached hereto at Tab 1) (coil price extras of 10 Euro for quantities between 25

and 50 tonnes). If, therefore, individual customers prefer to or have to work with larger rolls, the prices of these rolls would reflect this extra charge. When the prices of "normal" sized rolls are compared to the prices of these larger rolls, the normal rolls erroneously will appear to be sold at a reduced or "targeted" price. These are just two examples of price differences resulting from the particular product mix within a CONNUM – price differences that cannot be cured by a DIFMER adjustment since the products exist within the same CONNUM and, therefore, are considered identical by the Department.

Because the purchasing patterns (including product specifications such as width, etc.) of customers tend to be repetitive and, may be unique to an individual customer, significant price differentials may exist for specific customers for reasons totally unrelated to targeting. Similarly, in some instances, products may vary slightly due to the geographic area in which they are sold, resulting in price differentials due to the product variations within a CONNUM, and not at all related to targeted dumping. These issues exist in various degrees for every product and industry that the Department examines, regardless of whether the product is a commodity product or made to order, or a combination of the two. Accordingly, the adoption of a deviation of at least 20% or greater by the Department is necessary to avoid findings of targeted dumping based on factors completely independent of any actual targeting.

Further, a targeted dumping analysis is not appropriate where dumping exists outside, as well as inside, the targeted subset. See Borden, supra; and Memorandum to File Re: Remand on Pasta from Italy, Delverde Revised Targeted Dumping Remand Procedures (Dep't of Commerce Aug. 20, 1998). The concept of targeting is to identify dumping where it is limited to a subset of the overall market, not to increase the overall margin where dumping occurs throughout the U.S.

market. This is obvious from the Department's regulation which provides for a targeted dumping analysis only where the normal methodologies do not take into account the targeted price differentials. See 19 C.F.R. § 351.414(f)(ii). Where dumping consistently exists throughout the entire universe of U.S. sales, the "targeted dumping" will necessarily be taken into account by anyone's standards.

Use of a targeted dumping analysis is not a basis for the Department to depart from its normal principles of calculation. Any such departure must be justified by some reasoned basis for determining that the normal principle or technique is inappropriate in the context of targeted dumping. See 19 C.F.R. § 351.414(f). In particular, the fact that the statute (as well as the Antidumping Agreement) permits the use of an average-to-transaction methodology in computing the in-subset weighted average margin does not mean that the Department should use anything other than the average-to-average methodology. The Department has determined that average-to-average is the method that should normally be used in investigations. It should not depart from that methodology in an investigation computation unless it can give a reasoned explanation of what it is about the average-to-average method that makes it inappropriate in a targeted dumping computation. The Department's current regulations correctly recognize this principle.

Furthermore, in determining whether a price difference exists that is sufficiently significant to warrant use of the targeted dumping methodology, the Department should compare U.S. prices that are as nearly contemporaneous as possible. A "window" that is as narrow as practicable should be used. Moreover, the Department should assure itself that no event within

that window – exchange rate fluctuation, shift in supply and demand, change in or nature of product or customer mix, etc. – contributes to the price difference.

Conclusion

All elements of the targeted dumping methodology should be structured so as to effectuate the purpose of such a methodology – that is, to enable the Department to identify and measure dumping that is not country-wide, but rather, is limited to one of the statutorily identified subsets. Targeted dumping is not a means for artificially increasing dumping margins. Most importantly, it must not be designed as a vehicle for permitting otherwise-impermissible zeroing. To avoid any possible inference that this is the case, the Department must clearly explain, as to each respect in which its targeted dumping methodology differs from the methodology used in a country-wide investigation, why that difference is necessary to achieve the objective of identifying and measuring dumping that is limited to a subset of the respondent's total U.S. sales. The statute and the Department's current regulations contemplate such a rigorous examination before a targeted dumping methodology may be used.

Respectfully submitted,

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Counsel for Corus Staal BV

TAB 1

corus

Corus Strip Products IJmuiden

Price list

Valid from 1 April 2004

Hot Rolled Strip Products

1. Extras for reduced tolerances

1.1 Reduced tolerances to EN 10051		euro/t
Thickness	tolerances 3/4 EN 10051	-
	reduced tolerances 1/2 EN 10051	15,00
Width		15,00
Cut back to gauge		on request

2. Extras for special thicknesses

If a transfer in thickness tolerance in one direction is specified, the calculation of the size extra is based on the resultant average dimension.

3. Extras for Lasergrade quarantee

3.1 Lasergrade	euro/t
1,50 mm - 6,35 mm thickness	5,00
6,35 mm - 8,00 mm thickness	10,00

Please consult CSPY's commercial department for information about Lasergrade qualities.

4. Extras for small quantities/coils

4.1 Quantity in tonnes	euro/t
25 < 50	10,00
> 50	-

The minimum quantity that can be ordered is 25 tonnes.

4.2 Coil weights				euro/t
	Width in mm			
	600<800	800<1100	1100<1500	≥1500
Coil weight in tonnes				
5 < 10 ton	upon request	30,00	30,00	35,00

Coil weight price extras apply unless the specified coil weight is the result of technical limitations at CSPY.

Coils under 5 ton in weight not supplied.

These rates apply to orders from one customer for quantities of one size (width, thickness) and grade for delivery in one consignment to one destination.
Specified coil weights must be in balance with the ordered quantity.

4.3 Welds	euro/t
If recoiling welds are not accepted	3,00

5. Extras for special heat analysis

5.1 Low S-content	euro/t
Maximum 0,015 %	16,00
Maximum 0,008 %	21,00
Maximum 0,005 %	25,00

TAB 2

"4" ≥ 0.06" but < 0.09";
"5" ≥ 0.09" but < 0.180";
"6" ≥ 0.180" but < 0.250";
"7" ≥ 0.250" but < 0.50";
"9" ≥ 0.50".

CSBV is reporting the nominal thickness for each transaction using the specified codes.

FIELD NUMBER 3.6: Width

FIELD NAME: WIDTHU

DESCRIPTION:
"1" < 8.0";
"3" ≥ 8.0" but < 24.0";
"6" ≥ 24.0" but < 40.0";
"7" ≥ 40.0" but < 72.0";
"8" ≥ 72.0" but <96.0";
"9" ≥ 96.0".

Using these codes, CSBV will report the width of the material sold to its unaffiliated U.S. customers.

FIELD NUMBER 3.7: Cut-to-Length vs. Coil

FIELD NAME: COILU

DESCRIPTION:
"1" Cut-to-length;
"2" Coil.

A code "2" will be reported for all U.S. sales.

FIELD NUMBER 3.8: Temper Rolled

FIELD NAME: TEMPERU

DESCRIPTION:
"1" Temper rolled or skin passed;
"2" Not temper rolled or skin passed.

CSBV will report in accordance with the specified codes.