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Secretary of Commerce
Attention: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Antidumping Methodologies in Proceedings Involving Significant Cost Changes Throughout the Period of Investigation / Period of Review that May Require Using Shorter Cost Averaging Periods

Dear Secretary Gutierrez:

On behalf of United States Steel Corporation ("U.S. Steel"), we hereby respond to the Department's request for comments on methodologies to be used in antidumping proceedings where there are significant cost changes during the period of investigation ("POI") or period of review ("POR") and whether such changes should require cost averaging periods that are shorter than the POI or POR.[1]

As a preliminary matter, there are two key points that should be made. First, U.S. Steel fully agrees with the Department's assessment that in the overwhelming majority of cases the Department should adhere to its established practice of using the entire POI or POR as the proper

1 See Antidumping Methodologies in Proceedings Involving Significant Cost Changes Throughout the Period of Investigation (POI) / Period of Review (POR) that May Require Using Shorter Cost Averaging Periods, 73 Fed. Reg. 26364 (Dep't Commerce, May 9, 2008) (request for comments).

averaging period for the calculation of the cost of production. The use of shorter averaging periods , even though there are documented fluctuations in costs, should be extremely rare.[2] The reason for this is that by following the normal practice of calculating costs over a longer period of time, such as the year-long POI/POR, the Department can "smooth out the effect of fluctuating costs and obtain a more accurate cost calculation."[3] Indeed, the statute itself already provides allowances in order to smooth out cost fluctuations that occur during the annual period.[4] In addition, most respondents employ accrual accounting so as to systematically and evenly recognized sporadic costs throughout the period of a year or more.

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2 Final Results of Determination Pursuant to Court Remand, Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. v. U.S., Court No. 05-00613 (Ct. Int'l Trade March 3, 2008) ("Final Results of Remand Determination") at 5 ("{t}he Department has . . . adopted a consistent and predictable approach in using annual-average costs over the entire POR – the result being a normalized average production cost to be compared to sales prices covering the same extended period") and at 14 (the Department's resort to shorter cost-averaging periods is an exception that has been "rarely granted").

3 Issues and Decision Memorandum in Stainless Steel Sheet and Strip in Coils from France, 71 Fed. Reg. 6269 (Dep't Commerce Feb. 7, 2006) (final results) at 5 (citing Certain Steel Concrete Reinforcing Bars from Turkey, 70 Fed. Reg. 67665 (Dep't Commerce Nov. 8, 2005) (final results) ("Rebar from Turkey"), and stating that in that case, the Department "used annual average costs in order to even out swings in the production cost experienced by the respondent over short periods of time").

4 See, e.g., 19 U.S.C. § 1677b(b)(2)(C) (2000) (requiring that sales for any given product model not be disregarded as below the cost of production unless at least 20% of the total volume of such product is sold at below cost prices); Id. § 1677b(b)(2)(D) (providing that even though sales are made below the per unit cost of production at the time of the sale, such sales will not be disregarded if they are above the weighted average cost of production for the POI/POR); Id. § 1677b(f)(1)(B) (providing that the Department make an adjustment for nonrecurring costs that benefit current or future production).

Second, the burden of establishing the factors necessary for a shorter cost averaging period should fall squarely on the party seeking such treatment. This rule is consistent with both the Department's regulations and longstanding practice. [5]

U.S. Steel's responses to the Department's specific questions are set forth below.

1. Are there other factors relevant to the consideration of whether and when to rely on shorter cost averaging periods besides significant cost changes and the linking of sales and costs during the same shorter period? If so, identify the factor(s) and explain in detail why such factor(s) should be considered.

Yes, the Department should consider at least one additional factor. In addition to showing significant cost changes and the linking of sales and costs during the shorter period, a party seeking shorter cost periods should also be required to demonstrate that the cost variations at issue are both unusual and unforeseeable. [6] The antidumping law recognizes that where costs are not ordinary or anticipated, certain allowances can properly be made and such costs can be afforded special treatment.[7] On the other hand, where costs are typical for the industry involved, the standard methodologies should be used. This principle should be applied to cost swings during a reporting period. Where cost variations are foreseeable, there is a presumption that a

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5 See Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. 7308, 7329 (Dep't Commerce Feb. 27, 1996) (referring to the Department's "longstanding practice of requiring parties claiming an adjustment to provide sufficient support for that claim", citing Timken v. United States, 673 F. Supp. 495, 513 (Ct. Int'l Trade 1987)); see also 19 C.F.R. § 351.401(b)(1) (2008) ("The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment").

6 See, e.g., Final Results of Remand Determination at 11 (rejecting respondent's request for shortened cost averaging periods where the cost fluctuations at issue were "not unusual or significant").

7 See, e.g., 19 U.S.C. § 1677b(f)(1)(B) and (C) (2000) (providing special treatment for costs relating to nonrecurring items and start-up operations).

producer should factor such variations into its pricing decisions. The Department has held that most costs are reasonably foreseeable.[8] Therefore, where costs swings are reasonably anticipated, it is appropriate to compare prices to annualized costs.

Accordingly, significance and linkage alone are not enough. Even though cost changes throughout the period may be deemed significant, a party should also have to demonstrate that such changes are both unusual and unforeseeable.

2. How should the significant cost changes factor be analyzed and what numeric threshold should we rely upon as a basis for resorting to shorter cost averaging periods? Provide the basis for your suggested threshold number. Should the nature of the industry (e.g., steel, consumer electronics, perishable products, etc.) affect the analysis? If so, explain in detail how the analysis would be affected?

The significant cost changes factor should be analyzed on a case-by-case basis. Clearly, to qualify as "significant," the percentage change in costs must be very high.[9] In U.S. Steel's view, however, it would be inappropriate for the Department to establish a numerical "bright-line" threshold. The reason for this is that each case must be analyzed on its own facts relating to the industry involved, the relevant market conditions and a respondent's individual accounting

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8 See, e.g., Hot-Rolled Carbon Quality Steel from Japan, 64 Fed. Reg. 24329 (Dep't Commerce May 6, 1999) (final.determ.) (Comment 26) (where the Department included the cost of a blast furnace accident in respondent's cost of production even though the respondent had never experienced such an accident before because "industrial accidents are neither unusual nor unforeseen for steel producers").

9 See Issues and Decision Memorandum in Carbon and Certain Alloy Steel Wire Rod from Canada, 71 Fed. Reg. 3822 (Dep't Commerce Jan 24, 2006) (final results) at Comment 5 (rejecting a shortened cost averaging period where there were no "drastic cost and price changes" and finding that a 12% change in costs was not significant); Thai Pineapple Canning Industry Corp. v. U.S., 273 F. 3d 1077, 1081 (Fed. Cir. 2001) at n.1 (finding a 50% change is costs to be significant).

practices. Indeed, the Department has applied numerical standards on a case-specific basis and should continue to do so.[10]

As indicated, the specific industry at issue, and industry practices and expectations, should definitely bear on the Department's analysis. A cost fluctuation percentage may be deemed highly significant in one industry, whereas it would be considered typical and insignificant in another industry.

3. How should the correlation between prices and shorter cost averaging periods be analyzed to reasonably assess that the prices and shorter period average costs are accurately linked?

It is imperative that there be a direct and fully demonstrable correlation between costs and home market sales prices in the proposed cost averaging period. This element is critical. Without such a direct and demonstrable correlation - - regardless of the magnitude of the cost fluctuations - - the use of a shorter cost averaging period could actually engender distortion instead of creating greater accuracy. As the Department explained in Rebar from Turkey,

> Even if we considered the fluctuation in manufacturing costs to be significant enough to adopt a shorter cost averaging periods, . . . simply comparing costs and sales prices occurring in the same quarter does not make the result any more accurate. Without a direct link between the input raw material costs and the directly related sales transactions, . . . there is no certainty that in adopting the respondents quarterly cost approach, sales occurring in a given quarter are directly the result of the recorded raw material costs for the same quarter. As such, deviating from our normal practice in an attempt to make a more accurate comparison of sales prices and costs may well result in a

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10 See, e.g., Issues and Decision Memorandum in Steel Concrete Reinforcing Bars from Latvia, 71 Fed. Reg. 7016 (Dep't Commerce Feb. 10, 2006) (final results) at Comment 1 (rejecting proposed use of abbreviated cost averaging periods where respondent contended that raw material costs increased in some instances by as much as 231% to 320%).

> comparison that is less accurate due to the many factors that influence a fair comparison of production and sales.[11]

An example of an appropriate and direct linkage is found in Brass Sheet and Strip from the Netherlands. There, the respondent accounted for its metal purchases as a "pass-through item" in the normal course of business, and the cost of the metal could be linked to the respondent's sales of the foreign like product on customer invoices.[12] As a result, the Department could establish that the sales prices in the shorter cost averaging period were properly matched to the shorter period costs.

4. Should it matter whether costs are trending consistently up, consistently down, or up and down throughout the POI/POR in the decision to use shorter cost averaging periods? Explain in detail why or why not.

The Department should not use shortened cost averaging periods where costs are trending in different directions throughout the period. As the Department has recognized, the very purpose of using an annual period is to smooth out cost changes that occur during the period. In Stainless Steel Sheet and Strip in Coils From France,[13] the Department stated that "{b}y following our normal practice of calculating costs over a longer period of time, the Department can smooth out the effect of fluctuating costs and obtain a more accurate cost calculation". In

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11 Issues and Decision Memorandum in Rebar from Turkey, 70 Fed. Reg. 67665 (Dep't Commerce Nov. 8, 2005) (final results) at Comment 1.

12 Brass Sheet and Strip from the Netherlands, 65 Fed. Reg. 742, 747 (Dep't Commerce Jan 6, 2000) (final results).

13 Issues and Decision Memorandum in Stainless Steel Sheet and Strip in Coils From France, 71 Fed. Reg. 6269 (Dep't Commerce Feb. 7, 2006) (final results) at 5.

addition, trends in costs may be reasonably foreseen by industry participants and thus incorporated in a respondent's pricing decisions over the course of a year.

5. **If shorter cost averaging periods are used based on the argument that it is distortive to rely on a single average cost when costs have changed significantly throughout the year, should the recovery of cost test be modified in any way? That is, should sales that are below the shorter costs averaging period still be considered to provide for the recovery of costs within a reasonable period time if they are above the annual average cost? See section 773(b) (2) (D) of the Act.**

In the past, where shortened periods have been employed, the Department has required a respondent to forgo the application of the recovery of costs period specified in section 773(b)(2)(D).[14] Such a rule should plainly be applied where shortened cost averaging periods are employed. Once a respondent has demonstrated to the Department's satisfaction that shortened cost averaging periods should be used, it would not then be meaningful to compare prices to annual costs to assess the recovery of costs.

6. **To what extent should the costs from the window periods in reviews affect the overall analysis?**

Such costs should have no effect. It is the Department's practice to analyze costs incurred during the POR. Fluctuations in costs that occur outside the POR should not be considered.

7. **If we were to gather information at the outset of every segment of a proceeding in order to determine early on whether a respondent needed to provide cost information for shorter cost averaging periods, what information should we request? Provide specific questions that could be incorporated into the section A questionnaire.**

The Department is correct that this is an issue that should be raised in the early stages of any investigation or review. However, U.S. Steel does not agree that the Department should

[14] See, e.g., Certain Pasta from Turkey, 66 Fed. Reg. 34410 (Dep't Commerce June 28, 2001) (prelim. results); unchanged in final, 67 Fed. Reg. 298, 299 (Dep't Commerce Jan. 3, 2002) (using same treatment for sales below cost).

include questions relating to this issue in its questionnaires. As previously noted, the Department should not establish a numerical threshold for significance. Therefore, the eligibility for this exception will depend on facts that are unique to each respondent in each case. As such, the Department's analysis does not lend itself to specific questions. Moreover, while fluctuations in costs are normal in almost every case, the use of shorter cost reporting periods is a rare exception to the general rule. It does not make sense from an administrative stand point for the Department to have to analyze this issue in practically every case.

U.S. Steel does believe, however, that it should be incumbent on the respondent to raise this issue as early as possible during an investigation or review. Indeed, the Department should not permit this issue to be raised by a respondent subsequent to the filing of its first response to the Department's cost questionnaire. This is necessary to ensure that the Department and the parties have sufficient opportunity to analyze this issue and obtain all necessary information. It goes without saying that in every case - - even where the issue of a shortened cost averaging period is raised - - a respondent must be required to provide complete answers to all of the Department's questions regarding the computation of cost on an annualized POI/POR basis.

8. **Should shortening the cost averaging period affect price comparisons? For sales comparison purposes, should prices be compared across cost-averaging periods?**

No, shortening the cost averaging period should not affect price comparisons. The statute and the Department's regulations define contemporaneity for sales comparison purposes and provide other guidance as to how sales in the home market should be compared to U.S. sales.[15]

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[15] See 19 U.S.C. § 1677b(a)(1)(A) (2000) (providing that normal value shall be the price of merchandise sold in the home market "at a time reasonably corresponding to the time

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The purpose of a shortened cost reporting period is to permit a more accurate cost test so that sales are not improperly included or excluded from the pool of home market sales that can be matched to U.S. price. Once the sales below cost test is performed, the price comparisons should take place in accordance with the Department's normal practice.

Respectfully submitted,

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of the sale" used to determine U.S. price); Id. § 1677(16) (providing for the selection of the foreign like product to be compared to subject merchandise).