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Docket No. ITA-2010-0011

February 18, 2011

Mr. Ronald K. Lorentzen  
Deputy Assistant Secretary for Import Administration  
Room 1870  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20230

**Re: Regulation Identifier Number (RIN) 0625-AA87, 75 FR 81,533-36  
(December 28, 2010): Comments of the American Iron and Steel  
Institute**

Dear Mr. Lorentzen:

These comments are presented on behalf of the U.S. member companies of the American Iron and Steel Institute ("AISI") in response to the Department of Commerce's ("Department") December 28, 2010 notice proposing modification to the "calculation of the weighted average dumping margin and assessment rate in certain antidumping duty proceedings."<sup>1</sup>

**Introduction**

AISI's U.S. member companies represent 80 percent of the steel produced annually in the United States. On behalf of our members and the thousands of men and women that they employ, AISI is committed to the vigorous enforcement of the fair trade laws of the United States. The Department's current proposal to alter its dumping margin calculation to eliminate the practice of "zeroing" in administrative reviews will seriously weaken these laws by masking the full effects of injurious dumping by foreign producers and exporters.

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<sup>1</sup> Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 Fed. Reg. 81,533 (proposed Dec. 28, 2010).

**1. Implementing the Proposed Rule Will: Impose Upon the United States an Obligation that Does Not Exist; Weaken Domestic Trade Laws; Mask the True Extent of Dumping; and Hinder the U.S. Government's Ability to Adequately Remedy Injury to U.S. Producers Caused by Unfair Trade Practices**

The U.S. government has long denounced the WTO Appellate Body rulings on the issue of zeroing as a gross misreading of the General Agreement on Tariffs and Trade 1994 ("GATT") and of the Agreement on the Implementation of Article VI of the GATT 1994 ("Antidumping Agreement"), and as inconsistent with WTO Members' obligations under these agreements. In fact, U.S. government officials have explicitly stated that these Appellate Body findings impose obligations on WTO member countries that were never incorporated into the Antidumping Agreement, and were vehemently opposed by the U.S. government during the Uruguay Round of international trade negotiations.<sup>2</sup>

The U.S. government's position on this issue has been consistent over the past decade, with Administration officials and Members of Congress -- of both parties -- opposing the Appellate Body's overreach and incorrect interpretation. The various Appellate Body rulings on the issue of zeroing have been repeatedly criticized as erroneous interpretations of the text of the Antidumping Agreement, and as rulings that will: (1) create obligations that do not exist under the Antidumping Agreement; (2) weaken domestic trade laws and remedies; (3) mask the real extent of dumping; and (4) hinder the ability of the U.S. government to adequately remedy injury to domestic producers.<sup>3</sup> In sum, eliminating zeroing, a practice that is consistent with the WTO agreements and U.S. law, will effectively defeat the very purpose of the Antidumping Agreement, which is to provide a full and fair remedy to unfair trade practices.<sup>4</sup> The Department

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<sup>2</sup> See, e.g., Letter from Eric I. Garfinkel, Fmr. Asst. Sec. of Commerce for Import Adm. (1989-1991), and Alan M. Dunn, Fmr. Asst. Sec. of Commerce for Import Administration (1991-1993), to the Sec. of Commerce and the U.S. Trade Representative (June 20, 2005) ("Despite the successful effort to prevent any provision in the Antidumping Agreement that would prohibit 'zeroing,' the WTO AB concluded that the Antidumping Agreement does prohibit 'zeroing.' This interpretation of the Agreement creates an obligation to which the U.S. did not agree, and, even more disturbing, it imposes upon the U.S. an obligation that the U.S. affirmatively opposed and successfully prevented from being incorporated into the WTO Antidumping Agreement.").

<sup>3</sup> Letter from Sens. Rockefeller, Baucus, Craig, Durbin, Crapo, Byrd, Voinovich, Conrad, Graham, Bayh, and Dole to the Sec. of Commerce and the U.S. Trade Representative (Dec. 11, 2006) ("Implementing the decisions of the Appellate Body on 'zeroing' would result in a dramatic weakening of the antidumping laws. Dumped sales would be masked by non-dumped sales. Unfair trade would go undetected and without remedy. Opponents of fair trade would have achieved through litigation what the U.S. would never agree to in negotiation or through litigation: the evisceration of the antidumping remedy. This cannot be permitted.").

<sup>4</sup> See, e.g., Parties' Comments on the Appellate Body Report in *U.S. Stainless Steel (Mexico)(DS344)*, ¶ 11, WT/DS/350/R ("[T]he Appellate Body's findings have no sound basis in the text of the agreements . . . [T]he Antidumping Agreement . . . reflects a balance of interests negotiated by the Members. When the Appellate Body

should not adopt such a rule, particularly in light of the explicit and consistent opposition from successive U.S. Administrations and Congresses.

## **2. The Department Should Not Proceed with this Rulemaking Before the Outcome of the Ongoing Doha Negotiations is Known**

The issue of zeroing is currently being addressed in the ongoing WTO Doha Round negotiations.<sup>5</sup> Congress has urged the Administration not to sign on to any agreement or protocol arising out of the ongoing trade negotiations that lessens the effect of our current trade remedies.<sup>6</sup> Further, any fundamental change to the rights and obligations of WTO Members should arise only out of negotiations and mutual agreement, rather than out of interpretation in the course of dispute settlement. As such, the Department should not adopt any changed methodologies until the outcome of the Doha trade negotiations is known. This will ensure that the Department does not implement a rule based on an erroneous interpretation of U.S. obligations under the agreements.

## **3. If, in Spite of the Negative Impacts, the Department Proceeds to Adopt the Proposed Rule, it Should Ensure that Any Resulting Methodology Captures and Remedies the Effects of All Dumping Activity**

As described above, the implementation of the adverse Appellate Body rulings on zeroing will: undermine the purpose of the antidumping laws as a means of addressing injury to domestic producers caused by dumping; weaken the existing trade regime; and defy the policy of successive Administrations and Congresses. Notwithstanding all of this, if the Department chooses to proceed with the proposed rule, AISI urges: that it be creative and flexible in its approach; that it, on a case-by-case basis, employ methodologies that will allow it to effectively capture and address *all* dumping practices; and that it implement additional antidumping policies and practices that

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alters the negotiated balance, it acts beyond its authority and jeopardizes Members' confidence that the bargains that are negotiated are the bargains that will be respected.”).

<sup>5</sup> See Proposal from the United States, Proposal on Offsets for Non-Dumped Comparisons, TN/RL/GEN/147 (June 27, 2007); Letter from Chairmen of the House Ways and Means Committee and Trade Subcommittee to the Secretary of Commerce and the U.S. Trade Representative (Nov. 14, 2007) (“We appreciate the Administration’s sharp criticisms of these so-called ‘mandatory offsets’ or ‘zeroing’ decisions, and we welcome the proposal . . . submitted in the Rules Group to clarify what WTO rules provide. That proposal would clarify the rights of WTO Members with respect to both antidumping investigations and administrative reviews, and it is hard to imagine Congress approving any final package that fails to include this essential clarification.”).

<sup>6</sup> S. Conc. Res. 55, 109th Cong. (2005) (“[I]t is the sense of the Congress that . . . the United States should not be a signatory to any agreement . . . with respect to the Doha Development Round of the [WTO] negotiations . . . that— (A) adopts any proposal to lessen the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions . . .”).

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preserve the *full effectiveness* of our antidumping laws. In this regard, AISI endorses the comments submitted by the Committee to Support U.S. Trade Laws (CSUSTL).

There is nothing in the Appellate Body rulings or in the Antidumping Agreement that requires the Department to adopt the average-to-average approach in administrative reviews. In fact, the United States has previously ensured that other methodologies are acceptable under the current trade regime. The Department should not unreasonably confine itself to a single one-size-fits-all approach. An average-to-average approach could be somewhat beneficial in some cases. However, in other instances, other approaches may be more effective at unmasking the harmful effects of dumping. Thus, maintaining maximum flexibility in the review process will allow the Department to remedy every instance of dumping, irrespective of whether the foreign producer/exporter also engages in non-dumped selling.

### Conclusion

The Department should not adopt the proposed rule, because it will seriously undermine the purpose of the Antidumping Agreement and will impose on the United States an obligation that does not exist under the WTO agreements. Any determination that zeroing cannot be employed during antidumping administrative reviews should be the result of negotiations and an agreement among countries, rather than an obligation forced upon them. If, however, the Department chooses to move forward with the proposed rule, it should ensure that it provides itself with maximum flexibility to account for and remedy the effects of *all* dumping practices engaged in by foreign producers and implement additional antidumping policies and practices that preserve the *full effectiveness* of our antidumping laws.

On behalf of AISI's U.S. member companies, we thank you for the opportunity to submit these comments.

Sincerely,



Kevin M. Dempsey  
Senior Vice President, Public Policy  
and General Counsel  
American Iron and Steel Institute