

August 8, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Import Administration, Group II

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review: Iron Construction Castings from Canada -
March 1, 2000 through February 28, 2001

Summary

We have analyzed the comments of interested parties in the antidumping duty administrative review of iron construction castings from Canada for the period March 1, 2000 through February 28, 2001. As a result of our analysis, we made no changes to the margin calculation. We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum for these final results.

Below is the complete list of issues in this administrative review for which we received comments from parties:

1. Negative Dumping Margins
2. Application of Cash Deposit and Assessment Rates

Background

On April 10, 2002, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on iron construction castings from Canada. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada, 67 FR 17358. The period of review (POR) is March 1, 2000 through February 28, 2001.

We invited interested parties to comment on our preliminary results of review. In response to this invitation, respondent, Canada Pipe Company, Ltd. (Canada Pipe) filed a case brief on May

10, 2002. No other interested party submitted case or rebuttal briefs.

Discussion of the Issues

Comment 1: Negative Dumping Margins

Canada Pipe contends that the Department should not set negative weighted-average margins on specific sales to zero in calculating its overall weighted-average margin. Canada Pipe notes that the WTO Appellate Body found a procedure analogous to the Department's practice of setting negative weighted-average margins to zero to be inconsistent with Article 2.4.2 of the WTO Agreement on Implementation of Article VI of GATT 1994 (Antidumping Agreement). See European Communities – Antidumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001). While Canada Pipe concedes that WTO decisions are not binding on U.S. law, it contends that these decisions are not to be ignored. See Luigi Bormioli Corp. v. United States, 118 F. Supp. 2d 1345, 1350 (C.I.T. 2000) (holding that "GATT determinations, while lacking the enforceability of domestic law, should nevertheless not be ignored"). Further, Canada Pipe states that nothing in the Tariff Act of 1930, as amended, (the Act) explicitly requires the Department to set negative weighted-average margins to zero and absent express Congressional language to the contrary, the Act should not be interpreted to conflict with international obligations. See Federal Mogul Corp. v. United States, 63 F.3rd 1572, 1581 (Fed. Cir. 1995) (indicating that an interpretation of antidumping law consistent with U.S. international obligations is preferred over one that is not). Additionally, Canada Pipe notes that the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act specifies that "[t]he Agreement on Implementation of Article VI (Antidumping Agreement or Agreement) provides substantive and procedural rules for the conduct of antidumping investigations." See H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. at 807 (1994). Thus, Canada Pipe argues, that Article 2.4.2 of the Antidumping Agreement should be regarded as a substantive and procedural rule for the conduct of U.S. antidumping proceedings.

Finally, Canada Pipe states that if the Department discontinued its practice of setting negative weighted-average margins to zero, it would have no dumping margin.

Department's Position:

We disagree with Canada Pipe and have not changed our calculation of the weighted-average dumping margin (aggregate dumping margin) for the final results. Non-dumped sales are included in the weighted-average margin calculation as just that - sales with no dumping margins. The value of such sales is included in the denominator of the weighted-average margin calculation along with the value of dumped sales. We do not, however, allow non-dumped sales to cancel out dumping determined to be present on other sales.

This methodology is required by U.S. law. The statute defines “dumped” and “dumping” as “the sale or likely sale of goods at *less than* fair value,” and “dumping margin” as “the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” See section 771(34) and (35)(A) of the Act (emphasis added). Thus, the plain language of the statute directs the Department to alleviate dumping by looking only to those sales where the price in the U.S. market falls below the price in the comparison market.

The statute defines the “weighted average dumping margin” at issue here as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” See section 771(35)(B) of the Act. Because “dumping margin” is defined as the amount by which the normal value *exceeds* the export price or constructed export price of the subject merchandise the statute clearly directs the Department to consider only the sum of the margins of sales for which normal value exceeds U.S. price when it determines the weighted-average dumping margin (the aggregate dumping margin) for each exporter.

With respect to the respondent’s WTO-specific arguments, we consider that U.S. law is fully consistent with our WTO obligations. See SAA at 669.

Comment 2: Application of Cash Deposit and Assessment Rates

Canada Pipe notes that it has separately filed a request for a changed circumstances review and requests that the Department ensure that the cash deposit and assessment rates calculated in these final results apply to both Canada Pipe as well as its unincorporated divisions¹.

Department’s Position:

We are issuing the final results of our changed circumstances review of Canada Pipe concurrently with these final results. In the final results of the changed circumstances review, we found that during the period covered by the Department’s 99-00 antidumping duty administrative review of the order on iron construction castings from Canada (March 1, 1999 through February 29, 2000), the Laperle, Grand Mere, and Bibby Ste Croix foundries, which previously had been owned by various legal entities named as respondents in prior segments of this proceeding, were unincorporated foundries owned by Canada Pipe Company Ltd. We also found that the antidumping duty deposit and assessment rates calculated in the 99-00 antidumping duty administrative review of Canada Pipe Company Ltd. should be applied to Canada Pipe Company

¹ The changed circumstances review involves the issue of whether Canada Pipe’s cash deposit and assessment rates from the antidumping duty administrative review covering the period March 1, 1999 through February 29, 2000 apply to Canada Pipe’s unincorporated foundries.

Ltd, including its unincorporated foundries, Laperle, Grand Mere, and Bibby Ste-Croix. During the period covered by this review, the Laperle, Grand Mere, and Bibby Ste-Croix foundries were owned by Canada Pipe and their U.S. sales of subject merchandise were reviewed in this segment of the proceeding. Thus, we find that the antidumping duty deposit and assessment rates calculated in this review should be applied to Canada Pipe Company Ltd., including its unincorporated foundries, Laperle, Grand Mere, and Bibby Ste-Croix. We also plan to continue to treat the unincorporated foundries in this manner unless in a subsequent review segment we find the facts have changed and we need to revisit our position on this matter.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

Agree_____ Disagree_____ Let's Discuss_____

Faryar Shirzad
Assistant Secretary
for Import Administration

(Date)