

70 FR 19419, April 13, 2005

A-428-830
2nd Administrative Review
AR 3/1/03-2/29/04
Public Document
I/1: A. Smith x1276

DATE: April 6, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2003-2004
Administrative Review of Stainless Steel Bar from Germany

SUMMARY

We have analyzed the case brief filed by an interested party in the second administrative review of stainless steel bar from Germany. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the “Discussion of Issues” section of this memorandum. Below is a complete list of the issues in this review for which we received comments:

- Comment 1: Interest Expense Ratio
- Comment 2: Home Market Level of Trade

BACKGROUND

On December 7, 2004, the Department of Commerce (“the Department”) issued the preliminary results of the second administrative review of the antidumping duty order on stainless steel bar from Germany. See [Stainless Steel Bar from Germany: Preliminary Results of Second Antidumping Duty Administrative Review](#), 69 FR 70651 (December 7, 2004) (“Preliminary Results”). The period of review is March 1, 2003, through February 29, 2004.

We invited parties to comment on the Preliminary Results. On January 6, 2005, the respondent BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, “BGH”) filed a case brief. Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America

(AFL-CIO/CLC) (collectively, “petitioners”), did not file a case brief or a rebuttal brief in this review.

DISCUSSION OF ISSUES

Comment 1: Interest Expense Ratio

Respondent’s Argument: BGH argues that the Department erred by recalculating BGH’s reported interest expense ratio for the Preliminary Results. BGH argues that the Department misinterpreted the chart BGH included as Appendix D-11 of its July 2, 2004 response in determining that BGH included only a portion of its total foreign exchange gains and losses in calculating the interest expense ratio for the Preliminary Results.

According to BGH, BGH correctly included all foreign exchange gains and losses in its interest expense calculation in conformity with the Department’s practice as stated in Final Results of Antidumping Administrative Review and Final Determination to Revoke Order in Part: Certain Preserved Mushrooms from Indonesia, 68 FR 39521 (July 2, 2003). In accordance with the practice defined in this proceeding, BGH stated that it first deducted currency gains on foreign bank accounts and investments from net interest expenses and added currency losses of foreign bank accounts and investments to net interest expenses. BGH states that it then deducted currency gains on accounts payable and added currency losses on accounts payable to calculate a net interest expense adjusted for all foreign exchange gains and losses.

Thus, BGH states that the Department should use the interest expense ratio reported by BGH in the final results.

Petitioners’ Argument: The petitioners did not comment on this issue

Department’s Position: We agree with BGH. The Department mistakenly double-counted BGH’s reported foreign exchange gains and losses by adjusting BGH’s reported interest expense ratio for the Preliminary Results. Therefore, we will use BGH’s reported interest expense ratio in the comparison market and margin calculations for the final results.

Comment 2: Home Market Level of Trade

Respondent’s Argument: BGH argues that the Department erroneously recognized only two levels of trade in the home market in the Preliminary Results. BGH states that it reported four channels of distribution comprising three levels of trade. BGH states that these three levels of trade conform to the Department’s findings in the original investigation.

According to BGH, in the Preliminary Results, the Department grouped sales made through channels one, two, and three into one level of trade. Although the Department recognized that “the inventory maintenance function for channel 3 was distinguishable from channels 1 and 2,”

the Department disregarded this distinction, claiming that “sales reported in channel 3 were made in large lot sizes similar to those in channels 1 and 2, indicating that inventory handling on these sales was minimal.”

BGH argues that the Department’s reliance on lot sizes is not supported by the evidence on the record. BGH argues that BGH’s home market sales file indicates that the “average lot size” for channel three sales is “considerably” smaller than the lot sizes of sales made through channels one and two. As a result of this difference in lot size, BGH argues that inventory maintenance for channel three sales was “significantly greater” than for sales made through channels one and two. Therefore, BGH argues the Department should consider sales made through channel three to be a separate level of trade.

Petitioners’ Argument: The petitioners did not comment on this issue.

Department’s Position: We agree, in part, with BGH. We agree that the Department’s reliance on lot size is not supported by record evidence. However, we continue to find that home market sales made through channels 1, 2, and 3 are similar with respect to selling functions, customer category, and level of selling expenses. Therefore, we find that channels 1, 2, and 3 sales continue to constitute a single level of trade for the final results.

Section 773(a)(1)(B)(i) of the Tariff Act of 1930, as amended, states that, to the extent practicable, the Department will calculate normal value based on sales at the same level of trade (“LOT”) as the export price. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997).

In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the “chain of distribution”), including selling functions, class of customer (“customer category”), and the level of selling expenses. For the Preliminary Results, the Department found that the channel 3 sales differed from the channels 1 and 2 sales because channel 3 sales were inventory sales, while the channels 1 and 2 sales were made-to-order. However, we found that channel 3 sales were otherwise similar to channels 1 and 2 with respect to sales process, freight services, and warranty services (the other three major categories of selling functions). The Department further found that, despite the fact that channel 3 sales were inventory sales, this selling function was not significant in that sales reported in channel 3 were made in large lot sizes similar to those in channels 1 and 2, indicating that inventory handling on these sales was minimal. As such, we found that this selling function difference alone was not sufficient to distinguish channel 3 sales from channels 1 and 2. Therefore, we found that channels 1, 2, and 3 were sufficiently similar to constitute a distinct level of trade, consistent with our findings in the first administrative review.

See Notice of Final Results of Antidumping Administrative Review: Stainless Steel Bar from Germany 69 FR 32982 (June 14, 2004) (“First Review Final”).

We agree with BGH that record evidence does not support the argument that the lot size of channel 3 sales is similar to that of channels 1 and 2 sales. However, we continue to find that there is sufficient evidence on the record of this review supporting the fact that the selling functions, customer categories, and level of selling expenses performed on channel 3 sales are sufficiently similar to channel 1 and 2 sales as to warrant classification of channels 1, 2, and 3 sales into one LOT. Specifically, we find that the degree to which the sales process and marketing selling function, as well as freight and delivery selling functions, is performed is “medium” for all channels 1, 2, and 3 sales. Similarly, we find that the degree of quality assurance and warranty service selling functions is “low” for channels 1, 2, and 3 sales. See the LOT memo included as attachment 4 of the “Final Results Calculation Memorandum for the BGH Group of Companies,” dated April 6, 2005.

The only difference in selling functions between channels 1 and 2 and channel 3 is a difference in warehousing and inventory selling functions. The difference in the warehousing and inventory selling functions for channels 1 and 2 and channel 3 sales is minimal in that it has been recorded as “low” for channels 1 and 2 and “medium” for channel 3. Moreover, channel 3 sales are subject to the same pricing mechanism, discounts, rebates, indirect selling expenses, terms of delivery, freight and delivery costs, and brokerage and handling as channels 1 and 2 sales.

The Department has consistently found that a difference in a single selling function among different channels of distribution is not sufficient alone to determine that these channels constitute separate levels of trade. See Certain Pasta from Italy: Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30331 (June 14, 1996). In the instant review, as noted above, all other factors save a single selling function (warehousing and inventory) are similar for channels 1, 2, and 3.

Moreover, we find that the factual circumstances evident in the investigation of this case that resulted in the Department classifying channels 1 and 2 into a separate level of trade than channel 3 are not present in the current proceeding. Specifically, in the investigation, the Department concluded that channel 3 sales differed from channels 1 and 2 sales in both warehousing and inventory and freight and delivery selling functions. The Department’s level of trade analysis memorandum for BGH, which was attached to the July 26, 2001 “Preliminary Determination Calculation Memorandum for the BGH Group of Companies,” indicates that the degree of freight and delivery selling functions for channels 1 and 2 sales was “medium.” However, the degree of freight and delivery for channel 3 sales was “high.” Similarly, the degree of warehousing and inventory for channel 1 and 2 sales was “low,” while the degree for channel 3 sales was “medium.” Conversely, in the First Review Final, the Department found that channels 1, 2, and 3 constituted a single LOT based on the same facts that are on the record of the instant review.

The Department’s regulations at 19 CFR 351.412(c)(2) clearly indicate that it is the Department’s

practice, in making LOT determinations, to consider differences in multiple selling functions between channels that may indicate that sales made through the different channels were made at different marketing stages. In the investigation, the difference in multiple selling functions between channels 1 and 2 and channel 3 was sufficient to classify channel 3 sales as a separate level of trade from channels 1 and 2. In the current case, multiple differences in selling functions do not exist. Therefore, we continue to find that channels 1, 2, and 3 sales comprise one level of trade for the final results.

RECOMMENDATION

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

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date