

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memo for the Antidumping Duty
Administrative Review of Stainless Steel Flanges from India -
February 1, 2005 through January 31, 2006

Summary

We have analyzed the comments from Rollwell Forge, Ltd. (Rollwell) and Echjay Forgings Pvt. Ltd. (Echjay) in the antidumping duty administrative review of stainless steel flanges from India. As a result of our analysis of Echjay's comments we have made no changes to our calculations. With respect to Rollwell, we have calculated a margin rather than use adverse facts available as in the preliminary results. We disclosed the post-preliminary calculated margin to Rollwell on June 6, 2007.¹ In these final results we recalculated Rollwell's material costs to exclude post period of review (POR) purchases of stainless steel billets. See our "Analysis of Data Submitted by Rollwell Forge Ltd. (Rollwell) for the Final Results of the 2005-2006 Administrative Review of the Antidumping Duty Order on Stainless Steel Flanges from India" (Rollwell Analysis Memorandum) at Section II. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments by parties:

Comment 1: Cost of Raw Materials
Comment 2: Scrap Offset
Comment 3: Revocation

Background

On March 7, 2005, the Department of Commerce (the Department) published its preliminary results of review of the antidumping duty order on stainless steel flanges from India. See Certain

¹ On July 2, 2007, we issued a letter to Rollwell correcting a misstatement contained in our June 6, 2007, analysis memorandum. See footnote 3 (below).

Forged Stainless Steel Flanges from India; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission, and Intent to Rescind, 72 FR 10142 (March 7, 2007) (Preliminary Results). The period of review (POR) is February 1, 2005, through January 31, 2006. There are three respondents in this review: Echjay Forgings Pvt., Ltd. (Echjay), Rollwell Forge, Ltd. (Rollwell), and Shree Ganesh Forgings, Ltd. (Shree Ganesh). We invited parties to comment on our preliminary results of review. We received comments from Echjay and Rollwell. No party submitted rebuttal comments. As indicated in the Preliminary Results, we are rescinding the review with respect to Shree Ganesh.

Discussion of the Issues

Comment 1: Cost of Raw Materials

Rollwell produces subject stainless steel flanges from stainless billets it purchases from unaffiliated suppliers. Rollwell argues the Department erred in its analysis by using its annual weighted-average price of steel billets in the computation of cost of manufacture.² It argues that its purchase prices for steel increased substantially on a monthly basis during the POR, and especially during the fourth quarter period. Moreover, Rollwell argues, it made no home market sales of subject merchandise during the fourth quarter. Therefore, it argues, use of this annualized cost is unjustified and distortive.

Rollwell argues that as an alternative to using an annualized cost for steel the Department should either: (1) use the actual raw material price for the U.S. market sale, thereby calculating the actual cost of the product sold to the United States; or (2) for the home market, calculate steel costs on a monthly basis. Rollwell argues only by using one of these two methods can the Department avoid serious distortions in the reported costs.

Department's Position:

We disagree. Our normal practice is to calculate costs on an annualized basis for the period of review. See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 3677 (January 26, 2005) (S4 from Mexico) and accompanying Issues and Decision memorandum at Comment 8. See also Certain Pasta from Italy; Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000) (Pasta From Italy) and accompanying Issues and Decision memorandum at Comment 18. For this reason our standard questionnaire states, "calculate reported COP and CV figures based on the actual costs incurred by your company during the *period of review*, as recorded under your company's normal accounting system." See April 5, 2006, questionnaire at D-2

² The Department used February 1, 2004 through January 31, 2005 as the cost reporting period here because its U.S. sales during the POR were invoiced during period the February 1, 2004 through January 31, 2005. Therefore, the relevant period for calculating both normal value and cost of production is that same period. We are reviewing the U.S. sales during the review February 1, 2005 through January 31, 2006 because they entered U.S. customs territory during the period February 1, 2005 through January 31, 2006.

(emphasis added). Furthermore, price variations throughout a POR are not uncommon. Our purpose in using weighted-average annualized costs is to minimize the impact of these variations, whether the variation be upward or downward.

More importantly, based on our review of Rollwell's steel billet purchases during the POR, we determine that Rollwell's steel purchase prices do not support its assertion that its steel prices "increased substantially" during the POR. We find rather that there were price fluctuations throughout the entire POR, and that some of the fluctuation appeared more related to the supplier than the fiscal quarter. Thus, some of Rollwell's purchase prices for 304L billets in August 2004 were the same as its prices in April 2004, with prices during the intervening months being sometimes higher and sometimes lower. Moreover, one of the 304L prices in July 2004 was lower than any of the prices in April 2004. Similarly, some of its purchase prices for 316L billets in January 2005 were lower than some of its prices in August 2004, and one of the August 2004 prices was identical to its only April 2004 purchase. See Rollwell's June 28, 2007 submission at 3. Therefore, we are not convinced the record of Rollwell's purchases significantly increased during the POR so as to warrant a deviation from our standard cost calculation method. Moreover, the Court of International Trade (CIT) has upheld our use of annual weighted-average costs where there are random variations in costs throughout a review period. See Fujitsu General Limited v. United States, 883 F. Supp. 728 (Ct. Intl. Tr. Mar. 14, 1995); aff'd Fujitsu General Limited v. United States, 88 F.3d 1034, (Fed. Cir. July 3, 1996).

Furthermore, Rollwell's first alternative suggestion (*i.e.*, calculating sales-specific costs in the U.S. market) would amount to using different cost calculation methods in each of the two markets. Doing so would not result in a correct cost comparison, and would violate our practice expressed in our standard questionnaire, which states, "calculate reported COP and CV figures on a weighted-average basis using the CONNUM specific production quantity, *regardless of market sold*, as the weighting factor." See April 5, 2006, questionnaire at D-16 (emphasis added).

Rollwell's second alternative suggestion (*i.e.*, using monthly costs in the home market, rather than annualized costs), is not warranted by the facts of this case. As noted in S4 from Mexico and Pasta from Italy, the Department may use monthly costs "when there is a single primary input product and that input experiences a significant decline or rise in its cost throughout the reporting period." See S4 from Mexico; see also Pasta from Italy. However, unlike S4 from Mexico and Pasta from Italy, we do not have a fact pattern here that supports use of monthly costs. As demonstrated above, Rollwell's prices for its primary production input, steel billets, fluctuated during the POR, and fail to evince a sustained upward or downward movement.

Rollwell's basis for proposing these alternatives is its belief that the use of weighted-average prices of the raw material inputs would distort the calculation of the difference-in-merchandise (difmer) adjustment. On the contrary, the use of product specific calculations, as proposed by the respondent, would distort the antidumping duty analysis. Section 351.411(a) of the Department's regulations explains that, when comparing U.S. sales with foreign market sales, the Secretary

will make reasonable allowances for differences in physical characteristics between the product, if the differences have an effect on prices. Section 351.411(b) of the Department's regulations further explains that, "in deciding what is a reasonable allowance for the difference in physical characteristic, the Secretary will consider only differences in variable costs associated with the physical differences."

The respondent argues that because prices of the raw materials used to produce the merchandise under consideration increased during the period (an assertion with which the Department disagrees, as described above), the prices of the specific raw materials used to produce the respective sales should be used to calculate the difmer adjustment. However, a difmer based on such a methodology would not capture differences in the physical characteristics, but instead would capture price differences in the raw materials. Assuming a given inventory holding period for the inputs of both products, the greater the difference between the dates of sale of the U.S. and the foreign market sales the greater the distortion created because of fluctuating raw material prices. The distortion created by such a methodology would increase even more if there was a difference in the inventory holding period of the original raw materials used to produce the U.S. and the foreign market sales, because the product with the longer inventory holding period would presumably incur more price change.

The use of weighted-average prices of the raw material inputs reduces this distortion because the per-unit costs used in the comparison (i.e., the difmer) are on the same basis and period averages. They are not from difference periods or moments in time. Since they are on the same basis, they do not predominantly reflect price changes and better measure the differences in physical characteristics.

Therefore, because Rollwell has presented no evidence that the cost computation method used in our June 6, 2007, analysis was distortive, we have not adopted either of its alternative suggestions. However, we have determined from our further review of Rollwell's reported steel sales prices that Rollwell included steel purchases that were not part of the cost reporting period. In these final results we have removed these purchases from the computation, and have recalculated Rollwell's margin accordingly.

Comment 2: Scrap Offset

Rollwell argues the Department erred by denying the scrap offset. In our preliminary analysis we stated, "we denied the scrap offset because Rollwell did not segregate its revenue derived from sales of carbon steel scrap from its revenue derived from sales of stainless steel scrap." See June 6, 2007, analysis memorandum (analysis memorandum) at 6. Rollwell contends this statement was incorrect, and cites to its March 22, 2007, submission at 12 and 13, as support³.

³After receiving Rollwell's June 28, 2007, comments, we determined our analysis memorandum had misstated the rationale for denying the scrap offset. Therefore, on July 2, 2007, we issued a letter to Rollwell in which we explained the correct rationale for our having denied the scrap offset. In that letter we noted Rollwell's

Rollwell claims it is not possible for it to segregate revenue derived from the sale of 304L scrap from revenue derived from 316L scrap as it does not maintain its records in that way. Rollwell states its invoices do not mention the grade of scrap, and claims scrap is always sold on a mixed lot basis.

Department's Position:

We disagree with Rollwell that the Department erred in denying the scrap offset. The Department's regulations state, "{t}he 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." See 19 CFR 351.401(b)(1). Here the Department is not satisfied that Rollwell has adequately quantified the amount of the adjustment because its computation is not grade-specific, and thus does not account for the known differences between the selling prices of 304L and 316L. The steel grade is an important determinant of the selling price for any steel product. For this reason, steel grade is the first of the product characteristics the Department uses in its model match. This is especially so for stainless steel products where individual grades require varying amounts of costly alloying elements (e.g., nickel). To disregard the grade, as Rollwell asks us to do, in calculating a scrap offset, and to calculate the offset instead on an average of a product mix as disparate as 304L and 316L, would distort the material costs of both grades, and would not result in adequate product matching or difference-in-merchandise adjustments. Therefore, in these final results, as in the preliminary results, we have denied Rollwell's claimed scrap offset to its direct material costs.

claimed adjustment did not segregate its revenue derived from sales of 316L scrap from its revenue derived from sales of 304L steel scrap. (In a March 9, 2007 supplemental questionnaire to Rollwell we had requested Rollwell calculate its scrap offset claim in this way. In its March 22, 2007 response, Rollwell failed to do so.) After issuing the July 2, 2007 letter, we gave Rollwell an opportunity to comment on the correct rationale. Rollwell submitted its comments on July 9, 2007.

Comment 3: Revocation

Echjay argues the Department erred in failing to consider its request for revocation. Echjay submitted this request on December 21, 2006. In its preliminary results the Department announced that it would not entertain this request for revocation because Echjay did not submit it until almost ten months after the required deadline for revocation requests. See 19 CFR 351.222(e)(1). The Department explained that this delay prevented the Department from timely notifying interested parties of Echjay's possible revocation, as well as planning and conducting verification, both of which are required by 19 CFR 351.222(f).

Echjay argues the Department should reconsider its preliminary decision to reject Echjay's untimely request for revocation from the order. Echjay argues that petitioners have not participated in any administrative reviews for many years, and that Viraj's request for revocation in the 2003-2004 administrative review of this order did not lead to any petitioner participation. Moreover, Echjay argues the Department issued an additional supplemental questionnaire to Rollwell in this case after issuing the preliminary results, and that in the additional time required for petitioners to comment on Rollwell's response the Department could have also verified Echjay. Furthermore, Echjay argues, the Department often verifies after it issues its preliminary decision, and could therefore do so here.

Department's Position:

The Department has not changed its position on this issue. As noted in the Preliminary Results, Echjay's revocation request was filed nearly ten months after the deadline for filing such requests. 19 CFR 351.222(e)(1) specifies that the request for revocation by an exporter or producer must occur "during the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation . . .". Moreover, the regulations make clear that such requests for revocation be included in the published notice of initiation. See 19 CFR 351.222(f)(2)(i). Furthermore, the CIT has upheld the Department's position on this issue. In Samsung Elecs. Co. v. United States, the CIT upheld the Department's rejection of a revocation request on grounds that "Samsung failed to file its request for revocation during the anniversary month of the antidumping duty order."⁴ See Samsung Elecs. Co. v. United States, 946 F. Supp. 5, 11 (November 7, 1996).

⁴ The CIT also upheld this application of the regulation in Exportaciones Bochica/Floral v. United States 807 F. Supp. at 447, 448 (CIT 1992, aff'd without opinion 996 F.2d 317 (Fed. Cir. 1993)). The court cited the Department's administrative burdens and the need for prompt completion of reviews as support for its conclusion that the mandatory requirement of filing on an anniversary month was a reasonable interpretation of the regulation, deserving judicial deference.

Recommendation:

Based on our analysis of the comment received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)