

70 FR 69512, November 16, 2005

A-274-804  
Administrative Review 03/04  
Public Document  
Office III: DM

November 8, 2005

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

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**RE:** Carbon and Certain Alloy Steel Wire Rod from Trinidad and  
Tobago (Period of Review: October 1, 2003, through  
September 30, 2004)

**SUBJECT:** Issues and Decisions for the Final Results of the Second  
Administrative Review of the Antidumping Duty Order on Carbon  
and Certain Alloy Steel Wire Rod from Trinidad and Tobago

Summary:

We have analyzed the case and rebuttal briefs submitted by interested parties. 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 the Issues" section of this memorandum. Below is the complete list of the relevant issues upon which we received substantive responses and rebuttal comments from interested parties.

1. List of Comments

- Comment 1: Ministerial Error Related to Normal Value ("NV") Adjustment
- Comment 2: Methodology for Calculating Imputed Expenses for Constructed Export Price ("CEP") Sales
- Comment 3: CEP Offset Adjustment and Level-of-Trade ("LOT") Analysis
- Comment 4: Treatment of Certain Merchandise as Non-prime

2. Background

On July 12, 2005, the Department published the preliminary results of the second administrative review of the antidumping duty order on carbon and alloy steel wire rod from Trinidad and Tobago. See Preliminary Results of Antidumping Duty Administrative Review: Carbon and

Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 39990 (July 12, 2005) (“Preliminary Results”). The review covers one manufacturer/exporter, Carribean Ispat Limited (now known as Mittal Steel Point Lisas Limited), and its affiliates Ispat North America Inc. (now known as Mittal Steel North America) (“INA”) and Walker Wire (Ispat) Inc. (collectively “CIL”).<sup>1</sup> The petitioners are ISG Georgetown Inc. (formerly Georgetown Steel Company), Gerdau Ameristeel US Inc. (formerly Co-Steel Raritan, Inc.), Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively “petitioners”). We received case and rebuttal briefs from the petitioners and CIL as discussed in the background section of the Federal Register notice. The merchandise covered by this review is described in the scope section of the Federal Register notice issued on the same date as this memorandum. The period of review (“POR”) is October 1, 2003, through September 30, 2004.

### 3. Discussion of the Issues

#### Comment 1: Ministerial Error Related to NV Adjustment

##### **Respondent:**

CIL argues that the Department made an error in calculating NV by adding certain U.S. price adjustments (i.e. freight surcharge and billing adjustments) to home market price. CIL asserts that the Department should have added the home market rather than the U.S. price adjustments variable to the home market price when calculating NV.

##### **Petitioners’ Rebuttal:**

The petitioners did not respond to this comment.

**Department’s Position:** We agree with CIL and made the correction in the final margin program in accordance with 19 CFR 351.401(c).

#### Comment 2: Methodology for Calculating Imputed Expenses for CEP Sales

##### **Respondent:**

CIL argues that the Department incorrectly calculated CIL’s imputed expenses by neglecting to use the reported domestic inventory carrying costs for the home market, the reported inventory carrying costs in the United States, and the reported credit expenses. CIL asserts that its reporting methodology is consistent with the Department’s questionnaire instructions and its practice.

For the reported domestic inventory carrying costs for the home market, CIL states that the questionnaire instructed respondents to report the per-unit opportunity cost incurred from the

---

<sup>1</sup> See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 38871 (July 6, 2005).

time of final production to the time of arrival in the United States. CIL also states that for the reported inventory carrying costs in the United States, the Department's questionnaire requested the respondent to report the period from the time of arrival in the United States to the time of shipment from warehouse to the first unaffiliated customer. CIL asserts that it determined and reported inventory carrying costs consistent with the Department's practice, citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 24.

As for the reported credit expenses, CIL explains that it used INA's date of invoice, instead of the date of shipment from the warehouse, because CIL does not have a warehouse. CIL stated that it properly based its credit expenses on the date the goods were invoiced to the U.S. customer and the date INA received payment, because INA's imputed credit expenses did not begin to accrue until its invoice was issued to the U.S. customer. Moreover, CIL argues that the credit expenses calculated for CEP sales resulted in an unfair comparison to NV, since the period is far longer than the credit expenses related to NV.

CIL asserts that the Department incorrectly made the same adjustments to imputed expenses in its prior review. CIL explains that the case precedent cited by the Department ignored which party extends credit. See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30732 (June 8, 1999) ("Steel Sheet and Strip from Germany"), at Comment 12. CIL further asserts that Steel Sheet and Strip from Germany conflicts with cases where the Department determined that it was inappropriate to include time on the water between the respondent and its affiliate in the United States. CIL explained that the Department ordinarily does not deduct indirect expenses incurred in selling to the affiliated U.S. importer when the economic activity is outside of the United States. See Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review, 63 FR 67855 (December 9, 1998) ("Pipe Fittings from Taiwan"). Alternatively, CIL states that if the Department decides to reclassify the inventory costs and the credit expenses, then the Department should calculate the credit expenses from entry into the United States to the date INA receives payment from the U.S. customer.

#### **Petitioners' Rebuttal:**

The petitioners argue that the Department should continue to calculate the imputed credit expenses for CIL's CEP sales to include the period from the date the wire rod was shipped from the port in Trinidad to the date of payment by the unaffiliated U.S. customer. The petitioners state that the Department clearly explained its policy and practice regarding credit expenses on CEP sales in the final results of the prior administrative review. See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 12648 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 6. Moreover, the petitioners state that the circumstances have not changed in this administrative review, that CIL does not maintain inventory in the United States,

and that CIL delivers directly from the mill to the customer. See CIL's Response, page A-24, dated January 31, 2005.

The petitioners assert that if the Department were to adopt CIL's approach, then the Department would violate its practice that the date of sale cannot occur after the date of shipment. See Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 14, 2000), and accompanying Issues and Decision Memorandum at Comment 1. The petitioners argue that if the date of sale cannot occur after the date of shipment, then CIL's methodology would result in the classification of post-sale expenses as inventory carrying costs. Further, the petitioners argue that it makes no sense to impute inventory carrying costs to an affiliate that has no inventory. Moreover, the petitioners state that CIL's reference to Pipe Fittings from Taiwan shows that CIL's methodology is inconsistent with the Department's stated practice, because the U.S. affiliate maintained inventory in the United States in Pipe Fittings from Taiwan.

Finally, the petitioners argue that the Department should disregard CIL's statement that the credit expense methodology is unfair because it results in a longer credit period for CEP sales. The petitioners argue that the credit period should begin whenever CIL ships the wire rod to the customer because, at that point, the wire rod is designated for a particular customer.

**Department's Position:** We agree with the petitioners and, therefore, continued to calculate credit expense in the same manner as we did in the preliminary results and in the previous review. See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 12648 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 6. Credit expense is the interest expense incurred (or interest revenue foregone) between date of shipment of merchandise to a customer and date of receipt of payment from the customer. Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. In this case, the merchandise does not enter inventory, whereas in Pipe Fittings from Taiwan, the U.S. affiliate maintained inventory in the United States. Therefore, it is the Department's intention, in CEP cases, where the merchandise does not enter inventory of a U.S. affiliate in the United States, to calculate the credit period from the time the merchandise leaves the port in Trinidad and Tobago to the date of payment rather than calculate any kind of inventory carrying costs. See Steel Sheet and Strip from Germany and Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China, 61 FR 53190, 53195 (October 10, 1996).

In CIL's January 31, 2005, response to our section A questionnaire, CIL explained that orders are typically delivered from the mill to the end user and INA does not maintain inventory in the United States. Therefore, we conclude that INA did not have any sales of subject merchandise out of inventory during the POR. CIL's sales made through INA were direct shipments. However, CIL did maintain inventory at CIL's factory and did incur domestic inventory carrying costs. Thus, we recalculated domestic inventory carrying costs based on the average time in

inventory in Trinidad and Tobago. For the reported inventory carrying costs in the United States, we set the reported amounts equal to zero and attributed these imputed expenses to the credit expense calculation. Furthermore, we have recalculated credit expenses based on the date of shipment from the mill to the payment date of the U.S. customer.

Comment 3: CEP Offset Adjustment and LOT Analysis

**Petitioners:**

The petitioners argue that according to section 773(a)(7)(B) of the Tariff Act of 1930, as amended (“the Act”), the home market sales must be at a more advanced stage of marketing than the U.S. sales to receive a CEP offset. In contrast, the petitioners assert that the record of evidence (e.g., selling functions) demonstrates that sales made in Trinidad and Tobago were either made at a comparable or less advanced stage of marketing than the LOT for CEP sales. Furthermore, the petitioners assert that INA is simply a U.S. point of contact and that CIL sets the price, arranges shipment, and employs the same number and types of employees in Trinidad and Tobago to sell and market CEP, export price (“EP”), and home market products.

The petitioners assert that INA’s role in CEP sales is limited to that of an intermediary between CIL and the U.S. customers. The petitioners argue that wire rod is delivered from CIL to the end-user and that INA does not maintain or sell from inventory. In addition, the petitioners assert that INA would play a more active role if the goods were placed in inventory. However, the petitioners point to CIL’s response which demonstrates the price negotiations for two CEP sales. The petitioners argue that these documents demonstrate that CIL dictates the price and terms for CEP sales. See CIL’s Supplemental Response, page SS-4 and Attachment A-2, dated May 25, 2005.

The petitioners state that a review of CIL’s selling functions for its home market sales and CEP sales are virtually identical and do not provide a basis for finding a different LOT. The petitioners argue that the only difference with regard to selling functions are for sales force development and freight and delivery arrangements. However, the petitioners assert that CIL does not even provide freight and delivery arrangements for its home market sales. Therefore, the petitioners claim that CIL relies on one selling function (i.e., sales force development) to establish different LOTs. With regard to sales force development, the petitioners argue that CIL does not even provide a training program and did not submit documentation to the Department to support its claim that it trains.

As for the other selling activity, the petitioners argue that CIL did not provide documentation or evidence to support its claim that it had a greater level of selling activity for solicitation of orders, processing purchase orders, and accounts receivable management. For negotiating prices, the petitioners argue that CIL sends monthly price sheets to its customers in the home market, while it provided e-mail correspondence showing that it is actively involved in negotiating CEP sales. With regard to freight and delivery arrangements, the petitioners argue that CIL ships to many different ports for CEP sales and would require a greater level of activity. In addition, the petitioners argue that the coordination of North American activities represents

another selling function. Furthermore, the petitioners argue that there is no actual “sales force” because there is only one individual assigned to solicit orders for each type of sale.

Finally, the petitioners assert that the Statement of Administrative Action (“SAA”) identifies the criteria a respondent must meet to qualify for an LOT adjustment or CEP offset adjustment. Specifically, the petitioners point to the SAA at 830, which states, “Where it is established that there are different levels of trade on the performance of different selling activities, but the data establish that there is a pattern of no price differences, the level of trade adjustment will be zero. No further adjustment is necessary.” The petitioners also point to CIL’s statement, “CIL’s prices do not vary depending on the channel of distribution in either the U.S. or Trinidad market. CIL’s prices do not vary by customer category.” See CIL’s Response, page A-19, dated January 31, 2005. Therefore, the petitioners argue that there should be no adjustment because CIL states that prices do not vary by channel of distribution or customer category. Finally, the petitioners argue that CIL did not provide the relevant information to establish an adjustment. See 19 CFR 351.401(b)(1). The petitioners assert that CIL failed to submit documents requested by the Department.

### **Respondent’s Rebuttal:**

CIL argues that the Department should grant it a CEP offset as it did in the investigation and first administrative review. First, CIL argues that it is not correct to automatically assume that it provides a lower level of activity for its CEP sales because it has an affiliated intermediary that sells to the unaffiliated U.S. customer. Second, CIL argues that it is incorrect to suggest that a CEP offset is not warranted because the subject merchandise does not enter into inventory. See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Preliminary Results of Antidumping Duty Administrative Review, 65 FR 62700, 62705 (October 19, 2000). Third, CIL argues that it submitted substantial evidence in support of its request for a CEP offset adjustment and that it should not be penalized for failing to submit documents that do not exist. See, e.g., U.H.F.C. Co. V. United States, 916 F. 2d 689, 701 (Fed. Cir. 1990).

CIL argues that the factual evidence demonstrates that its home market sales are made at a more advanced stage of the marketing process than CEP sales to affiliates and that there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, citing section 773(a)(7)(B) of the Act. First, CIL argues that it performs five selling functions at a higher degree of intensity for EP sales than for CEP sales. Second, CIL argues that it performs five selling functions at a higher degree of intensity for its home market sales compared to its CEP sales to INA. Further, CIL notes in its chart that four of the five selling functions for the EP and home market sales are at a higher level of intensity than CEP sales (e.g., solicitation of orders, negotiate prices, process purchase orders, and accounts receivable management).

CIL argues that it has already explained how it conducts its home market sales solicitation activities and verified the accuracy of its response, citing 19 CFR 351.303(g)(1). CIL argues that it meets with home market customers at least twice a year, that many customers make

weekly visits to the mill, and that it has daily contact with its customers. As for processing purchase orders, CIL explained that the amount of time required to process smaller home market purchase orders is greater, on a ton-for-ton basis, than that required for CEP purchase orders. With regard to negotiating prices, CIL argues that prices on its invoices are not always identical to its price sheets. Furthermore, CIL argues that the e-mail correspondence between CIL and INA is not representative of how CIL determines its prices. For accounts receivable management, CIL argues that its payment terms to home market customers do not reduce the amount of accounts receivable work required to ensure payment from its customers. For freight and delivery arrangements, CIL argues that it demonstrated in its response that on average its CEP shipments were greater than its EP shipments. As for sales force development, CIL argues that the petitioners fail to recognize that INA is the one that deals directly with the U.S. customer, and therefore, the level of training is not the same as the level of training needed for home market sales. With regard to coordinating North American activities, CIL stated that it erroneously reported that an employee of CIL coordinates North American activities.

Finally, CIL argues that the petitioners disregard three major points regarding the number of staff assigned to conduct selling functions. First, CIL asserts that the petitioners disregarded CIL's ranking of the selling functions by the most employee time to the least. See CIL's Supplemental Response, page SS-10, dated May 25, 2005. Second, CIL argues that the petitioners ignore two home market selling functions (i.e., sales forecasting and negotiating prices), where individuals performing the selling function for the home market outnumber those performing the selling function for other markets. Third, CIL asserts the petitioners' argument assumes that individuals are only responsible for one market.

**Department's Position:** We disagree with the petitioners. However, we note both parties have provided conflicting interpretations of what selling activities were performed and the level of intensity with which they are performed. In performing our analysis, we have to rely on what documentary evidence is on the record. In that regard, we note that the level of intensity associated with certain selling activities is difficult to evaluate because there is sometimes less than complete documentation. Because this issue was raised early enough in the review, we were able to focus our supplemental questions and solicit as much data as possible to illuminate this issue.

We were able to collect reasonable documentation for certain selling activities (e.g., monthly price sheets to analyze price negotiations) which enables us to do a more thorough analysis. Based on the record evidence, in some instances we agree with CIL's characterization of the level of activity in its response (e.g., solicitation of orders and accounts receivable management). In others, we disagree with CIL's characterization (e.g., negotiating prices). Thus, although we collected some data that caused us to disagree with CIL's characterizations, on balance we still agree with CIL's CEP offset claim.

Therefore, for these final results, we find that an LOT difference exists between CIL's U.S. CEP sales and its home market sales. In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or the CEP transaction. The NV LOT is that of the starting-price sales in the home

market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses, and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997) (“Carbon Steel Plate”). The statute and the SAA support analyzing the LOT of CEP sales at the level of the sale to the U.S. importer -- that is, the level after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has adopted this interpretation in previous cases. See e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order, 63 FR 50867, 50872 (September 23, 1998); see also Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea, 63 FR 8945 (February 23, 1998).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. In this particular case, for the CEP sales, the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability. Therefore, we made an adjustment to NV under section 773(a)(7)(B) of the Act.

Moreover, we disagree with the petitioners’ claim that INA is simply a point of contact. Although INA does not maintain inventory, it is more than a processor of documentation and a communication link to the unrelated buyer. In Attachment A.9 and A.10 of CIL’s January 31, 2005, response, CIL reported that it has a higher level of activity for solicitation of orders, negotiating prices, processing purchase orders, and accounts receivable management for EP and home market sales. On May 25, 2005, and July 18, 2005, CIL responded to additional questions concerning its claim for a CEP offset. Even though CIL was not able to provide certain documentation, such as trip reports, it did provide a complete response to the Department’s questions and verified the accuracy of its response. See 19 CFR 351.303(g)(1).

Comment 4: Treatment of Certain Merchandise as Non-Prime

**Petitioners:**

The petitioners argue that certain wire rod is not considered prime wire rod and should not be used to compare to U.S. sales. The petitioners refer to the price sheets submitted in Attachment 13 of CIL’s January 31, 2005, Section A, response where CIL lists prices for prime and certain other wire rod. In addition, the petitioners referred to CIL’s July 18, 2005, questionnaire

response where CIL defines composite wire rod as partial coils. The petitioners argue that the information on the record supports its claim that sales of composite wire rod are sold at a lower price than prime wire rod.

The petitioners state that it is the Department's practice to match prime home market sales to prime U.S. sales and non-prime sales to non-prime sales. See Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 67 FR 15542 (April 2, 2002); see also Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada, 67 FR 55782 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 14. In addition, the petitioners argue that the Department has determined that such sales have been determined outside of the ordinary course of trade because the merchandise was obsolete, defective, or priced lower than normal and less profitable. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18441 (April 15, 1997) ("Flat Products from Korea").

#### **Respondent's Rebuttal:**

CIL argues that it provided the Department with a detailed explanation of its production and sales process for certain wire rod characterized by the petitioners as "non-prime." CIL argues that the cost of producing the above type of merchandise is the same as any other type of subject merchandise. Further, CIL argues that these sales are not distinguished by whether the customer is a "target" customer or an "alternate" customer. Both types of wire rod were sold to "target" customers.

CIL argues against the citation to Flat Products from Korea. First, CIL asserts that the merchandise is not obsolete because it is sold on a continuing basis. Second, CIL argues that the type of rod is not defective. Third, CIL also argues that the low price is not to compensate a customer for a previous payment but for the customers' lost production time resulting from the nature of the coils. Although the price is less than the typical prime merchandise sold, it is not far less profitable. Therefore, CIL argues that the "non-prime" wire rod cannot be considered outside the ordinary course of trade.

**Department's Position:** In this review, we did not use the wire rod which was not identified as prime on CIL's price list for matching purposes. In deciding which sales of the foreign like product to compare to sales of the subject merchandise, the Department first seeks to compare sales of identical merchandise. If there are no sales of the identical foreign like product, the Department will compare sales of the foreign like product similar to the subject merchandise. The similar foreign like product is merchandise that is produced by the same manufacturer in the same country as the subject merchandise, and which, in order of preference, is either (1) similar to the subject merchandise in component materials, use, and value, or (2) similar in use to, and reasonably comparable to, the subject merchandise. See Section 771 (16) of the Act. Therefore, because we have found identical or similar matches in our calculations, we have excluded CIL's wire rod which is not identified as prime from our calculations for this administrative review.

**Recommendation**

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

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date