

November 1, 2007

**MEMORANDUM TO:** David M. Spooner  
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, 2005, through  
September 30, 2006)

**SUBJECT:** Issues and Decisions for the Final Results of the Fourth  
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 not made changes in the margin calculations. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the one relevant issue upon which we received substantive responses and rebuttal comments from interested parties.

1. Comment

Methodology for Calculating Imputed Expenses for CEP Sales

2. Background

On July 6, 2007, the Department published the preliminary results of the fourth administrative review of the antidumping duty order on carbon and alloy steel wire rod from Trinidad and Tobago. See Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review, 72 FR 36955 (July 6, 2007) (Preliminary Results). The review covers one

manufacturer/exporter, Mittal Steel Point Lisas Limited and its affiliates Mittal Steel North America (MSNA) and Walker Wire (Ispat) Inc. (collectively Mittal). The petitioners are ISG Georgetown Inc., Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. We received a case brief from the petitioners and a rebuttal brief from Mittal as discussed in the background section of the Federal Register notice issued on the same date as this memorandum. The merchandise covered by this review is described in the scope section of that Federal Register notice. The period of review (POR) is October 1, 2005, through September 30, 2006.

### 3. Discussion of the Issue

#### Methodology for Calculating Imputed Expenses for CEP Sales

##### **Petitioners' Comments:**

The petitioners argue that the Department should use the shipment date, instead of the invoice date, to begin calculating Mittal's U.S. credit expense. The petitioners assert that the material terms of sale were established by the shipment date. The petitioners further assert that the CIT recognized that it is the Department's practice to begin the credit expense calculation from the date of shipment when the shipment date comes before the invoice date. See AIMCOR v. United States, 19 CIT 966, 972 (CIT 1995) (AIMCOR v. United States). Moreover, the petitioners note the Department's Final Remand Determination in which it states, "the use of shipment date as the beginning of the credit period is premised on the fact that the material terms of sale are established." See Final Remand Determination, affirmed at Mittal Steel Point Lisas Limited v. United States, Slip Op. 07-120 (CIT 2007) (Final Remand Determination), at 2-3.

The petitioners argue that the shipment date is the proper date to begin calculating credit expense because that is when Mittal begins to incur lost opportunity costs. See the Department's Questionnaire at C-30 (November 29, 2006). The petitioners assert that the credit expense calculation does not depend on the date of sale but instead is based on when the merchandise leaves the control of the producer. The petitioners cite Import Administration Policy Bulletin 98.2, in which the Department states, "These credit expenses may also be thought of as the opportunity cost of money: they are the cost to the respondent for not receiving the immediate payment for its sales."

In addition, the petitioners cite two cases where the respondent from the foreign port made direct shipments to the U.S. customer and the shipment date was used as the starting point to calculate credit expense. See 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) (Brake Drums), and Mitsubishi Heavy Industries v. United States, 23 CIT 326 (CIT 1999) (Mitsubishi Heavy Industries v. United States).

The petitioners argue that the facts of record in this review are distinguishable from the facts identified in the Final Remand Determination in the prior review. In this case, the petitioners argue that Mittal's response in this review to the Department's questionnaire indicates that Mittal's sales terms and sales documentation do not support the conclusion that the invoice date is the date of sale. The petitioners assert that the documentation provided by Mittal indicate that all material terms of sale are agreed to by Mittal and its U.S. customers when MSNA issues its written order acknowledgement or confirmation to its U.S. customers. Furthermore, the petitioners point to Mittal's statement that invoicing normally occurs when the terms of delivery to the U.S. customer are met for indirect sales. See Narrative to Mittal's Section A response and Attachment A-12.

Furthermore, the petitioners argue that the average delay is significant between the shipment date and invoice date from MSNA to the U.S. customer. The petitioners argue that the issuance of MSNA's invoice after shipment was most likely done as a courtesy to the customer and not as a result of changing the material terms of sale.

The petitioners further argue that if the Department cannot recalculate U.S. credit expense without changing the date of sale, it should change the date of sale to the shipment date to recalculate the U.S. credit expense. The petitioners point out that section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice as the date of sale but that the Department may use an alternative date on which the producer or exporter establishes the material terms of sale. The petitioners assert that the material terms are established when terms, such as price, quantity, delivery terms, and payment terms are agreed upon. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756, 38768 (July 19, 1999).

Furthermore, the petitioners cite to several Federal Register notices in which the Department states that the date of sale cannot occur after the date of shipment. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle From Canada, 64 FR 36847, 36849 (July 8, 1999); Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756, 38768 (July 19, 1999); Notice of Final Results of Antidumping Duty Administrative Review of Stainless Steel Bar from Japan, 63 FR 13717 (March 14, 2000), and accompanying Issues and Decision Memorandum at Comment 1; Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13172-13173 (March 18, 1998); and Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review, 71 FR 42802 (July 28, 2006), and accompanying Issues and Decision Memorandum at Comment 1. As mentioned above, the petitioners argue that the shipment date is the appropriate date of sale because the record evidence demonstrates that the material terms are agreed upon before shipment.

Finally, the petitioners argue that Mittal may have improperly included certain CEP sales at the beginning of the POR or excluded certain CEP sales at the end of the POR, when considering a different sale date. The petitioners claim that Mittal should have reported

the sales that were based on the date of shipment as the date of sale in its U.S. sales database. The petitioners cite the Department's Questionnaire, which instructs the respondent to:

Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a date of sale within the POR. See the Department's Questionnaire at C-2 (November 29, 2006). Emphasis added by the petitioners.

Therefore, the petitioners assert that since the sale was made at the time of shipment and before importation, the Department should request that Mittal submit a revised U.S. sales database. At the least, the petitioners request the Department to use the shipment date in order to calculate imputed credit expenses.

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

Mittal argues that there is no basis for altering the reported date of sale and method of calculating U.S. credit expense for CEP sales. Mittal cites to the Final Remand Determination, upheld by the CIT, as support for its argument. Mittal further argues that there is no evidence that Mittal's sales process has changed in the current review from the original investigation and prior three reviews. Moreover, Mittal asserts that the standard language, cited by the petitioners above and on the back of the sample sale's order confirmation, is no basis for changing the date of sale methodology.

Mittal argues that the petitioners' cite to AIMCOR v. United States, which bases the credit expense calculation on shipment date, is not at issue. The point is that the material terms of sale were not set before the invoice date as noted in Mittal Steel Point Lisas Limited v. United States, Slip Op. 07-120 (CIT 2007) (Mittal v. United States). Mittal argues that its responses to the Department's questionnaires have not varied much between segments of this proceeding, and thus, there is no reason for the Department to change its prior findings regarding the date of sale. Furthermore, Mittal refers to the verification report from the investigation in which the Department notes changes in terms of sale, namely quantity ordered, from the order to the invoice date and redirection of a shipment from one customer to another prior to invoicing. See Memorandum from Magd Zalok to Gary Taverman re: CEP Verification of the Sales Response in the Antidumping Investigation of Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago (June 12, 2002) at 5 ("Verification Report").

In support of Mittal's argument that the date of sale is determined when the essential terms of sale are met, Mittal cites to Federal Register notices, such as Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 68 FR 27530, 27531 (May 20, 2003). Mittal asserts that the record evidence indicates that the date of sale in this review is MSNA's invoice date. Mittal further asserts that the petitioners' conclusion to the language on the back of MSNA's order

confirmation is unavailing. For instance, Mittal argues that the order acknowledgement suggests that essential terms of sale can change after shipment. Moreover, the language is standard and does not necessarily reflect the actual business practices.

Mittal agrees with the petitioners that the Department can make a different conclusion in this review from that made in previous reviews but only if the conclusion is based on different facts. See Cinsa S.A. de C.V. vs. United States, 21 CIT 341, 349, 966 F.Supp. 1230, 1238 (1997). Furthermore, Mittal argues that the Department may not make “minor but disruptive changes in methodology where a respondent demonstrates its reliance in multiple preceding reviews.” See Fujian Machinery and Equipment Import & Export Corp. v. United States, 178 F.Supp.2d 1305 (CIT 2001). Mittal argues that for these reasons the Department should apply the methodology used in the Final Remand Determination. Finally, Mittal argues that the Department should recalculate inventory carrying expenses if it decides to recalculate credit expenses to ensure that no expenses are double-counted.

#### The Department's Position

We find that the proper date of sale is MSNA's date of invoice because that is the date on which the material terms of sale are established. Consequently, we will continue to calculate the U.S. credit expense beginning from the date of MSNA's invoice.

The Department's regulations state that it normally will use the invoice date as the date of sale unless a better date reflects the date on which the material terms of sale are established. See 19 CFR 351.401(i); see also Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38768 (July 19, 1999) (stating that “the Department considers the date of sale to be the date on which all substantive terms of sale are agreed upon by the parties”). However, the Department has made it its practice to use the date of shipment as the date of sale when the date of invoice is after the date of shipment, because, normally, once merchandise is shipped to the customer, the material terms of sale have been established.

The Department begins to calculate a company's credit expenses when that company begins to incur lost opportunity cost. A company incurs lost opportunity cost when it has sold a product, but has not received immediate payment. See Import Administration Policy Bulletin 98.2. As such, the Department begins calculating credit expenses on the date of sale because that is the date on which the material terms of that sale are established, but payment has not been received.

In this instant review, the merchandise is shipped from Mittal's mill in Trinidad to MSNA, who takes possession of the merchandise for purpose of unloading the merchandise from the vessel, and then arranges for delivery of the merchandise to the

unaffiliated U.S. customer. See Mittal's January 26, 2007, response at A-14. Mittal reported this type of sale as a CEP sale.<sup>1</sup>

MSNA's CEP sales documentation indicates that material terms of sale were not always set upon shipment. For example, the standard customer acknowledgement submitted in this current segment as well as prior segments of this case suggests that the essential terms of sales, such as quantity, can change after shipment. The customer acknowledgement also allows for other changes to the essential terms of sale listed in the standard terms on the customer acknowledgement. See Attachment A-12 of Mittal's January 26, 2007, response.

Finally, at verification during the investigation, the Department's analyst noted changes in terms of sale, like quantity ordered, from the order date to the invoice date. For example, on occasion, INA (now known as MSNA) redirected a shipment of subject merchandise from one customer to another prior to invoicing. See Verification Report. Therefore, because the material terms of sale are not established until the invoice date, the date of sale is the date of invoice. Hence, the credit period begins on the date of invoice because that is the date upon which Mittal begins to incur a lost opportunity cost.

The circumstances in this review are similar to Brake Drums and Mitsubishi Industries v. United States, as cited by the petitioners, in that the subject merchandise was shipped directly from the foreign port to the U.S. customer. However, the notices in the Brake Drums and Mitsubishi Industries v. United States decisions do not explicitly identify when the Department determined the materials terms of sale to have been met, and thus, do not inform our decision in the instant review. Here, for reasons explained above, it is appropriate to treat the invoice date from the U.S. affiliate to the unaffiliated U.S. customer as the date of sale.

Therefore, we are continuing to use the date of the invoice issued by MSNA to the U.S. customer as the beginning of our calculation of Mittal's U.S. credit expense. We note that this is consistent with the methodology upheld recently by the CIT with regard to a previous segment of this proceeding. See Mittal v. United States.

Furthermore, it was not necessary to adjust the inventory carrying costs because we did not change our method of calculating credit expense. Imputed expenses such as inventory carrying costs and credit expense are two separate calculations but span a continuous time period from the time the merchandise leaves the product line until payment. Thus, we used the inventory carrying costs as reported, in order to ensure that we did not double-count any imputed expenses. Finally, the petitioners' request for a new U.S. sales database based upon a changed sales date is moot because the Department is continuing to use Mittal's data as reported.

## **Recommendation**

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<sup>1</sup> Mittal reported sales shipped directly from the mill to the U.S. customer as EP sales.

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 margin in the Federal Register.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date