

March 5, 2009

**MEMORANDUM TO:** Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

**FROM:** John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Carbon and Certain Alloy Steel Wire Rod from Trinidad  
and Tobago (Period of Review: October 1, 2006, through  
September 30, 2007)

**SUBJECT:** Issues and Decision Memorandum for the Final Results of  
the Fifth 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. Outlined below is the complete list of the issues in this review for which we have received comments from interested parties.

I. **Background**

On November 5, 2008, the Department published the preliminary results of the fifth 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, 73 FR 65833 (November 5, 2008) (Preliminary Results). The review covers one manufacturer/exporter, ArcelorMittal Point Lisas Limited and its affiliate Mittal Steel North America (MSNA) (collectively AMPL).<sup>1</sup> The petitioners are Gerdau Ameristeel

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<sup>1</sup> On May 23, 2008, the Department determined that ArcelorMittal Point Lisas Limited is the successor-in-

US Inc., (formerly Co-Steel Raritan, Inc.), Nucor Steel Connecticut, Inc., Keystone Consolidated Industries, Inc., North Star Steel Texas, Inc., and Rocky Mountain Steel Mills (collectively petitioners). We received a case brief from AMPL and a rebuttal brief from the petitioners 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, 2006, through September 30, 2007.

## II. List of Comments

Comment 1: Whether the Department Should Exclude the Single Sale of Scrap Merchandise

Comment 2: Whether the Department Should Modify its Liquidation Instructions to U.S. Customs and Border Protection

## III. Discussion of Interested Party Comments

Comment 1: Whether the Department Should Exclude the Single Sale of Scrap Merchandise

AMPL asserts that its sole non-prime U.S. sale was atypical of its sales and pricing behavior because the sale consisted of several grades of steel, was defective merchandise not saleable to its regular customers, and the per-unit dumping margin was higher than the margin on its other U.S. sales. Therefore, AMPL argues that the Department should not have included, for the purpose of margin calculation, this single aberrant sale that AMPL reported as being outside the ordinary course of trade.

AMPL contends that the Department's explanation in its preliminary results, that because this is an antidumping duty administrative review in which it is assessing duties on all entries of subject merchandise, and therefore, all sales of the subject merchandise to the United States are included in the antidumping margin calculations, implies that the Department believes that it is compelled to include all sales in determining the antidumping liability in an administrative review, regardless of the circumstances under which the merchandise were sold. However, AMPL argues that the Department's statement is an incorrect interpretation of the law and is inconsistent with the Department's past practices.

AMPL claims that although the statute does not provide the Department with explicit authority to exclude the U.S. sale from its calculation, the Court of International Trade ("CIT") has concluded that the Department has the discretion to disregard certain U.S.

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interest to Mittal Steel Point Lisas Limited. See Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago: Notice of Final Results of Antidumping Duty Changed Circumstances Review, 73 FR 30052 (May 23, 2008).

pricing data if inclusion of certain sales, which are clearly atypical, would undermine the fairness of the comparison of foreign and U.S. sales.<sup>2</sup> Moreover, AMPL contends that in prior cases, including in the context of an administrative review, the Department has exercised its discretion to exclude aberrant U.S. sales from its margin calculations where those sales have been “exceptional” and their inclusion would have led to margin distortion.<sup>3</sup> Likewise, AMPL argues that in this instant case, the Department should exercise its discretion and exclude AMPL’s single sale of defective merchandise during the POR.

Petitioners counter that AMPL’s arguments and case citations do not provide a basis for the Department to exclude AMPL’s non-prime U.S. sale from the dumping margin calculations. Moreover, petitioners point out that in its October 7, 2008, letter to the Department, petitioners cited to four Department cases and a remand from the CIT that addressed issues related to the proper treatment of non-prime U.S. sales and that these cases make it clear that the statutory provision for sales outside the ordinary course of trade only applies to home market sales. Thus, petitioners argue that the Department properly included AMPL’s non-prime U.S. sales in its margin calculations.

Department’s Position:

During the POR, AMPL had a small volume of subject merchandise that was damaged during shipment to the United States that the original customer refused. Therefore, AMPL sold the defective merchandise “as is” in the U.S. market. We disagree with AMPL that this sale is aberrational, and therefore should be excluded. The Department’s exclusion or inclusion of sales in the ordinary course of business is applicable only to home market sales and not to U.S. sales. Furthermore, the CIT has held, in two separate decisions, that U.S. sales both within and outside the ordinary course of trade are to be included in the U.S. price calculations.<sup>4</sup> In this particular instance, the circumstances of AMPL’s sale of the defective merchandise in the U.S. market do not make the sale unusual nor do they make the sale aberrational. In order for the Department to exclude

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<sup>2</sup> See Ipsco, Inc. v. United States, 714 F. Supp. 1211, 1217 (CIT 1989), rev’d on other grounds, 965 F. 2d 1056 (Fed. Cir. 1992); American Permac, Inc. v. United States, 783 F. Supp. 1421, 1424 (CIT 1992) (American Permac); Floral Trade Council v. United States, 704 F. Supp. 233 (CIT. 1998); and FAG U.K. Ltd. V. United States, 945 F. Supp. 260 (CIT 1996).

<sup>3</sup> See Notice of Final Determination of Sales at Less-Than-Fair-Value: Stainless Steel Wire Rod from Taiwan, 63 FR 40461 (July 29, 1998) (Wire Rod from Taiwan); Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 61 FR 48465, 48466 (September 13, 1996) (Cold-Rolled Flat Products); Final Determination of Sales at Less-Than-Fair-Value: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 57 FR 42942, 42943 (September 17, 1992) (Circular Welded Non-Alloy Steel Pipe), and Fabric and Expanded Neoprene Laminate from Taiwan: Final Determination of Sales at Less-Than-Fair-Value, 52 FR 37193, 37194 (1997{sic.}) (1987) (Fabric and Expanded Neoprene Laminate).

<sup>4</sup> See Bowe Passat Reingigungs-und Washhereitechnik GmbH v. United States, 926 F. Supp. 1138, 1147-48 (CIT 1996) and Floral Trade Council v. United States, 15 CIT 497, 508 n. 18, 775 F. Supp. 1492 (CIT 1991).

sales, the circumstance must be exceptional and the proponent must demonstrate that inclusion of those sales would be extremely distortive. See Chang Tieh Indus. Co., Ltd., et. al v. United States, 840 F. Supp. 141, 145 (CIT 1993); see also Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (March 14, 2005), and accompanying Issues and Decisions Memorandum at Comment 6. Moreover, AMPL's line of reasoning only applies to the calculation of normal value based on home market sales and not to U.S. sales. The CIT has held, in two separate decisions, that U.S. sales both within and outside the ordinary course of trade are to be included in the U.S. price calculations.<sup>5</sup>

We also find that the cases cited by AMPL do not show inconsistency with the Department's preliminary results in the instant case. In Wire Rod from Taiwan at Comment 22, the Department stated that the home market sales of second-quality merchandise should not be used in the margin analysis since the respondent made no sales of second-quality merchandise to the United States. Thus, the issue was the exclusion of defective merchandise sold in the home market, and not merchandise sold in the United States. See also Final Determinations of Sales-at-Less-Than-Fair-Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea, 58 FR 37176, 37180 (July 9, 1993).

In Cold-Rolled Flat Products at Comment 1, the Department stated that its normal practice is to consider all of a company's U.S. sales in an administrative review, including those that were excluded due to time and resource constraints in the original investigation. The Department then noted that American Permac upheld the Department's inclusion of a small number of sales alleged by plaintiff to be distortive, noting that it was unclear from the record that any distortion actually occurred in that case. Id. at 43-44. Thus, American Permac stands for the proposition that the sales of small quantities of merchandise in the U.S. market will be included unless they are shown to be distortive. Moreover, we have satisfied the standards set forth in American Permac by providing for a methodology which accounts for the allegedly unrepresentative sale involving the non-prime merchandise that leads to a fair comparison. Specifically, for the comparison market price, we applied the weighted-average price and adjustments for non-prime sales made in the home market during the month that the non-prime U.S. sales occurred. Thus, because we compared the sale of non-prime merchandise in the United States to the sale of non-prime merchandise in the home market, we have eliminated any alleged distortions.

Also, AMPL's own characterization of the size of the U.S. sale at issue suggests that it could not significantly distort the overall, weight-averaged, margin. See AMPL's Case

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<sup>5</sup> See Bowe Passat Reingigungs-und Washhereitechnik GmbH v. United States, 926 F. Supp. 1138, 1147-48 (CIT 1996) and Floral Trade Council v. United States, 15 CIT 497, 508 n. 18, 775 F. Supp. 1492 (CIT 1991).

Brief at page 4. In the instant case, there is no evidence that AMPL's one sale of non-prime merchandise in the U.S. market is distortive; therefore, this sale is properly included in the margin calculation.

Likewise, we find AMPL's citation to Circular Welded Non-Alloy Steel Pipe at Comment 14, as a basis for the Department to exclude AMPL's sale of the non-prime merchandise from the margin calculations, to be unresponsive. In Circular Welded Non-Alloy Steel Pipe there was also an issue regarding whether the sale was outside of the POR, an issue not present in the instant case. Furthermore, reliance upon this one case would ignore the consistent, judicially affirmed precedent that states that we normally include all U.S. sales in the margin calculation.

Finally, we find that AMPL's cite to Fabric and Expanded Neoprene Laminate at Comment 2 is also unpersuasive. The issue in that case was whether the Department should include in the fair value comparisons sales where the customer did not make the payment. Payment is not an issue in this instant case. Moreover, in that case, the Department did not include the unpaid sales within the U.S. price because it was unable to calculate an accurate credit adjustment, which is also not an issue in this case.

As discussed above, the Department does not find that AMPL's arguments provide a basis for the Department to change its position. Therefore, the Department's position on this issue remains unchanged from the Preliminary Results.

Comment 2: Whether the Department Should Modify its Liquidation Instructions to U.S. Customs and Border Protection

AMPL requested that the Department include in its instructions to U.S. Customs and Border Protection ("CBP"), the former names of the respondent and its affiliates. Specifically, AMPL requested that for the final results, the Department identify AMPL as formerly known as Mittal Steel Point Lisas Limited ("MSPL") and Caribbean Ispat Limited ("CIL"), and for the Department to also instruct the CBP that Arcelor International America and/or Mittal Steel North America were formerly known as Ispat North America. AMPL claims that its request is being made in order to avoid potential confusion at CBP with respect to the names formerly used by AMPL in the application of the correct assessment rate.

Petitioners did not comment on this issue.

Department's Position:

In prior reviews, the Department has determined that AMPL is the successor-in-interest to MSPL, and that MSPL was the successor-in-interest to CIL. See the Background section of the Federal Register notice. Therefore, we determined it is appropriate to clarify the cash deposit and liquidation instructions to CBP to insure that CBP is fully aware of the prior company names used by AMPL.

**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 margin in the Federal Register.

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

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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Date