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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on
Silicomanganese from Brazil – December 1, 2003, through
November 30, 2004

Summary

We have analyzed the comments of Rio Doce Manganês S.A., Companhia Paulista de Ferro-Ligas, and Urucum Mineração S.A., the collapsed respondent, in the 2003-04 administrative review of the antidumping duty order on silicomanganese from Brazil. Eramet Marietta Inc., the petitioner, has not submitted either direct or rebuttal comments. As a result of our analysis of the comments received, we have revised our calculations for the final results and recommend that you approve the positions we have developed in this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from an interested party:

Comment 1: Affiliation with Certain Home-Market Customers
Comment 2: U.S. Gross Unit Price

Background

On September 9, 2005, the Department of Commerce (the Department) published the preliminary results of review and invited parties to comment. See Silicomanganese From Brazil: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 53628 (Preliminary Results). The period of review (POR) is December 1, 2003, through November 30, 2004.

We received comments only from Rio Doce Manganês S.A. (RDM), Companhia Paulista de Ferro-Ligas (CPFL), and Urucum Mineração S.A. (Urucum) (collectively, RDM/CPFL) .

Comment 1: Affiliation with Certain Home-Market Customers

RDM/CPFL argues that the Department concluded erroneously that RDM/CPFL is affiliated with certain home-market customers pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (the Act), because, according to RDM/CPFL, the information on the record does not support the Department's determination that these companies are affiliated by virtue of the common control by CVRD, RDM/CPFL's parent company. Specifically, RDM/CPFL argues that factors such as CVRD's minority stock ownership in these companies or the presence of CVRD's executive officers on the companies' boards of directors are not sufficient to establish CVRD's legal or operational control over these companies. Absent legal or operational control, RDM/CPFL argues, CVRD's relationship with these companies cannot generate any potential for CVRD to influence decisions concerning the production, pricing, or cost of silicomanganese. RDM/CPFL asserts that, pursuant to 19 CFR 351.102(b), unless the Department can show that CVRD's minority ownership interest or overlap in management places CVRD legally or operationally in the position to exercise restraint or direction over these companies to the effect of having the potential to affect their decisions with respect to production, pricing, or cost of silicomanganese, the Department cannot make a finding of control and, thus, it cannot make a finding of affiliation under section 771(33)(F) of the Act.

Department's Position: The Department continues to find that certain RDM/CPFL customers are affiliated with RDM/CPFL. Section 771(33)(F) of the Act states that "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person" shall be considered affiliated. A "person" may be an individual, corporation, or group. As defined further by section 771(33) of the Act, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." Pursuant to section 771(33)(F) of the Act, the Department does not need evidence of the actual exercise of control by one party over another. Control may exist when one party has the potential to exercise restraint or direction over the other person. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27298 (May 19, 1997) (Final Rule); see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy, 64 FR 30750, 30762 (June 8, 1999).

In our September 2, 2005, analysis memorandum for the preliminary results of administrative review of the antidumping duty order on silicomanganese from Brazil, we explained that, pursuant to section 771(33)(F) of the Act, we determined that RDM/CPFL is affiliated with certain home-market customers by virtue of common control by CVRD, RDM/CPFL's parent company. We determined that CVRD is in the position legally to exercise restraint or direction over the customers in question and, thus, CVRD's relationship with RDM/CPFL and RDM/CPFL's customers in question gives rise to its influence over the decisions on the production, prices, or cost of subject merchandise with respect to transactions between RDM/CPFL and the customers in question. Specifically, we determined that CVRD's investment interests in RDM/CPFL and RDM/CPFL's customers in question amount to control pursuant to section 771(33)(F) of the Act. Furthermore, we determined that the managerial overlap between CVRD and two of

RDM/CPFL's customers in question strengthens further our finding of CVRD's control over these customers.

Because RDM/CPFL's in-depth argument and our discussion with respect to this issue necessitates the use of business-proprietary information, we address this comment in more detail in the memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled "Final Results of the Administrative Review of the Antidumping Duty Order on Silicomanganese from Brazil: Affiliation with Certain Home-Market Customers," dated January 9, 2006, and placed on file in the Central Records Unit in room B099 of the main Department building.

Comment 2: U.S. Gross Unit Price

RDM/CPFL argues that the Department should use the gross unit price in the commercial invoice, which RDM/CPFL reported in U.S. dollars, instead of using the gross unit price in the nota fiscal fatura, which RDM/CPFL reported in Brazilian reais. RDM/CPFL requests that the Department use the U.S.-dollar gross unit price as reflected in RDM/CPFL's commercial invoice to its customers for the calculation of the final results of review.

Department's Position: We agree with RDM/CPFL. We determine the currency of a sales transaction based on the evidence determining the amount the purchaser would pay ultimately. See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 66 FR 45279, 45280 (August 28, 2001). To its U.S. customer, RDM/CPFL sent a commercial invoice, which lists the final dollar amount due to RDM/CPFL and the final quantity shipped. See RDM/CPFL's March 28, 2005, original response, page A-21. RDM/CPFL did not send a nota fiscal fatura to its U.S. customer as an invoice. See RDM/CPFL's April 11, 2005, original response, page C-13. Therefore, we have modified our margin program to reflect this change. See Analysis Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Silicomanganese from Brazil: Rio Doce Manganês S.A. (RDM), Companhia Paulista de Ferro-Ligas (CPFL), and Urucum Mineração S.A. (Urucum) (collectively, RDM/CPFL), dated January 9, 2006, for proprietary information on this issue.

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 of review and the final weighted-average dumping margin for RDM/CPFL in the Federal Register.

Agree

Disagree

David M. Spooner
Assistant Secretary
for Import Administration

(Date)