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August 6, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review of Stainless Steel Bar  
from Brazil; 2012-2013

## I. Summary

We analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on stainless steel bar (SSB) from Brazil covering the period February 1, 2012, through January 31, 2013. As a result of our analysis of the comments received, we made changes to our final margin calculation for Villares Metals S.A. (Villares). We recommend that you approve the positions in the “Discussion of the Issues” section of this memorandum.

## II. List of Comments

Comment 1: Quantity Variable Referenced

Comment 2: Differential Pricing Analysis

## III. Background

The Department of Commerce (the Department) published the *Initiation Notice* on March 29, 2013.<sup>1</sup> On March 24, 2014, the Department published in the *Federal Register* the *Preliminary Results* of the antidumping duty administrative review of SSB from Brazil.<sup>2</sup> The period of review (POR) is February 1, 2012, through January 31, 2013. We invited interested parties to comment on the *Preliminary Results*.

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 19197 (March 29, 2013) (*Initiation Notice*).

<sup>2</sup> See *Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 15948 (March 24, 2014) (*Preliminary Results*).



As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.<sup>3</sup> Pursuant to the Tolling Memorandum, the deadlines for briefs and the final results of this review were revised with due dates of April 23, 2014 and April 28, 2014, for case and rebuttal briefs, respectively, and July 22, 2014, for the final results. On July 15, 2014, we extended the deadline for the final results to August 12, 2014.<sup>4</sup>

Carpenter Technology Corporation, Crucible Industries LLC, Universal Stainless & Alloy Products Inc., and Valbruna Slater Stainless, Inc. (collectively, the petitioners), and Villares filed case briefs on April 22, 2014 and April 23, 2014, respectively. The petitioners filed a rebuttal brief on April 28, 2014.

#### IV. Scope of the Order

The merchandise subject to the order is SSB. The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections. The SSB subject to the order is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.<sup>5</sup>

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<sup>3</sup> See memorandum from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" dated October 18, 2013 (Tolling Memorandum).

<sup>4</sup> See memorandum from Sandra Dreisonstok, International Trade Compliance Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Stainless Steel Bar from Brazil: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2012-2013" dated July 15, 2014.

<sup>5</sup> The HTSUS numbers provided in the scope changed since the publication of the order. See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995); see also *Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 22227 (April 15, 2013).

## V. Changes to the *Preliminary Results*

Due to a change in the quantity variable referenced in the margin-calculation program (*see* Comment 1 below), the results of the differential pricing (DP) analysis changed for Villares from the *Preliminary Results*. For these final results, the Department finds that 36.39 percent of Villares' U.S. sales by value pass the Cohen's *d* test, which confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, we determine that the average-to-average (A-A) method cannot appropriately account for such differences because the resulting weighted-average dumping margin calculated using the A-A method and an alternative method based on the average-to-transaction (A-T) method applied to U.S. sales which pass the Cohen's *d* test moves across the *de minimis* threshold.<sup>6</sup> Accordingly, based on the results of our analysis, we determine for these final results to use the A-T method for U.S. sales passing the Cohen's *d* test and the A-A method for U.S. sales not passing the Cohen's *d* test to calculate the final weighted-average dumping margin for Villares. *See* Comment 2 below for further discussion.

## VI. Discussion of the Issues

**Comment 1:** The petitioners comment that the wrong quantity variable for Villares' U.S. sales was identified in the margin-calculation program for the *Preliminary Results*. The petitioners argue that the Department incorrectly referenced the reported sales quantity (*i.e.*, QTYU) rather than the reported warehouse-release quantity (*i.e.*, RQTYU), and that this should be corrected for the final results.

Villares did not comment on this issue.

**Department's Position:** Based on Villares' questionnaire responses, and consistent with the previous administrative review,<sup>7</sup> we determined its U.S. sales were constructed export price (CEP) sales, and that the universe of sales should be based on the date of release from the third-party warehouse in the United States. Accordingly, Villares reported its total quantity and value based on warehouse releases in the fields RQTYU and RGRSUPRU.<sup>8</sup> Villares also provided the Department with its total quantity and value of subject merchandise shipped from its facilities in Brazil in the fields QTYU and GRSUPRU.<sup>9</sup>

For the *Preliminary Results* we incorrectly referenced the shipment quantity (*i.e.*, QTYU) rather than the warehouse release quantity (*i.e.*, RQTYU) in the margin-calculation program. For the final results we revised our margin-calculation program to accurately identify the warehouse

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<sup>6</sup> *See* margin calculation program output at Attachment D.

<sup>7</sup> *See Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 4383 (January 22, 2013) and accompanying Issues and Decision Memorandum at 3-4, as unchanged for the final results.

<sup>8</sup> *See* Villares' U.S. sales database filed September 25, 2013.

<sup>9</sup> *Id.*

release quantity variable, RQTYU. *See* Final Analysis Memorandum for Villares for further details regarding this change.<sup>10</sup>

**Comment 2:** Villares states in its case brief that although it agrees with the Department’s decision to apply the A-A method for Villares in the *Preliminary Results*, it disagrees with the use of a DP analysis, including application of the Cohen’s *d* test, to determine whether the results of the Cohen’s *d* test support the use of an alternative method. Specifically, for the final results, Villares argues that the Department should apply the A-A method regardless of the results of the DP analysis because, given the facts of this case, it is impossible to find a pattern of CEPs for comparable merchandise that differs significantly among purchasers, regions, or time periods. First, Villares argues that its sales could not have differed by purchaser.<sup>11</sup> Then, Villares explains, because all of its CEP sales were based on releases from a single third-party warehouse, its sales also could not have differed by region.<sup>12</sup> Finally, Villares asserts that fluctuations in pricing based on market conditions do not reflect its negotiation or pricing practices and, therefore, “CEPs for subject merchandise could not have differed by time period as to mask dumping.”<sup>13</sup> In conclusion, Villares asserts that, because the facts of this case do not justify a DP analysis, it would be inappropriate to apply the A-T method to determine Villares’ dumping margin for the final results of review.

The petitioners argue that the fact pattern does not provide justification for the Department to deviate from its practice of conducting its DP analysis to decide whether the application of an alternative method is warranted. The petitioners state that it is not the Department’s practice to decide on a case-by-case basis whether to conduct the DP analysis and to apply the Cohen’s *d* test. Further, the petitioners assert, Villares failed to cite any relevant case precedent to support a decision to deviate from the DP analysis because, the petitioners argue, such a case does not exist.

The petitioners argue further that if the Department is to revise the quantity variable referenced in its margin-calculation program pursuant to the petitioners’ alleged ministerial error highlighted in its case brief, that the Department will find a pattern of CEPs that differ significantly among Villares’ purchasers, regions, or time periods and that there is a meaningful difference in the margin calculations *vis a vis* the A-A and A-T methods. For these reasons, the petitioners assert, the Department should apply the A-T method to determine Villares’ dumping margin for the final results of review.

**Department’s Position:** We disagree with Villares’ argument that based on the circumstances surrounding its sales, it is impossible to find a pattern of CEPs that differs significantly among

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<sup>10</sup> *See* Memorandum to the File from Sandra Dreisonstok, International Trade Compliance Analyst, AD/CVD Operations, Office I, “Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from Brazil: Final Analysis Memorandum for Villares Metals S.A.; 2012-2013” dated August 6, 2014 (Final Analysis Memorandum for Villares).

<sup>11</sup> Additional comments made regarding the DP analysis contain business proprietary information and are therefore not discussed in this public memorandum. For further discussion, *see* Final Analysis Memorandum for Villares.

<sup>12</sup> *Id.*

<sup>13</sup> *See* Villares’ April 23, 2014 case brief at 3-4.

purchasers, regions, or time periods.<sup>14</sup> Specifically, based on the results of the DP analysis, we determine that 36.39 percent of Villares' export sales confirm the existence of a pattern of CEPs for comparable merchandise that differs significantly among time periods.<sup>15</sup>

Villares' arguments regarding DP by purchaser and region do not change the fact that the DP analysis and Cohen's *d* test revealed a pattern of CEPs that differ significantly by time period.

First, Villares' argument that observed fluctuations in pricing based on market conditions do not reflect its negotiation or pricing practices is unavailing. In *Copper Pipe from Mexico*,<sup>16</sup> Golden Dragon similarly argued that its U.S. prices during the POR were set by a contractual formula which includes a fixed base price (fabrication charge) and a floating price for copper pegged to the London Metals Exchange (LME), an independent commodity exchange and, therefore, the Department's analysis should account for causal links for price patterns in a respondent's U.S. sales.<sup>17</sup> We disagreed with Golden Dragon's argument and observed that section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act) states that the Department should consider different comparison methods if:

- (i) there is a pattern of export prices (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

The purpose of the DP analysis is to determine whether the A-A method is a meaningful tool to measure whether, and if so to what extent, dumping is occurring. We stated in *Copper Pipe from Mexico* that “{w}e do not interpret the statute to mean a pattern of prices that differ significantly after controlling for external factors such as LME prices, causal links between LME prices and U.S. prices, or the intentions or motivations of the producer or exporter.”<sup>18</sup> The analysis employed by the Department, including the use of the Cohen's *d* and ratio tests, reasonably informs the Department whether a pattern of prices that “differ significantly” exists. On this basis, the Department continued to apply the Cohen's *d* and ratio tests, regardless of whether Golden Dragon's prices were based on a combination of contractually-fixed fabrication charges and copper prices which are set contractually by a formula, for the final results of that review. Similarly, as we found in the *Preliminary Results*, we continue to find it reasonable to determine our calculation methodology for Villares based on the results of our DP analysis, regardless of market fluctuations and/or contractual formulas used between Villares and its customer to account for these changes.

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<sup>14</sup> See Final Analysis Memorandum for Villares for a summary of Villares' arguments containing business-proprietary information.

<sup>15</sup> See margin-calculation program output at Attachment D; see also Final Analysis Memorandum for Villares at 2.

<sup>16</sup> See *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36719 (June 30, 2014) (*Copper Pipe from Mexico*) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>17</sup> See Golden Dragon's February 21, 2013, section A Response at Exhibit A-6.

<sup>18</sup> See *Copper Pipe from Mexico*, and accompanying Issues and Decision Memorandum at Comment 5.

Further, in *Pipe and Tube from Turkey*<sup>19</sup> and *Copper Pipe from Mexico*<sup>20</sup> we disagreed with arguments raised by the respondents that the Department must analyze the causality for any observed price differences based on changes in market conditions. We stated that neither the statute<sup>21</sup> nor the SAA<sup>22</sup> requires the Department to conduct an additional analysis to account for potential reasons that the observed price differences existed. Therefore, for these final results, we have not conducted an additional analysis to account for observed market fluctuations.

Also, on June 25, 2014, the United States Court of International Trade (CIT) stated in *Borusan v. United States* that "...the statute simply instructs Commerce to consider export sales price (or constructed export sales price) in its targeted dumping analysis... {and} ...does not require Commerce to undertake an investigation of the various reasons why a pattern of targeted dumping exists within a given time period."<sup>23</sup> This contradicts Villares' argument that, because changes in price over time are a result of the fluctuation in a published index it did not control, Villares could not have engaged in targeted dumping.

Accordingly, consistent with our determinations in *Pipe and Tube from Turkey* and *Copper Pipe from Mexico*, and the CIT's decision in *Borusan v. United States*, we have not altered the DP analysis performed for Villares in these final results.

### 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 this review and the final weighted-average dumping margin for Villares in the *Federal Register*.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

6 AUGUST 2014  
\_\_\_\_\_  
Date

<sup>19</sup> See *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) (*Pipe and Tube from Turkey*) and accompanying Issues and Decision Memorandum at 39.

<sup>20</sup> See *Copper Pipe from Mexico*, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>21</sup> See section 777A(d)(1)(B) of the Act.

<sup>22</sup> See Statement of Administrative Action (SAA), H.R. Rep. No. 103-316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040 at 842-843.

<sup>23</sup> See *Borusan Mannesmann and Boru Sanayi Ve Ticaret A.S. v. United States and United States Steel Corporation*, U.S. CIT, Court No. 13-00001 (Slip Op. 14-71) (June 25, 2014) at 7 (*Borusan v. United States*).