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October 16, 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 Final Results of
Antidumping Duty Administrative Review: Stainless Steel Bar
from Spain; 2012-2013

I. Summary

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel bar (SSB) from Spain. The review covers one producer/exporter of the subject merchandise, Gerdau Aceros Especiales Europa, S.L. (Gerdau). The period of review (POR) is March 1, 2012, through February 28, 2013. We determine that sales of the subject merchandise have not been made at prices below normal value.

II. List of Comments

Comment 1: Non-*Bona Fide* U.S. Sales

Comment 2: Post-Sale Invoicing of International Freight

III. Background

The Department published the *Initiation Notice* on May 1, 2013.¹ On April 23, 2014, the Department published in the *Federal Register* the *Preliminary Results* of the antidumping duty administrative review of SSB from Spain.² We invited interested parties to comment on the *Preliminary Results*.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 25418 (May 1, 2013) (*Initiation Notice*).

² See *Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 22622 (April 23, 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 were extended by 16 days.³ At the request of Carpenter Technology Corporation, Crucible Industries LLC, Universal Stainless & Alloy Products Inc., and Valbruna Slater Stainless, Inc. (collectively, the petitioners), on May 15, 2014 we extended the deadlines for case and rebuttal briefs to May 30, 2014 and June 4, 2014, respectively.⁴ The petitioners filed their case brief on May 30, 2014. Gerdau filed a rebuttal brief on June 4, 2014. On July 16, 2014, we extended the deadline for the final results by 60 days to October 20, 2014.⁵

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.⁶

³ See memorandum from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" dated October 18, 2013.

⁴ See memorandum to all interested parties signed by Mino Hatten, Program Manager, AD/CVD Operations, Office I, dated May 15, 2014.

⁵ 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 Spain: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2012-2013" dated July 16, 2014. In this memorandum, we inadvertently calculated an extended deadline of October 14, 2014 (60 days from the date of signature of the *Preliminary Results*) instead of October 20, 2014 (60 days from the date of publication of the *Preliminary Results*). See September 10, 2014, memorandum to the file from Sandra Dreisonstok, International Trade Compliance Analyst, clarifying the deadline for the final results.

⁶ The HTSUS numbers provided in the scope changed since the publication of the order. See *Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar From Spain*, 60 FR 11656 (March 2, 1995).

V. Discussion of the Issues

Comment 1: Non-Bona Fide U.S. Sales

In their case brief, the petitioners urged the Department to reconsider its *bona fides* determination for the final results. Specifically, the petitioners contend that the timing of the sales, alleged inconsistencies in dates and sales terms appearing in Gerdau's sales documentation, invoices to the U.S. customer recorded in foreign currency, the use of a European index to determine alloy surcharges, and certain language appearing in e-mail communication with the U.S. customer suggest Gerdau's sales were not typical commercial transactions.⁷ The petitioners argue that the Department misinterpreted the arm's-length criteria in its preliminary *bona fides* determination and urge the Department to analyze whether the circumstances surrounding the sales were based on arm's-length commercial behavior, regardless of affiliation, for the final results.⁸ Further, the petitioners placed on the record affidavits from industry experts to support their arguments that Gerdau's use of a European index to determine alloy surcharges and its invoicing in foreign currency were atypical behaviors in the SSB industry.⁹ Lastly, the petitioners provided import data from PIERS regarding the value of imports by HTSUS number to support their claim that the average price of Gerdau's U.S. sales was comparatively higher than other imports from Spain during the POR.¹⁰

In its rebuttal, Gerdau explains that, in its view, there was nothing unreasonable or distortive about the timing of its POR sales.¹¹ With regard to petitioners' arguments about inconsistencies, Gerdau asserts that the fonts in the documents provided are consistent and the dates identified by petitioners are print dates. Thus, Gerdau explains, these documents do not indicate any inconsistencies between Gerdau's description of its sales process and record evidence.¹² With regard to the affidavits from industry experts and import data provided by the petitioners, Gerdau argues that this information is self-serving and, ultimately, untimely information that should be stricken from the record.¹³ Gerdau submits that its normal practice is to use European indices to determine alloy surcharges for its U.S. sales, regardless of the opinion of the industry experts called upon by the petitioners, and that Gerdau would continue to sell to the U.S. market in the same manner in the future. With regard to the import statistics from PIERS, Gerdau explains that the data provided includes multiple HTSUS tariff codes and, therefore, it is not an appropriate basis for determining if Gerdau's average prices were comparatively higher than other imports of SSB from Spain.¹⁴ Further, Gerdau asserts, other than its own sales, according to the petitioners' data there were only two, low volume entries of SSB from Spain during the POR. Gerdau argues that the volume of this single entry is not "sufficiently large to serve as a reasonable basis for analysis."¹⁵ Gerdau asserts that the data provided by the petitioners indicate that Gerdau's average prices were comparatively lower than imports from other countries during

⁷ See, generally, the petitioners' case brief.

⁸ *Id.*, at 18-19.

⁹ *Id.*, at 12-13; see also the petitioners' May 29, 2014, letter at Attachments 2 and 3.

¹⁰ See *id.*, at 7-9; see also the petitioners' May 29, 2014, letter at Attachment 1.

¹¹ See Gerdau's rebuttal brief at 3-5.

¹² *Id.*, at 12-15.

¹³ *Id.*, at 5-6.

¹⁴ *Id.*, at 6-7.

¹⁵ *Id.*

the POR and, thus, Gerdau argues, the petitioners' argument regarding price is "weak" and unsubstantiated by the facts on the record.¹⁶ Lastly, Gerdau explains that, in its view, the presence of sales either before or after the POR is irrelevant to whether its POR sales are *bona fide*.¹⁷

Department's Position: Based on our analysis of record evidence and review of comments received we continue to find that Gerdau's sales were *bona fide*.

Subsequent to the *Preliminary Results*, we issued a supplemental questionnaire to solicit information regarding what Gerdau's customer did with the subject merchandise sold during the POR, and to inquire about additional price and quantity information related to any subsequent sales of subject and non-subject merchandise by Gerdau to the U.S. market. Gerdau's response confirmed that it is not affiliated with the customer, and that sales of subject and non-subject merchandise were sold to the customer for its inventory as a distributor.¹⁸ We also disagree with the petitioners that the structure of the sale supports determining that the transaction is not an arm's-length transaction. The record shows that the parties negotiated in normal commercial fashion. Also, the response confirmed that, while Gerdau did not have sales of subject merchandise in the subsequent POR, it had numerous sales of non-subject alloy bar, which were invoiced using a European index as the basis for its alloy surcharges.¹⁹ Based on the facts on the record, we determine that Gerdau demonstrated sufficiently that its normal business practice is to base its alloy surcharges for its U.S. sales on a European index.

As explained in the *Preliminary Results*,²⁰ in accordance with *TTPC*,²¹ we consider the following when determining if a sale is *bona fide*: 1) timing of the sale, 2) price and quantity, 3) expenses arising from the transaction, 4) whether the goods were resold at a profit, and 5) whether the transaction was made at arm's length. Thus, we consider a number of factors in our *bona fide* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."²² Although some *bona fide* issues may share commonalities across various Department cases, we examine the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.²³ In *TTPC*, the United States Court of International Trade (the Court) affirmed our practice of considering, as relevant, "any factor which indicates that the sale under consideration is not likely to be typical of those which the

¹⁶ *Id.*, at 7.

¹⁷ *Id.* at 4; *see also* Gerdau's May 19, 2014 post-preliminary supplemental questionnaire response at 2-3 (post-prelim SQR).

¹⁸ *See* post-prelim SQR response at 1 and 5-6.

¹⁹ *Id.*, at 2-5 and Exhibit 1.

²⁰ *See Preliminary Results*.

²¹ *See Tianjin Tiangcheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d at 1246, 1250 (CIT 2005) (*TTPC*).

²² *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*), citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002).

²³ *See New Donghua*, 374 F. Supp. 2d at 1340 n. 5, citing *TTPC* at 1260 (quoting *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 2).

producer will make in the future,”²⁴ and found “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”²⁵ The Court stated that the our practice makes clear we are highly likely to examine objective, verifiable factors to ensure a sale is not being made to circumvent an antidumping duty order.²⁶

Regarding price, we determine that the affidavits and PIERS data provided by the petitioners with their May 29, 2014 comments on Gerdau’s post-prelim SQR response were timely filed in accordance with 19 CFR 351.301(c)(1) (2012). However, we disagree with the petitioners’ arguments that this data constitutes a reasonable basis to find Gerdau’s pricing to be comparatively higher than other imports during that period. The petitioners’ data mixes tariff codes and contains only two, low volume entries during the period to use as a comparison. In short, this data does not reliably show that the price of Gerdau’s U.S. sale was aberrational, and there is no other information on the record demonstrating that the price is aberrational. We also find that Gerdau’s invoicing of the U.S. sale in euros is not commercially unreasonable. Further, we find, consistent with the *Preliminary Results*, that the quantity of Gerdau’s U.S. sale was consistent with its normal commercial practice. Finally, based on the facts on the record we continue to find that there is nothing commercially unreasonable about the timing of Gerdau’s sales, which entered the United States approximately one month before the end of the POR. Based on the factors set forth in *TTPC*, our review of the comments filed by interested parties, and our analysis of the responses received from Gerdau, we find that Gerdau’s U.S. sales during the POR were *bona fide*. This analysis and determination is consistent with the *Preliminary Results* and our previous determinations.²⁷

Comment 2: Post-Sale Invoicing of International Freight

Gerdau reported that it made its U.S. sales on a delivered “FOB Spanish seaport” (free on board) basis. However, information on the record indicates that these U.S. sales were made on a delivered (Chicago Rail Ramp) basis, and that Gerdau paid the relevant international freight charges.²⁸ Subsequent to the POR, Gerdau issued a post-sale invoice (debit note) to the customer for the freight charges incurred.²⁹

The petitioners argue that the Department should not have accepted these expenses in the *Preliminary Results* because, in their view, these freight expenses have not been linked with sales of subject merchandise. Further, the petitioners assert that Gerdau’s explanation of the alleged mistake by the shipping company is self-serving, and that “the chaotic means of shipping and invoicing” the U.S. customer is not indicative of normal business practices with a long-standing customer.³⁰ Gerdau asserts that the post-sale adjustment resulted from the mistaken delivery of merchandise by a third party *via* delivered sales terms rather than FOB.³¹

²⁴ See *TTPC*, 366 F. Supp. 2d at 1250.

²⁵ *Id.*, at 1263.

²⁶ See *New Donghua*, 374 F. Supp. 2d at 1339.

²⁷ See, e.g., *Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 72633 (December 3, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

²⁸ See sections B-C questionnaire (BCQR) responses dated June 27, 2013, at 60, 69, and Exhibit 16.

²⁹ See SQR1 response at Exhibit 2.

³⁰ See the petitioners’ case brief at 15-17.

³¹ See Gerdau’s rebuttal brief at 10-11; see also BCQR response at 69.

Department's Position: Pursuant to 19 CFR 351.401(c), when calculating export price, we use a price that is net of any price adjustment that is reasonably attributable to the subject merchandise. The regulations further define price adjustments as any change in the price charged for subject merchandise such as post-sale price adjustments that are reflected in the purchaser's net outlay.³² Based on our analysis of record evidence, we determine that these freight charges are attributable to Gerdau's U.S. sales. Specifically, the amount of the post-sale invoice is consistent with the amount Gerdau paid the shipping company for the freight charges incurred and Gerdau documented that it received payment from the U.S. customer for the incurred freight expenses after the sale.³³ Also, the freight invoice issued to the U.S. customer can be linked to the original freight invoice Gerdau was issued by the shipping company by the shipping invoice number.³⁴

In *Stainless Steel Sheet from Mexico*, we allowed post-sale billing adjustments because the adjustments were made to correct invoicing errors and because the record evidence did not indicate that the respondent, Mexinox, was attempting to manipulate the margin with its adjustments.³⁵ Further, in *Stainless Steel Sheet from Mexico*, Mexinox demonstrated that its reported post-sale adjustments were in accordance with the agreed upon terms made with its customer prior to the sale.³⁶ This is the case here as well. Gerdau demonstrated that there was an error in the invoicing of the freight, and that it did not catch the error until after the sale. This is not a change in the terms agreed to with the ultimate customer prior to the sale. Thus, consistent with the regulations and our practice, we included the reported freight revenue in our final margin calculations for Gerdau.

VI. Successor-In-Interest

Based on Gerdau's responses and the petitioners' comments, we preliminarily determined that Gerdau was the successor-in-interest to Sidenor Industrial S.L. (Sidenor), a previously reviewed company.³⁷ Parties did not comment on the successor-in-interest determination since the *Preliminary Results*. Thus, based on our review of the record evidence, for these final results we determine that Gerdau is the successor-in-interest to Sidenor. Consequently, we will instruct U.S. Customs and Border Protection to apply the cash-deposit rate calculated for these final results to all entries of subject merchandise from Gerdau that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

³² See 19 CFR 351.102(b).

³³ *Id.*, and SQR1 response at Exhibit 2.

³⁴ *Id.*

³⁵ See *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004) (*Stainless Steel Sheet from Mexico*) and accompanying Issues and Decision Memorandum at Comment 1.

³⁶ *Id.*

³⁷ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 2-3.

VII. 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 Gerdau in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

16 OCTOBER 2014
(Date)