

March 5, 2008

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 Stainless Steel Wire Rod from Sweden

Summary

We have analyzed the case and rebuttal briefs of interested parties in the 2005-2006 review of the antidumping duty order of stainless steel wire rod (“SSWR”) from Sweden. As a result of our analysis, we have made one change in the margin calculation for the final results. We recommend that you approve the position described in the “Discussion of the Issues” section of this memorandum. Below are the issues in this review for which we received comments from the parties:

Comment 1: Whether to Include Electroslag Refining As a Model-Matching Criterion
Comment 2: Converting the Unit of Measure of FSAB’s Constructed Value Data

Background

On August 31, 2007, the Department of Commerce (“the Department”) published the preliminary results in the 2005-2006 antidumping duty administrative review of stainless steel wire rod from Sweden. See Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 51411 (September 7, 2007) (“Preliminary Results”). The product covered by this review is stainless steel wire rod. The period of review (“POR”) is September 1, 2005, through August 31, 2006.

We invited parties to comment on the Preliminary Results. The respondent, Fagersta Stainless AB (“FSAB”), filed its case brief on October 9, 2007, and the petitioners¹ filed their rebuttal brief

¹ The petitioners include the following companies: Carpenter Technology Corporation and Charter Specialty Steel.

on October 15, 2007. As no party requested a hearing, the Department did not hold a hearing in this review.

On December 17, 2007, we extended the time limit for the final results in this review until March 5, 2008. See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from Sweden, 72 FR 71359 (December 17, 2007).

Based on our analysis of the comments received, we have changed the weighted-average margin applicable to FSAB and its affiliates AB Sandvik Materials Technology (“SMT”) and Kanthal AB (“Kanthal”) from the Preliminary Results.²

Margin Calculations

We calculated constructed export price (“CEP”) and normal value (“NV”) using the same methodology described in the Preliminary Results with one exception. We corrected a clerical error by converting FSAB’s constructed value (“CV”) costs from SEK/kg. to USD/lb. in the margin calculations. See March 5, 2008, Memorandum from Case Analyst to The File, entitled “Calculation Memorandum for the Final Results for Fagersta Stainless AB,” for further details.

Discussion of the Issues

Comment 1: Whether to Include Electroslag Refining As a Model-Matching Criterion

In the Preliminary Results, consistent with our determination in the final results of the prior review, we found that it was inappropriate to change the model-matching criteria adopted in the less-than-fair-value (“LTFV”) investigation, by including electro-slag remelting (“ESR”)³ in the model-matching criteria hierarchy, as argued by FSAB. See Preliminary Results; and Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review, 72 FR 17834 (April 10, 2007), and accompanying Issues and Decision Memorandum at Comment 1. We explained in the Preliminary Results that inclusion of ESR in the long-standing model-matching criteria used in this review (and prior segments of the proceeding) was unwarranted for several reasons: (1) FSAB’s use of ESR to produce one AISI-equivalent SSWR grade⁴ that it sold to one customer in the home market during the POR is insignificant when

² In the Preliminary Results, we determined it appropriate to treat FSAB and its affiliates, SMT and Kanthal AB, as one entity for margin calculation purposes because they met the regulatory criteria for collapsing affiliated producers/exporters. See March 22, 2007, Memorandum from the Team to The File, entitled “Stainless Steel Wire Rod from Sweden: Whether to Collapse FSAB, SMT, and Kanthal.” No party objected to this preliminary determination. Therefore, we have continued to treat these affiliated companies as one entity in the final results.

³ ESR is one form of remelting. Another form of remelting is vacuum arc remelting (“VAR”).

⁴ The Department’s antidumping duty questionnaire instructed FSAB to assign codes to its SSWR grades sold during the POR based on the specifications established for AISI-recognized grades. See antidumping duty questionnaire at page B-6 and C-5.

compared to the large number and quantity of other (non-ESR-treated) AISI-equivalent SSWR grades FSAB sold in both the home and U.S. markets during the POR; (2) ESR is not an industry-wide practice in the production of SSWR; (3) the Department's determinations with respect to other stainless steel products did not support revising the model-match criteria; (4) other production processes or steps (*i.e.*, not just remelting) can affect the internal and/or external quality of the final SSWR product, including the level of inclusions, and thereby impact costs; and (5) remelting is not a new technological development affecting the SSWR industry.

Respondent's Arguments

FSAB disagrees with the Department's preliminary decision, arguing that it is arbitrary, capricious, and unsupported by record evidence for several reasons. First, FSAB argues that the technical information it provided in its questionnaire responses⁵ in this administrative review, as well as in the prior administrative review, sufficiently demonstrates that ESR-treated SSWR differs significantly in physical characteristics from otherwise identical non-ESR treated SSWR. For that reason, inclusion of ESR as a matching criterion is essential to the accurate comparison of home and U.S. market sales. FSAB maintains that ESR is a separate and significant processing stage in the production of billets used to make SSWR, which imparts unique material qualities, primarily superior fatigue resistance, to the finished SSWR. Furthermore, FSAB maintains that it is the superior fatigue resistance in the SSWR produced by using the ESR process that results in a "cleaner" steel which its customer requires for purposes of producing spring material for use in corrosive environments. FSAB explains that the "cleaner" steel produced using the ESR process has fewer, smaller, and more evenly distributed inclusions⁶ and is, therefore, less prone to breaking under stress unlike SSWR produced without ESR. FSAB notes that the physical differences associated with the remelted material are extremely important to the application of the product, as evidenced by the fact that FSAB's customer requires special test reports which detail the inclusions by size and number. Moreover, FSAB contends that to the best of its knowledge, the "cleaner" steel cannot be produced without using the ESR remelting process.⁷

Second, FSAB argues that although the Department recognized in the Preliminary Results that FSAB may have incurred additional costs in using ESR, the Department improperly dismissed both the magnitude and significance of the price and cost differences associated with ESR. FSAB maintains that there exists on average a price difference of more than 100 percent and a cost difference of more than 80 percent between the ESR-treated product and non-ESR-treated product of the same grade which it sold in the same market. FSAB asserts that aside from the use of ESR,

⁵ See Exhibit 1 of the Section B Response.

⁶ An inclusion is a non-metallic particular formation such as aluminum nitride and/or aluminum oxide. The presence of inclusions generally weakens the steel, making it more prone to breaking under stress.

⁷ FSAB mentions that although VAR can also produce "cleaner" steel, VAR, unlike ESR, results in the decrease in the amount of desirable elements such as nitrogen and manganese.

the products falling within the same AISI grade would otherwise be absolutely identical in terms of physical characteristics. Moreover, FSAB argues that it is unreasonable to group ESR-treated and non-ESR-treated SSWR products in the same control number because they are not identical. FSAB contends that no customer would pay double the price for the same product which is unaccounted for by assigning the same control number to both ESR-treated and non-ESR-treated SSWR products.

Furthermore, FSAB argues that the above-noted price and cost differences between ESR and non-ESR-treated SSWR reflect important physical differences which the Department must consider when determining the model-matching criteria, as it has recently done in other antidumping duty cases.^{8,9} FSAB contends that when the same customer is willing to pay twice as much for one product as it does for another product that the Department treats as identical, the Department should analyze whether the products are, in fact, identical for model-matching purposes. In addition, FSAB notes that the type of detailed information the Department requires from respondents for purposes of submitting their sales expense data, no matter how minor, is at odds with the Department's decision not to take into account FSAB's use of ESR, which has a substantial impact on prices and costs, when making product comparisons.

Third, FSAB claims that the Department's preliminary decision not to include ESR as a model-matching criterion has distorted a substantial number of price-to-price comparisons. Specifically, FSAB notes that its home market sales of ESR-treated SSWR, combined with its home market sales of non-ESR-treated SSWR with the same grade, are significant when compared to the total volume of FSAB's reported sales made in the home market. Additionally, FSAB notes that a significant quantity of U.S. sales involving the SSWR grade at issue are subject to inaccurate comparisons as a result of the Department's preliminary decision to treat home market sales of the ESR-treated and non-ESR-treated SSWR with the same grade as identical. In order to restore accuracy in its product comparisons, according to FSAB, the Department must match U.S. sales of the SSWR grade at issue to the same exact product sold in the home market by accounting for ESR in the model-matching criteria. FSAB also maintains that a compelling reason warranting a change to the model-matching methodology may include greater accuracy in comparing foreign like product to the single most similar U.S. model, in accordance with section 771(16)(B) of the Tariff Act of the 1930, as amended ("the Act").¹⁰

⁸ In support of its argument, FSAB cites to Final Determination of Sales at Less than Fair Value: Metal Calendar Slides from Japan, 71 FR 36063 (June 23, 2006), and accompanying Issues and Decision Memorandum at Comment 1 ("Metal Calendar Slides"); and Final Results of the Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, 70 FR 13458 (March 21, 2005) ("Carbon Steel Flat Products") and accompany Issues and Decision Memorandum at Comment 1.

⁹ For example, FSAB questions whether the importance the Department placed on temper rolling and tension leveling in the corrosion-resistant carbon steel product cases, vitamin enrichment in the pasta cases, and percentage color concentrate in the plastic bags cases is inconsistent with the Department's treatment of ESR in the SSWR case.

¹⁰ In support of its argument, FSAB cites to Ball Bearings and Parts Thereof from France, Germany, Italy,

Fourth, FSAB argues that the fact that it used ESR to produce only one of many grades of SSWR sold in both the home and U.S. markets has little bearing on how significant either the ESR treatment is to FSAB's customer or how significant the ESR issue is to this review. FSAB claims that the degree of difference in physical qualities and the number of comparisons affected should determine how significant the ESR issue is to this review. FSAB argues that the Department has defined "significance" in this review without regard to the actual physical differences or the number of comparisons at issue, and that such treatment is not supported by the statute, regulations or prior Department practice. Moreover, if the Department wants to include only the significant physical characteristics in its model-matching criteria, then FSAB contends the Department should consider removing diameter and coating from the SSWR model-matching criteria. Specifically, FSAB maintains that with the exception of two grades sold to the United States during the POR, it reported the same information with respect to these two criteria for the vast majority of its U.S. sales, as the products it sold were within a specific diameter range and all were uncoated.

Fifth, FSAB argues that the Department's assertion that including ESR as a model-matching criterion would effectively remove the home market sales of ESR-treated SSWR from the margin calculation analysis and result in less accurate comparisons, is results-oriented. FSAB argues that, conversely, keeping the home market sales of ESR-treated SSWR in the margin calculation analysis artificially raises the comparison market price for U.S. sales of non-ESR-treated SSWR. Moreover, FSAB claims that the Department's treatment of the ESR-treated and non-ESR-treated merchandise at issue as identical is illogical because the products are so dissimilar and their cost differences so significant that they could not match as similar products under the Department's difference-in-merchandise ("DIFMER") test.

Finally, FSAB contends that Department precedent in the stainless steel bar ("SSB") proceedings supports the addition of ESR as a product-matching characteristic in the SSWR case in that SSB is much more similar to SSWR than the other stainless steel products (e.g., stainless steel plate, stainless steel sheet and strip in coils) cited to by the Department in the Preliminary Results.¹¹ FSAB disagrees with the Department's statement that while remelting is used to produce other stainless steel products, remelting is not a model-matching criterion for those products because it is not an integral part of the production process like it is for other stainless steel products such as SSB. FSAB argues that three of the four cases cited to by the Department (i.e., SSSS from

Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Review, 70 FR 54711 (September 16, 2005).

¹¹ See, e.g., Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998) ("Stainless Steel Plate"), which notes that the Department issued a July 11, 1995, scope ruling with respect to a stainless steel plate product named Stavax ESR; Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 71 FR 45521, 45523, 45527 (August 9, 2006) ("SSSS from Taiwan"); Stainless Steel Sheet and Strip in Coils From Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review, 71 FR 45024, 45025, 45027 (August 8, 2006) ("SSSS from Germany"); Stainless Steel Sheet and Strip in Coils From Mexico: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 35618, 35619-35620 (June 21, 2006) ("SSSS from Mexico").

Taiwan, SSSS from Germany, and SSSS from Mexico) are irrelevant because nothing in those decisions suggests that remelting is used in the production of these products, with the exception of a product excluded from the antidumping duty (“AD”) orders and, therefore, inclusion of ESR as a model-matching criterion in those proceedings was not necessary. FSAB argues that SSB is much more similar to SSWR than the other stainless steel products, including stainless steel plate, because unlike those other stainless steel products, SSWR is used to make SSB. As such, FSAB claims that if remelting is a significant operation for SSB, an intermediate downstream product of SSWR, then it must also be significant to the production of SSWR. FSAB argues that the Department has discounted the relevance of its model-matching criteria in the SSB proceedings as compared to the SSWR proceedings simply because not all SSB is produced from SSWR. FSAB argues that the Department has not explained why it is relevant that SSWR’s use in the production of SSB may be limited to smaller diameters. FSAB concludes that only the SSB model-matching criteria is relevant to SSWR. FSAB argues that the factors justifying the inclusion of remelting as a matching criterion in the SSB proceedings also apply to the SSWR case, namely, statements made by the petitioners that: (1) remelting removes impurities; and (2) some customers specifically request remelted product because they require finished products with lower inclusion content.

Petitioners’ Arguments

The petitioners maintain that the Department properly rejected FSAB’s claim to create a new model-matching criterion in this review. The petitioners claim that, as in the prior review, FSAB is attempting to promote a change in the model-matching criteria in an effort to prevent a select group of home market sales to a single customer from being compared to sales of similar products in the United States. The petitioners contend that the Department should reject FSAB’s request in this review, as it did in the last review, because the facts have not changed. The petitioners also assert that the Department’s longstanding model-matching criteria in the SSWR cases ensure proper matches, particularly for the greatest volume of sales over the entire product line.

The petitioners contend that if the Department were to grant FSAB’s request to include ESR as a matching criterion, it would be an extraordinary departure from Department practice. The petitioners argue that when the Department creates model-matching criteria it normally does not do so for a particular product sold to a single customer. The petitioners assert that the Department normally rejects a respondent’s efforts to manipulate the model matching when the respondent claims that it has sold a high-priced, specialized grade of product in the home market which cannot be used for comparison purposes. The petitioners argue that to do otherwise would be to manipulate the product comparisons particularly when the respondent has reported sales of the same SSWR product sold in the U.S. market during the POR for which price variations also exist.

The petitioners argue further that the Department should not revise its model-matching criteria for SSWR based on the price and cost differences for ESR-treated and non-ESR-treated SSWR, nor should it consider relevant to its analysis the number of price comparisons affected by ESR, for several reasons. First, the petitioners assert that the Department’s current model-matching

criteria is based on the primary physical characteristics relevant to SSWR consistent with section 771(16) of the Act. Therefore, the Department should not change these criteria based on the random or selective price differences alleged by FSAB. Second, the petitioners note that FSAB's analysis ignores the fact that it has reported U.S. sales of identical SSWR products, including the SSWR grade at issue, for which the prices vary substantially, and that this circumstance might be explained by the fact that some of these SSWR products underwent extra production steps to meet the particular specifications required by the customer. The petitioners assert that if the Department were to consider differences in prices as the basis for revising the model-matching criteria for SSWR, it would have to investigate the reasons for the above-referenced price variations among FSAB's U.S. sales. Third, the petitioners state that despite the existence of these substantial price variations among U.S. and home market sales of the same grade of SSWR, FSAB is on the record as stating that there are no significant differences between the SSWR merchandise sold in the home market and that exported to the U.S. market.¹² The petitioners claim that FSAB has failed to submit information that demonstrates actual physical differences exist between the SSWR FSAB sold in the home market and the SSWR FSAB exported to the United States. In order for the Department to consider FSAB's request, the petitioners contend that FSAB should have submitted evidence in the form of mill reports or some other evidence which shows the number and size of inclusions for each SSWR product sold in both markets on a sale-by-sale basis. Absent the requirement that FSAB provide such information to support its claim, the petitioners argue that creating a new matching criterion (based on a single SSWR grade sold to a single home market customer) would defeat the purpose of the statute and would encourage any respondent to claim other exceptions for high-priced home market sales in an effort to revise selectively the matching criteria hierarchy to reduce dumping margins.

In addition, the petitioners disagree with FSAB's argument that the other stainless steel products cited to by the Department in the Preliminary Results which also undergo remelting to a limited extent (but do not include remelting in their model-matching criteria) are irrelevant because in three of those cases the only reference to remelting concerns the exclusion of a remelted product from the scope of the orders. The petitioners maintain that the issue really is whether remelting is used in the production of those stainless steel products, and if so, whether remelting is included in the model-matching criteria for those products. The petitioners point out that it is commonly known that stainless steel producers of flat products such as those referred to by the Department do remelt their products. In addition, the petitioners point out that the SSWR is more similar to stainless steel flat products than to SSB because, while remelting does occur in the production of the former products, it is not a prevalent practice.

Finally, with respect to FSAB's argument that SSB is made from SSWR and because remelting is a matching criterion in SSB, it should also be one for SSWR, the petitioners contend that it is without merit. The petitioners argue that SSB is not always made from SSWR and the vast majority of remelted SSB is not made from SSWR. Moreover, the petitioners assert that the remelting process occurs more frequently with respect to SSB, particularly with respect to

¹² See FSAB's November 27, 2006, Section A Questionnaire Response at page A-40.

large-diameter SSB, and is a standard practice in that industry. The petitioners also note that unlike the SSWR proceedings, all parties in the SSB proceedings agreed to include remelting as a matching criterion because it is an integral part of the production of a wide range of SSB products.

Department Position

We continue to find that FSAB has not demonstrated that a change to the established model-matching criteria for SSWR is warranted. Among other things, we disagree with FSAB that ESR is a salient physical characteristic that necessitates inclusion in the model-matching criteria for SSWR. We find that remelting, including ESR, is not an integral part of the SSWR production process and that its inclusion as a matching criterion based on its limited application to one SSWR grade sold by the respondent in this review would be inconsistent with normal Department practice. Moreover, we find that including ESR as a matching criterion would not lead to greater accuracy in our margin analysis particularly because FSAB is not applying ESR to the vast majority of SSWR grades it sold during the POR. In addition, we note that the Department is not required to account for every possible difference among products in its matching criteria, particularly when that difference results from the limited application of a customer-specified process.

In making its fair value comparisons for margin calculation purposes, the Department compares U.S. sales to sales of a “foreign like product.” Section 771(16) of the Act defines “foreign like product” in descending order of preference as follows:

- (A) The subject merchandise and other merchandise which is identical in physical characteristics with and was produced in the same country by the same person as, that merchandise.
- (B) Merchandise (i) produced in the same country and by the same person as the subject merchandise, (ii) like that subject merchandise in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the subject merchandise; or
- (C) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise, (ii) like that merchandise in the purposes for which used, and (iii) which the administering authority determines may reasonably be compared with that merchandise.

See NSK v. United States, 217 F. Supp. 2d 1291, 1299-1300 (Ct. Int’l Trade 2002) (“Section 771(16) establishes a descending hierarchy of preferential modes that Commerce must select for matching purposes.”).

Pursuant to section 771(16) of the Act, “Congress has implicitly delegated authority to {the Department} to determine and apply a model-matching methodology necessary to yield ‘such or

similar' merchandise.” See Koyo Seiko. Co. v. United States, 66 F.3d 1204, 1209 (Fed. Cir. 1995). Moreover, “Congress has delegated to {the Department} the ability to choose product-matching criteria to identify the ‘foreign like product’ to which domestic sales are compared in order to calculate the dumping margins.” See New World Pasta Co., vs United States, 316 F. Supp. 2d 1338, 1352 (Ct. Int’l Trade 2004). To make its “such or similar” merchandise determinations under section 771(16) of the Act, the Department devises a hierarchy of commercially significant characteristics suitable to each class or kind of merchandise, and then compares U.S. sales to sales in the comparison market using those characteristics. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9180 (February 24, 1998) (“Steel Wire Rod From Trinidad and Tobago”).

Furthermore, it is well-established that once a model-matching methodology is developed at the early stage of a proceeding, the Department does not change or alter it unless compelling reasons exist. See SKF USA Inc, et al v. United States, 491 F. Supp. 2d 1354, 1363 (CIT 2007) (“{the Department} does indeed express its preference for maintaining a stable methodology across reviews unless compelling reasons exist.”). The Department refrains from revising the model-matching criteria unless there is evidence that the criteria are not “reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason requiring a change.” See Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 73729 (December 13, 2005), and accompanying Issues and Decision Memorandum at Comment 1. Moreover, the Department has established “a high factual threshold” that a party must overcome to warrant a change in the model-matching criteria. See id.

We find that FSAB has failed to satisfy the high factual threshold necessary to include ESR as a product characteristic in the established model-matching criteria for SSWR because: (1) FSAB failed to demonstrate that the established model-matching criteria, exclusive of ESR, do not reflect the salient physical characteristics of SSWR on an industry-wide basis; (2) ESR is used only to a limited extent in the production of SSWR; (3) remelting does not represent a new technological advancement to the SSWR industry; (4) the differences in prices and costs between the ESR-treated and non-ESR-treated product grade and the number of price comparisons affected are not determinative; (5) the Department’s determinations not to include remelting as a model-matching criterion for certain other stainless steel products which, like SSWR, undergo remelting only to a limited extent, support not revising the model-matching criteria for SSWR; and (6) the Department’s determination to include remelting as a model-matching criterion for SSB, the production of which uses SSWR to a limited degree, does not support revising the model-matching criteria for SSWR, because, unlike SSWR production, remelting is an integral part of SSB production.

The matching criteria used in this review focus on the salient physical characteristics of SSWR.¹³ These criteria were never intended to account for every known or unforeseen difference between and among SSWR products, and the Department is not required under the statute to account for every possible difference among products in its matching criteria.¹⁴ Such a requirement would not be practical to implement or necessary for purposes of ensuring accuracy in making product comparisons. See Pesquera Mares Australes, Ltda. v. United States, 266 F.3d 1372, 1384 (Fed. Cir. 2001). FSAB's suggestion that the diameter and coating criteria included in the Department's model-matching criteria are insignificant characteristics because FSAB's SSWR products are generally uncoated and of the same diameter and thus the Department should consider removing them from the model-matching criteria is without merit. First, FSAB reported a range of diameters, not just one diameter size, for all of its products that were sold in both markets. More importantly, consistent with normal Department practice, the SSWR model-matching criteria were developed to account for the salient characteristics of SSWR on an industry-wide basis and to apply across all SSWR proceedings in general, not to the specific experience of any one respondent in any one SSWR proceeding. See, e.g., Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

In this review, all of the data FSAB has placed on the record indicates that FSAB's use of ESR is limited to the billets used to produce one home market grade of SSWR sold to one customer during the POR. The production of all the other grades of SSWR which FSAB sold in both the home and U.S. market during the POR did not involve the use of ESR. FSAB has applied ESR to the production of the billets used to produce only one SSWR grade based on the request of one home market customer which is the sole holder of the patent used to produce a product made using that SSWR grade. FSAB reported no other grade of SSWR product sold to that customer in the home market during the POR, and FSAB sold no other grade of SSWR in either the home or U.S. market the production of which underwent ESR treatment during the POR. In other words, FSAB has applied ESR to SSWR production under very limited circumstances. Therefore, FSAB's use of ESR to make SSWR products is an exception to its production process and selling practices, and there is no evidence on the record to suggest that the use of ESR is by any means an integral part of the production process used to produce SSWR products industry-wide. When one takes into consideration all of the grades of SSWR products FSAB produced for sale in both the home and U.S. market during the POR, ESR (and remelting in general) is not a significant production characteristic. Given that FSAB's use of ESR is limited to the production of a single SSWR grade and is not being used by FSAB to produce any of the other SSWR grades it sold during the POR,

¹³ The matching criteria (in order of importance) are: (1) grade; (2) diameter; (3) further processing; and (4) coating.

¹⁴ This is particularly true, when, as in this case, those differences are a result of applying a customer-specified process that is limited to a specific product, and that specialized process is not an integral part of the production of the products covered by the scope of the proceeding.

the inclusion of remelting as a matching criterion would only serve the purpose of removing from our margin analysis home market sales of otherwise identical SSWR grade from the comparison pool. In this context, differentiating ESR-produced merchandise in the comparison pool would be contrary to the statutory requirements under section 771(16) of the Act.

Moreover, these matching criteria have been used in this proceeding, as well as in the other companion SSWR proceedings, since their inception without alteration or modification. As noted above, the Department may revise its model matching criteria if there is evidence that the criteria are not reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason requiring a change. None of these factors applies in this case. To the contrary, we find that the existing criteria include the salient product characteristics for SSWR, and that ESR is but one form of remelting and remelting has been used, albeit to a limited extent, in the SSWR industry prior to the LTFV segment of this proceeding. While FSAB claims that it only started using the ESR process to produce the one grade of SSWR at issue after the LTFV segment, we do not find this claim sufficient to conclude that ESR is a new technological development or advancement in the SSWR industry. Additionally, FSAB does not dispute the fact that other forms of remelting, such as VAR, have been used to produce SSWR for decades, and that both ESR and VAR are similar in terms of their intended purposes and uses (*i.e.*, to make a cleaner steel, a steel with fewer, smaller, and more evenly distributed and/or segregated inclusions). It also fails to mention that other melting processes applicable to the production of stainless steel products, including SSWR, such as argon-oxygen-decarburization (“AOD”) and vacuum-oxygen-degassing (“VOD”), are used to achieve “cleaner” steel.¹⁵ FSAB states that to the best of its knowledge no other production process (VAR or otherwise) results in the specific product characteristics of the product at issue as required by its customer. However, it has not provided any record evidence in support of its assertion.

In addition, we disagree with FSAB that its claimed significant price and cost differences between ESR-treated and non-ESR-treated SSWR of the same grade warrant a change to the model-matching criteria. FSAB claims that the differences in cost and price among sales of the SSWR grade at issue were solely attributable to whether or not the SSWR underwent ESR treatment or not. Based on our analysis of the submitted data, we cannot conclude that ESR is the sole reason for the price and cost differences between home market sales of the ESR and non-ESR grade at issue. Specifically, an examination of the net prices of FSAB’s home market sales of the SSWR product made of the ESR-treated grade to the same customer during the POR reveals that in at least one instance, the net price of that product varied over 50 percent (*see* March 5, 2008, Memorandum from the Team to The File, entitled, “Stainless Steel Wire Rod from Sweden: Examination of Price Variations for Home Market and U.S. Sales of Identical Products Reported

¹⁵ See, e.g., 2004-2005 SSWR Final Results at Comment 1; U.S. ITC Publication 3404, entitled Stainless Steel Bar from Brazil, India, Japan, and Spain: Investigation Nos. 731-TA-678-679 (Review), at page I-15 (March 2001) (“U.S. ITC Publication 3404”); and U.S. ITC Publication 2880, entitled Industry & Trade Summary: Stainless Steel Products, at pages 1-3 (June 2005).

by FSAB” (“Price Variation Memo”). Because of this price variation for the same ESR-treated product sold to the same home market customer during the POR, it is reasonable to conclude that factors other than ESR may contribute to price differences. Moreover, the same conclusion can be made regarding an unexplainable net price variation of about 40 percent which exists when one examines two sales of the ESR-treated product sold to the same home market customer in the same POR month (see also Price Variation Memo). Therefore, the Department finds that the use of ESR in isolation cannot explain why the prices for the same ESR-treated product sold to the same customer are vastly different.

Furthermore, the Department notes that similar price variations exist among FSAB’s home market and U.S. sales of identical non-ESR-treated SSWR products made to the same customers during the POR. Specifically, an examination of the net prices of home market sales of identical non-ESR-treated products of the same grade as the ESR-treated product sold in the home market during the POR indicates that in at least one instance, the net price of the non-ESR-treated SSWR product varied over 50 percent (see also Price Variation Memo). Moreover, we note that there are even more dramatic price variations between sales of identical non-ESR-treated SSWR products sold to the same customer in the U.S. market during the POR. In fact, an examination of the net sales prices of certain identical non-ESR-treated SSWR products sold in the U.S. market during the POR reveals that the net prices for those products to the same customer varied substantially more than what FSAB claims the price variation is between the ESR-treated and non-ESR-treated grade of merchandise at issue (see also Price Variation Memo). These sizeable price variations among sales of the same product sold to the same customer during the same month certainly cannot be explained by the use of ESR because FSAB has reported that none of its SSWR products sold through its U.S. affiliates, Fagersta Stainless, Inc. and Sandvik Materials Technology U.S., during the POR underwent ESR during production. Therefore, it is quite possible, as suggested by the petitioners, that the use of some other additional or unreported production process/step or some other factor might explain the price variations which exist between identical SSWR products of the same non-ESR grade reported in FSAB’s U.S. sales database. In addition, we note that in at least one instance there is a net price variation greater than 20 percent when one examines two U.S. sales made to the same customer in the same POR month of the same grade which underwent ESR treatment in the home market (see also Price Variation Memo). In any event, record evidence indicates that significant price variations occur independent of whether ESR was used in the production process and FSAB has failed to provide evidence of the amount of price variation directly attributable to the use of ESR.

FSAB’s reliance on Metal Calendar Slides from Japan and Carbon Steel Flat Products, for the proposition that the Department will change a model-matching methodology based on the prices and costs of a product is misplaced. The Department does not dispute that price or cost may be a relevant consideration when determining whether compelling reasons exist to modify the model-matching criteria. However, it is not the only consideration. See Carbon Steel Flat Products at Comment 1 (considering whether the product characteristic represented a new technological advancement in the industry and whether it was an industry-wide, commercially accepted standard).

FSAB claims that the Department's refusal to include ESR in the model-matching criteria is illogical because the ESR-treated product is so dissimilar to the non-ESR-treated product and the cost difference is so significant that the products could not match as similar products under the Department's DIFMER test. The Department assigns physical characteristics to products for model-matching purposes based on the established criteria (i.e., in this case, grade, diameter, further processing, and coating). The physical characteristics are used to distinguish the differences among products across the industry. Cost is not the primary factor for establishing these characteristics. Therefore, to include ESR in the model-matching criteria based solely on the cost differences associated with it, as FSAB suggests, would be inappropriate. Cost variations are not the determining factor in assigning product characteristics for model-matching purposes. The fact that FSAB suggests that the Department should factor such considerations into its analysis when devising its model-matching criteria conflicts with the Department's long-standing practice of selecting the "salient" physical characteristics for model-matching purposes. See Steel Wire Rod from Trinidad and Tobago. As explained above, FSAB has not demonstrated that ESR is a salient physical characteristic that should be taken into account in the Department's model-matching criteria for SSWR. Therefore, its DIFMER argument is without merit.

In addition, FSAB argues that the quantity of the ESR-treated and non-ESR-treated SSWR product sold in the home market compared to the total quantity of home market sales during the POR is significant in terms of the number of price comparisons affected by treating ESR and non-ESR product as identical. However, the quantity per se (without consideration of the number of products and grades involved) is not dispositive of the Department's determination as to whether ESR is a salient physical characteristic of SSWR that should be accounted for in the model-matching criteria.

FSAB's argument that the ESR should be included as a matching criterion for SSWR because SSWR is used to produce SSB and remelting is a matching criterion for SSB is unpersuasive. Specifically, remelting is an integral part of the production of SSB whereas remelting is not an integral part of the production of SSWR or of other stainless steel products for which remelting is used on a limited basis (see, e.g., 2004-2005 SSWR Final Results at Comment 1). Although SSB may be a downstream product of SSWR and remelting is an integral part of SSB production, SSWR is only used to a limited extent to produce SSB. In fact, the ITC reports for SSB and SSWR indicate that to the extent that SSWR is used to produce SSB, its use is not as widespread as FSAB would have the Department believe. In fact, the use of SSWR to produce SSB is limited to the smaller diameters of SSB.¹⁶ Moreover, other ITC reports indicate that stainless steel wire ("SSW") is also used to produce SSB and its use does not appear limited based on the diameter of the SSB.¹⁷ The ITC reports for both SSB and SSWR make no mention that remelted SSWR is used to produce SSB. However, like SSWR, the ITC report for SSW does not indicate that

¹⁶ See U.S. ITC Publication 3404 at page I-14 and U.S. ITC Publication 3866 at pages 4-5.

¹⁷ See U.S. ITC Publication 3404 at page I-14.

remelting is an integral part of SSW production.¹⁸ More importantly, there is no evidence in the ITC report for SSB that the SSWR used by the SSB industry has to be remelted before the SSB production process takes place. In other words, when SSB is remelted, it is taking place after the SSWR is produced. Therefore, FSAB's claim that remelted SSWR is being used to produce SSB is simply not substantiated by the ITC report.

Furthermore, FSAB's assertion that the same reasons (*i.e.*, the petitioners' statements about remelting and its use based on the customer's request) for including the remelting criterion in the SSB case exist in the SSWR case is inaccurate. The Department did not include remelting as a matching criterion in the SSB case simply because the petitioners in that case requested it. Rather, when the parties submitted comments on the Department's model-matching criteria at the beginning of the SSB investigations, most, if not all, parties to those proceedings concurred that remelting was an integral part of the SSB production process. *See* August 31, 2007, Memorandum to The File entitled, "Public Documentation Placed on the Record" (which includes discussion of remelting in the SSB proceedings).

Finally, we disagree with FSAB's claim that certain of the other stainless steel product proceedings cited to by the Department in the Preliminary Results are irrelevant because there is no evidence that remelting is used in the production of these products with the exception of a product excluded from the antidumping duty orders covering SSSS. Although the stainless steel product excluded from the other stainless steel orders happens to undergo remelting, that is not to say that other stainless steel products undergoing remelting are not covered by the scope of those orders. Moreover, the scope of those orders do not explicitly exclude any other remelted product. In addition, there is no evidence in the ITC report on SSSS that remelting is an integral part of the production of those products and, therefore, it is not part of the Department's model-matching criteria.¹⁹

Therefore, based on the analysis provided above, we continue to find an insufficient basis upon which to change the current model-matching criteria as suggested by FSAB in this review.

Comment 2: *Converting the Unit of Measure of FSAB's Constructed Value Data*

FSAB contends that it reported its cost data in terms of kilograms and the Department made a ministerial error when it did not convert the unit of measure for its cost data from kilograms to pounds when deriving the foreign unit price in dollars ("FUPDOL") for purposes of making product comparisons. To correct this ministerial error, FSAB asserts that when calculating FUPDOL based on CV, the Department must convert the CV data from kilograms to pounds.

¹⁸ *See, e.g.*, U.S. ITC Publication 3194, entitled Stainless Steel Round Wire Rod From Canada, India, Japan, Korea, Spain, and Taiwan: Investigation Nos. 731-TA-781-786 (Final), at pages I-5 through I-7 (May 1999) ("U.S. ITC Publication 3194").

¹⁹ 2004-2005 SSWR Final Results at Comment 1.

The petitioners did not comment on this issue.

Department Position

We agree with FSAB and have corrected this ministerial error in the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of review and the final weighted-average dumping margin for the reviewed firm in the Federal Register.

Agree ____

Disagree ____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)