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

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

SUBJECT: Antidumping Duty New Shipper Review of Circular Welded
Carbon Steel Pipes and Tubes from Thailand – Pacific Pipe Public
Company, Limited: Issues and Decision Memorandum for the
Final Results

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty new shipper review of circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand, and we have considered the results and findings at verification conducted since the preliminary results. See Memorandum to File Verification of the Sales Response of Pacific Pipe Public Company, Limited in the Antidumping New Shipper Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand, dated November 5, 2009 (Verification Report). As a result, we have made changes to the margin calculation for Pacific Pipe Public Company Limited (Pacific Pipe or respondent), which are fully described in the notice accompanying this memorandum and in the Memorandum to File, Analysis of Pacific Pipe Public Company, Limited, for the Final Results of the Antidumping Duty New Shipper Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand for the period 03/01/2008 through 09/30/2008, dated concurrently with this memorandum (Final Analysis Memorandum). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

BACKGROUND

On August 31, 2009 the Department of Commerce (the Department) published the preliminary results of the antidumping duty new shipper review of pipes and tubes from Thailand. See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty New Shipper Review, 74 FR 44825 (August 31, 2009) (Preliminary Results). The respondent covered by this new shipper review is Pacific Pipe Public Company Limited (Pacific Pipe). The period of review (POR) is March 1, 2008, through September 30, 2008.

The Department conducted a sales verification of Pacific Pipe in Bangkok, Thailand from October 5 through October 8, 2009. See Verification Report. We invited parties to comment on the Preliminary Results and Verification Report. We received a timely filed case brief from Pacific Pipe and a timely filed rebuttal brief from domestic interested parties Allied Tube & Conduit Corporation and Wheatland Tube Company (collectively, petitioners). The Department did not receive a request for a hearing. Based on our analysis of the comments received and revisions from verification, the weighted-average margin for Pacific Pipe has changed from that calculated in the Preliminary Results.

LIST OF THE ISSUES

Below is the complete list of issues in this review on which we received comments from interested parties:

- Comment 1: Whether the Department Should Use Invoice Date as the Date of Sale for the U.S. Sale in the Final Results
- Comment 2: Whether the Department Should Continue to Treat Home Market Pre-Sale Freight and Warehousing Expenses as Movement Expenses
- Comment 3: Whether Pacific Pipe Has Established that Transportation Rates Paid to its Affiliated Carrier Are at Arm's Length

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Use Invoice Date as the Date of Sale for the U.S. Sale in the Final Results

Pacific Pipe argues that the Department should use the invoice date as the date of sale for the final results and not the proforma invoice date used in the preliminary results. Pacific Pipe contends that the evidence reviewed at verification demonstrates that the sales invoice date is the appropriate date of sale. Furthermore, Pacific Pipe notes that the Department's regulations specify that the Department will normally use the date of invoice as the date of sale, unless a different date better reflects the date on which the material terms of sale are established.

Pacific Pipe explains that there was only one sale during the POR for which there were no changes to quantity or price after the proforma invoice was issued, and therefore it reported the proforma invoice date as the date of sale in its questionnaire response. However, Pacific Pipe states that while preparing for verification, company officials reviewed a broader segment of export sales to the United States which included non-subject merchandise sales and discovered that the material terms of sale, including quantity and price did sometimes change, due to market conditions, after the proforma invoice was issued. Pacific Pipe notes that it presented at verification several examples of such changes, as shown in the Verification Report. Given the preference for invoice date as explicitly stated in the Department's regulations, and the demonstration at verification that there were material changes after the proforma invoice was

issued, Pacific Pipe urges the Department to use the sales invoice date as the date of sale for the final results.

The petitioners disagree with Pacific Pipe's argument, pointing to Pacific Pipe's statement in its case brief that there were no changes in the quantity or price to the single U.S. sale during the POR after the issuance of the proforma invoice. Petitioners cite to the explanation by Pacific Pipe of the sales process, as described in the Verification Report at 9-12. Petitioners maintain that the Department confirmed that all of Pacific Pipe's other sales to the United States were of non-subject merchandise, and further, that the instances where the proforma invoices had been revised related to non-subject merchandise. Therefore, according to petitioners, there is no basis for using a date of sale other than the proforma invoice date.

With regard to Pacific Pipe's contention in support of using the sale invoice date that the Department's regulations express a preference for invoice date as the date of sale and its demonstration at verification that material terms of sale did sometimes change after the issuance of the proforma invoice, petitioners point out that Pacific Pipe failed to mention that there was no change to the terms of sale for the single sale of subject merchandise at issue. Therefore, petitioners argue, it is irrelevant that there may have been revisions affecting non-subject merchandise. Further, petitioners add, the Department's regulations do not express a preference for commercial invoices over proforma invoices but in fact state that "the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." 19 CFR §351.401(i). Petitioners therefore state that it is clear that the proforma invoice for the sale of subject merchandise was issued by Pacific Pipe before the commercial invoice, and there was no change to price or quantity after the date of the proforma invoice for the sale of the subject merchandise at issue. Thus, petitioners state, the material terms of the U.S. sale were indeed established by the proforma invoice. Furthermore, petitioners contend that the Statement of Administrative Action accompanying the Uruguay Round Agreement Act (URAA) expressly defines the date of sale as the date when the material terms of sale are established.¹ Petitioners therefore request the Department to use the date of the proforma invoice as the date of sale for the U.S. sale of subject merchandise.

Department's Position:

As in the preliminary results, we are using the proforma invoice date as the date of sale for the U.S. sale of subject merchandise. Section 351.401(i) of the Department's regulations sets a rebuttable presumption that "the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business" as the date of sale. However, the Department's regulations also state that the Department "may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See 19 CFR 351.401(i). Pacific Pipe reported in its original questionnaire response the proforma invoice date as the U.S. date of sale. Pacific Pipe reported the proforma invoice date as the date on which all material

¹ See Statement of Administrative Action, H.R. Doc. No.103-316, at 810, reprinted in 1994 U.S.C.C.A.N. 3773, 4153.

terms of the sale (i.e., price and quantity) are fixed and did not change. See Section C Questionnaire Response, dated January 6, 2009 at 11. At verification, Pacific Pipe pointed out several instances where the proforma invoice for U.S. sales had been revised due to market conditions. All of these instances of revisions pertained to sales of non-subject merchandise. See Verification Report at 12-13. In this new shipper review, Pacific Pipe had only one sale of subject merchandise to the United States during the POR. Thus, this sale serves as the basis for evaluating respondent's sales practices in the U.S. market with respect to subject merchandise. See e.g., Metal Calendar Slides from Japan: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 71 FR 36063 (June 23, 2006), and accompanying Issues and Decision Memorandum at Comment 4. Information provided by Pacific Pipe at verification confirmed there were no changes to the proforma invoice for subject merchandise. The information provided by Pacific Pipe also confirmed that, if there were revisions in the sales terms, a revised proforma invoice was issued. See Verification Report at Exhibit 10. Thus, we conclude that the proforma invoice date and not the invoice date best reflects when the material terms of sale were established. See e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review, 64 FR 12951 (March 16, 1999), and accompanying Issues and Decision Memorandum at Comment 4. Accordingly, consistent with our practice, we have determined that the proforma invoice date is the appropriate date of sale for Pacific Pipe's U.S. sale as it most accurately represents the date on which the material terms of sale were established.

Comment 2: Whether the Department Should Continue to Treat Home Market Pre-Sale Freight and Warehousing Expenses as Movement Expenses

Pacific Pipe highlights that the Department correctly noted in its Verification Report (at 2 and 20) that certain freight and warehousing expenses were incurred by Pacific Pipe in the home market prior to sale, as finished products are transferred to an off-site warehouse facility from which the products are subsequently sold. According to Pacific Pipe, 19 CFR §351.402(e)(2) states that the Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses. Pacific Pipe adds that 19 CFR §351.401(e) further defines the term "original place of shipment" as the production facility. Therefore, Pacific Pipe contends that it is clear that warehousing expenses incurred after the foreign like product leaves the production facility are to be treated as movement expenses. In addition, Pacific Pipe contends that the transportation costs incurred to move the finished product to the warehouse should likewise be treated as movement expenses.

Pacific Pipe refers to the Department's treatment of warehousing expenses as movement expenses in the third administrative review of Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008) (Shrimp from Thailand), and accompanying Issues and Decision memorandum at Comment 2. In that review, Pacific Pipe notes that the Department recognized that 1) the statute—specifically section 772(c)(2)(A) of the Tariff Act of 1930, as amended (the Act)—and regulations direct the Department to deduct movement expenses from the price used to establish export price or constructed export price; and 2) under 19 CFR §351.401(e)(2) and the preamble to the Department's regulations (62 FR 27296, 27345, May 19, 1997), the Department must consider warehousing expenses that are incurred after the merchandise leaves the foreign

production facility as movement expenses, regardless of whether the merchandise has been sold. Pacific Pipe adds that the Department further reasoned that the treatment of transportation and warehousing expenses incurred after the merchandise departs from the production facility are not affected by whether title may pass to the unaffiliated customer at the warehouse location, as the expenses at issue were warehousing expenses associated with storing subject merchandise and thus fall squarely into the types of expenses characterized as movement expenses under 19 CFR §401(e)(2). Pacific Pipe argues that this analysis applies to the calculation of normal value in the instant case and, therefore, the transportation and warehousing expenses incurred by Pacific Pipe after its merchandise leaves its production facility must be deducted from normal value as movement expenses.

The petitioners did not comment on this issue.

Department's Position:

Section 773(a)(6)(B)(ii) of the Act directs the Department to adjust normal value for movement expenses. Pursuant to 19 CFR 351.401(e), movement expenses include any transportation and other associated expenses, including warehousing, that are incurred by the seller after the merchandise leaves the original place of shipment, normally considered to be the production facility. Consequently, in accordance with section 773(a)(6)(B)(ii) of the Act and 19 CFR 351.401(e)(2), we have continued to treat the pre-sale freight and warehousing expenses in question as movement charges and have made deductions, as appropriate, for those expenses. See Light-Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 20; Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 10000, 10006 (Mar. 9, 2009), results unchanged in Certain Frozen Warmwater Shrimp From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47551 (Sept. 16, 2009); see also Shrimp from Thailand at Comment 2.

Comment 3: Whether Pacific Pipe Has Established that Transportation Rates Paid to its Affiliated Carrier Are at Arm's Length

Pacific Pipe contends the results of verification establish that the transportation rates it paid to its affiliated carrier were actually higher than the rates paid to an unaffiliated carrier. See Verification Report at 20 and at Exhibit 23. Pacific Pipe notes that 19 CFR §403(c) instructs the Department to use prices paid to an affiliate where the company can demonstrate that such prices are comparable to the prices paid to unaffiliated entities. Therefore, Pacific Pipe requests that the Department use the transportation rates reported in its questionnaire response.

The petitioners did not comment on this issue.

Department's Position:

We confirmed at verification that for specific comparison market sales, the freight rate paid to the affiliated carrier was significantly higher than the rate paid to the unaffiliated carrier. See Verification Report at 20. However, these comparison market sales are not used in the margin calculation; therefore it is not necessary to address this issue for these final results.

Recommendation

We recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results and Pacific Pipe's final weighted average dumping margin in the Federal Register.

Agree _____ Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date