

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
For Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Certain Cold-Rolled
Carbon Steel Flat Products from Argentina

Summary

We have analyzed the case and rebuttal briefs of interested parties in the investigation of sales at less than fair value of Certain Cold-Rolled Carbon Steel Flat Products (CRS) from Argentina. As a result of our analysis, we have made changes in the margin calculations for the final determination. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttal comments by parties:

1. Indirect Tax Rebates (Reintegro)
2. Missing Production Costs at One Plant
3. Failure to Provide Depreciation Costs
4. Revision of Interest Expenses and General and Administrative (G&A) Costs
5. Level of Trade

Background

On May 9, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Negative Preliminary

Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, 67 FR 31181 (May 9, 2002) (Preliminary Determination). See also Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela, 66 FR 54198 (October 26, 2001) (Initiation Notice).

We gave interested parties an opportunity to comment on the Preliminary Determination. On August 26, 2002, the petitioners¹ submitted their case brief. Siderar S.A.I.C. (Siderar), the sole respondent in this investigation, also submitted its case brief on August 26, 2002. The petitioners and Siderar submitted their rebuttal briefs on September 3, 2002. The petitioners submitted a request for a hearing on June 10, 2002, but withdrew it on September 4, 2002.

Discussion of the Issues

1. Indirect Tax Rebate (Reintegro)

Comment 1: The petitioners argue that the Department should not grant an adjustment to normal value for funds Siderar received under the Argentine Government's reintegro program (rebates to Siderar of indirect taxes paid on the the subject merchandise or its components), as Siderar has not demonstrated a link between the amounts paid to Siderar under the reintegro program and the individual underlying taxes. Citing American Alloys, Inc., v. United States, 30

¹ The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. Weirton Steel Corporation is not a petitioner in the Netherlands case. Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation."

F.3d 1469 (Fed. Cir. 1994) (American Alloys), the petitioners contend that the Court of Appeals for the Federal Circuit requires the Department to conduct an inquiry into whether the taxes rebated under the reembolso program (the predecessor program to the reintegro program in Argentina) were imposed directly upon the exported merchandise or components thereof. The petitioners contend that, in American Alloys, the Federal Circuit found that the taxes rebated under the reembolso program must bear a direct relationship to the exported product or a physically incorporated component of that product. The petitioners argue that Siderar has not linked the rebate amount under the reintegro program to individual underlying taxes that qualify as “directly imposed upon the foreign like product or components thereof” under section 773(a)(6)(B)(iii) of the Tariff Act of 1930, amended (the Act) and, therefore, no adjustment should be granted. They argue further that most, if not all, of the taxes Siderar listed in its responses are in fact not paid by Siderar but are embedded in the cost of the materials and other elements of cost. Therefore, the petitioners contend, since Siderar never actually incurred a tax liability for these taxes as required under the statute, they should not be included in any adjustment to normal value.

In rebuttal, Siderar argues that the Department should reject the petitioners’ claims and confirm in the final determination its preliminary determination to adjust normal value by the amount of the reintegro rebate. Siderar states that the statute provides for this adjustment in order to avoid the inflation of dumping margins by the amount of domestic taxes affecting the production and distribution of the product under investigation. Siderar agrees that the petitioners state correctly that the predecessor to this statutory provision was interpreted by the Federal Circuit in American Alloys, referring to 30 F.3d at 1469. Siderar explains, however, that the

Federal Circuit reviewed the statutory provision and the legislative history and made a number of findings relevant to the Department's analysis in this investigation, including the following: 1)

The purpose of the statutory provision is to "avoid distortion of dumping margins merely because the exporting country taxes home market sales but not export sales" and that, without the adjustment to normal value, "these taxes would raise the apparent costs of the merchandise in the home country in comparison to the United States price; 2) The statutory provision is intended to achieve consistency between the antidumping and countervailing duty laws; and 3) In order for the Department to make the adjustment to the dumping calculation, there must be a "direct relationship between the tax and the exported product or components of the exported products."

Siderar maintains that, in the administrative proceedings giving rise to the American Alloys case, there was no corresponding countervailing duty investigation nor was there any administrative review or any other proceeding in which the Department had analyzed the reintegro program as it operated for the sector in question (silicon metal and ferroalloys). Thus, Siderar argues, the Department was faced with the situation in which it had to render its antidumping determination without the benefit of any analysis under the countervailing duty law regarding the appropriateness of the rebates received by the exporter. Siderar argues that the current case is very different as the Department not only has a concurrent countervailing duty investigation in which it is examining the specific issue of the relationship between the rebate and the indirect taxes paid throughout the production and distribution process, but there are also several administrative determinations by the Department regarding that relationship. Siderar argues that, unlike the investigation examined in American Alloys, there is no lack of

information or argument in this case regarding the relationship between the indirect taxes and the reintegro rebate. Finally, Siderar argues that the Department has determined consistently that the Argentine government program satisfies the “linkage” test, the essence of which was to ensure that the indirect taxes were sufficiently related to the product to justify the rebates.

Department’s Position: We find that the record supports the relationship between the rebate and the indirect taxes, which include, among other taxes, the turnover tax and indirect taxes on freight, paid throughout the production and distribution process. The Department has found in previous determinations that these indirect taxes, such as the turnover tax, are rebateable indirect taxes. See, e.g., Final Affirmative Countervailing Duty Determinations and Final Countervailing Duty Orders; Certain Welded Pipe and Tube Products from Argentina, 53 FR 37619, 37624 (September 27, 1988). At verification we discussed the reintegro program with Siderar officials and examined documentation that supports Siderar’s claim that indirect taxes are assessed and accumulated prior to export for sales to the United States but are not collected. Regarding Siderar’s claim in its submissions that the reintegro adjustment figure was 7.5 percent, we examined the Argentine government resolution pertaining to the reintegro program. The percent figure for CRS which was listed by HTS number in the resolution matched the amount claimed by Siderar. See Memorandum of Home-Market Verification of Siderar’s Sales Questionnaire Responses, dated July 26, 2002 (Home-Market Verification Memo), exhibit 12, “Resolucion No. 257/2000 Del Ministerio De Economia,” published in the Boletín Oficial, April 10, 2000. We also examined shipping documents created by Argentine government customs officials for selected transactions and tied the shipping documents to invoices, to worksheets demonstrating the calculation of the reintegro amount, and to journal entries confirming that the

shipments were made. Finally, we tied the total reintegro amount paid for the invoices for the selected transactions to the notices of reimbursement issued by Argentine customs and to the appropriate collection and income journals of Siderar's general ledger. See Home-Market Verification Memo at pages 12 and 13. Therefore, we are satisfied that the record evidence reflects the amount of the adjustment claimed by Siderar. Accordingly, we find it appropriate to continue to make an adjustment to normal value for the reintegro rebate.

2. Missing Production Costs at One Plant

Comment 2: The petitioners assert that, for the purposes of the final determination, the Department should apply partial adverse facts available to those products that were further processed (i.e., slit) at the Florencio Varela plant. Citing Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan, 62 FR 60472 (Nov. 10, 1997), the petitioners claim that the basis for the use of adverse facts available exists because Siderar should not benefit from its lack of cooperation in failing to provide the Department with the requested information on cost of production (COP) for the merchandise further processed at the Florencio Varela plant. Furthermore, the petitioners comment that Siderar stated that the costs for production at the Florencio Varela plant were included in the reported costs when in fact, they were not, as the Department determined at verification. Therefore, the petitioners state, the slitting costs provided by Siderar at verification should be stricken from the record since it is new factual information. Finally, the petitioners conclude that the information Siderar provided at verification for the cost of products further processed at Florencio Varela is not adequate because the production costs were segregated by product or by components. The petitioners suggest applying the highest reported slitting costs based on the width of the subject merchandise.

In rebuttal, Siderar argues that the Department's cost verification report confirms that the products for which it had not provided slitting costs were the products transferred from the Ensenada plant to the Florencio Varela plant for slitting. Siderar contends that it provided the Department with the costs included in further processing at Florencio Varela and a list of the models to which these costs apply. Additionally, the respondent states, the Department can use this information to determine the complete costs (i.e., variable overhead, fixed overhead, total cost of manufacturing, depreciation, G&A , and interest expense) for each model of products further processed at Florencio Varela. Therefore, Siderar concludes, the Department has no reason to apply facts available.

Department's Position: We agree with the respondent that complete slitting-cost information is on the record and it is not necessary to apply partial adverse facts available. We requested the missing costs for slitting at the Florencio Varela plant at verification and verified the accuracy of these costs. Therefore, we have included the slitting costs at the Florencio Varela plant in the final determination. See Verification Report on the Cost of Production and Constructed Value Data Submitted by Siderar S.A.I.C., from Margaret Pusey and LaVonne Jackson, Office of Accounting, to Neal M. Halper, Director, Office of Accounting, July 22, 2002.

3. Failure to Provide Depreciation Costs

Comment 3: The petitioners contend that the Department should apply partial adverse facts available to Siderar for its depreciation expenses. The petitioners claim that the basis for the use of adverse facts available exists because the depreciation information was requested of Siderar several times by the Department prior to verification. Furthermore, the petitioners argue, the size of the change based on the information that was submitted by Siderar at verification

demonstrates that this correction was not minor. In addition, the petitioners cite Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710 (June 8, 1999) (Strip in Coils from Germany), in which the Department applied partial adverse facts available to a respondent which attempted to provide new information prior to verification. Finally, the petitioners argue that Siderar's new factual information provided at verification does not account for certain depreciation cost differences because the depreciation expenses are not product-specific. The petitioners contend that the physical characteristics Siderar reported in its U.S. and home-market datasets indicate that it produced a wide variety of subject merchandise and that each type of product requires the use of different types of machinery. For example, the petitioners state, Siderar reported sales of products that were "hardened and tempered" and products that were "not hardened and tempered." The petitioners argue that Siderar's new factual information provided at verification does not account for any of these cost differences. Finally, the petitioners argue that in applying partial adverse facts available, the Department should apply certain useful-life periods previously submitted by Siderar.

In rebuttal, Siderar argues that the Department verified the depreciation expense information it presented to correct minor errors in its response on the first day of verification and the Department can use this depreciation expense information for the final determination. Further, Siderar argues, the logic behind the calculation of the petitioners' proposed depreciation adjustment is flawed because the petitioners used the wrong useful-life totals for its assets. Therefore, the respondent concludes, the Department should use the adjustment Siderar presented at verification for the final determination.

Department's Position: We agree with the respondent that partial adverse facts available is not warranted. Contrary to the petitioners' reference to Strip in Coils from Germany, Siderar did not attempt to submit new information but rather submitted this information as we requested in our verification agenda. The respondent presented the depreciation adjustment to correct a minor error on the first day of verification. As Siderar submitted the minor correction in a timely manner, the Department was able to verify the depreciation expense information. Because the depreciation expense information was verified, there is no reason to apply partial adverse facts available. Moreover, we do not find the petitioners' calculation of its alleged under-reported depreciation expense to be accurate. Therefore, for the final determination the Department has included the depreciation expense information as presented at verification.

4. Revision of Interest Expenses and General and Administrative (G&A) Costs

Comment 4: The petitioners assert that the Department should revise Siderar's calculation of interest expense to include an amount which the Department found at verification Siderar had excluded. The petitioners also contend that the G&A expense calculation should be revised to include another amount which the Department found at verification Siderar had excluded.

The respondent does not dispute the proposed changes to the interest and G&A expense calculations.

Department's Position: We agree and have adjusted the interest and G&A expense calculations to include the amounts Siderar excluded from its earlier calculations.

5. Level of Trade

Comment 5: Siderar argues that, although the Department found correctly that sales were

made at one level of trade in the United States, the record evidence contradicts the Department's finding that the home-market level of trade was the same as the U.S. level of trade. Siderar maintains that the record evidence demonstrates that there are two distinct levels of trade in the home market - a distributor level and an end-user level - and that the end-user level in the home market is more advanced than the distributor level in the home market. Further, Siderar argues, the single (distributor) level in the United States is similar to the distributor level in the home market and less advanced than the end-user level in the home market. Siderar explains that it sells to the same type of customer and to the same channel of distribution in the United States as its distributor sales in the home market. Also, Siderar states that its export-price (EP) sales and constructed-export-price (CEP) sales to U.S. customers are sales to distributors (Siderar makes EP sales to trading companies and CEP sales to Siderca Corporation, its U.S. affiliate). Further, Siderar contends that its sales to distributors in the United States or in Argentina generally require fewer and less-involved services than its sales to the end-users of the products. Finally, citing section 773(a)(1)(B) of the Act, Siderar argues that applying the statutory requirement that the Department will calculate normal value "to the extent practicable, at the same level of trade as the export price or constructed export price," the Department should compare U.S. sales to home-market distributor sales to the extent that there is identical or similar merchandise sold by distributors in the home market. Siderar states that this will result in product matches at the same level of trade for sales of all U.S. models with the exception of EP sales of one model and Siderar argues that a level-of-trade adjustment is warranted for normal value compared to these EP sales.

In rebuttal, the petitioners argue that the Department concluded correctly in the Preliminary Determination that Siderar's home-market and U.S. levels of trade were the same and, therefore, made no level-of-trade adjustment and did not apply a CEP offset. The petitioners argue further that Siderar set forth in its original questionnaire response a "skewed and incomplete list of selling activities performed for its U.S. and home-market sales of the subject merchandise..." but that, when pressed by the Department to provide a complete list and description of its selling activities, Siderar qualified its earlier response and changed the facts for many of its alleged selling-activity differences, admitting that many of the selling activities omitted or unexplained in its earlier response were also performed in the United States (i.e., at the distributor level). The petitioners also argue that, consistent with past practice, the Department should ignore variations in degree (e.g., "high," "medium," or "low") or cost of the selling activities and focus on the type of selling activities provided by Siderar on its home-market and U.S. sales. Furthermore, the petitioners argue, an examination of Siderar's selling activities reported on the record shows that no substantial differences exist between the selling activities performed by Siderar for its sales to home-market end-users and the selling activities performed by Siderar for its sales to home-market distributors.

Specifically, the petitioners argue that for certain selling activities, such as inventory maintenance, pre-sales services, technical advice, advertising/promotion, market research, computer assistance, management operations advice, credit warranties, and joint ventures, there is no basis for the Department to conclude that there is any substantial difference in these selling activities to demonstrate that a different level of trade exists in Siderar's home market or that certain of these activities are not selling activities. For example, the petitioners argue that Siderar

tries to draw a distinction between the freight and delivery arrangements provided for home-market end-users and those provided for home-market distributors by claiming that end-user arrangements are more complicated because they involve many small items. The petitioners argue that Siderar has conceded in home-market verification exhibit number 13 that its sales to home-market distributors and sales to U.S. distributors have similar selling activities. They argue further that a comparison of the freight and delivery arrangements for Siderar's sales to U.S. distributors shows that they are, at the very least, at the same level as Siderar's freight and delivery arrangements for sales to end-users in the home market. Finally, the petitioners contend that there is no substantial difference in the degree of selling activities Siderar provided for sales to end-users and distributors in the home market and that the Department should find that Siderar's home-market sales are at a single level of trade.

Department's Position: Prior to the home-market verification, we asked that Siderar provide detailed information to support its claim that there were two levels of trade in the home market. We also asked Siderar for further clarification of its submissions and for supporting documentation regarding the selling functions it performed, the services it offered, and the degree to which Siderar performed each sales function.

Based on an analysis of information presented in Siderar's submissions and additional supporting information presented at verification, we found that the selling functions that Siderar provided to a greater degree for end-users than for distributors in the home market include, among others: (1) inventory maintenance; (2) pre-sale service; (3) technical advice; (4) freight and delivery arrangement; (5) market research; (6) computer assistance; and (7) management operations advice. See Home-Market Verification Memo at pages 14, 15, and 16. We disagree with the petitioners' assertion that we should ignore variations in degree (e.g., "high," "medium,"

or “low”) or cost of the selling activities and focus on the type of selling activity provided by Siderar on its home-market and U.S. sales. Contrary to the petitioners’ argument that our practice is to ignore variations in degree of involvement in a selling activity, we request consistently that respondents provide information as to the degree of involvement of a selling activity/function which we then use to analyze and evaluate claims regarding channels of distribution and levels of trade. Using inventory maintenance as an example, we found at the Siderar home-market verification that, although this selling function/activity is present for sales to end-users and to distributors, a significantly higher degree of involvement was required for sales to end-users compared to sales to distributors. For example, we found that a wide range of different gauges, widths, lengths, and quantities of CRS was required to be maintained as inventory to meet end-user requirements whereas the distributors provided for their customers many of these services such as cutting to length, slitting, etc. We also found that Siderar maintained lower physical inventories and performed fewer (i.e., lower) inventory maintenance activities for sales to distributors to its sales to end-users. Similarly, the other selling activities/functions required a greater degree of involvement for sales to end-users than sales to distributors. See Exhibit 13, Home-Market Verification Memo.

Finally, regarding Siderar’s claim for a level-of-trade adjustment for EP sales of one model for which there are no model matches at the distributor level of trade in the home market, but for which there were matches at the end-user level of trade, we tested for and found a pattern of price differences at the home-market levels of trade. Therefore, we made a level-of-trade adjustment to normal value for EP sales of this one model that are matched to the end-user level of trade.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

Agree _____ Disagree _____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date