

DATE: December 14, 2007

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 New Shipper Review of  
Stainless Steel Bar from India

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## **SUMMARY**

We have analyzed the case and rebuttal briefs of interested parties in the new shipper review of certain stainless steel bar from India. As a result of our analysis, we recommend the use of adverse facts available. We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is a complete list of the issues in this review for which we received comments from interested parties:

### Issues

- Comment 1: Bona Fide Nature of Ambica’s Sale
- Comment 2: Weighted-Average Gross Unit Prices and Removal of Size from the  
Department’s Control Number - Application of Total Adverse Facts Available
- Comment 3: Adjustment to Ambica’s International Freight Expenses
- Comment 4: Inclusion of Excise Taxes in Ambica’s Home Market Inland Insurance  
Expenses
- Comment 5: Discrepancies (Rounding) Related to Ambica’s Gross Unit Prices Used to  
Calculate Ambica’s Per-Unit Adjustments
- Comment 6: Multiple Payment Dates

## BACKGROUND

On July 23, 2007, the Department published in the Federal Register the preliminary results of the new shipper review of the antidumping duty order on stainless steel bar (“SSB”) from India. See Stainless Steel Bar from India: Preliminary Results of Antidumping Duty New Shipper Review, 72 FR 40113 (July 23, 2007) (“Preliminary Results”). The period of review is February 1, 2006, through July 31, 2006.

Following the Preliminary Results, we conducted verification of Ambica Steels Limited’s (“Ambica’s”) sales and costs in New Delhi, India, from September 24, 2007, through October 5, 2007. We invited interested parties to comment on the preliminary results. On November 26, 2007, we received a case brief from Ambica. On November 28, 2007, we received a rebuttal brief from Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc. (collectively, “the Petitioners”).

## DISCUSSION OF ISSUES

### Comment 1: Bona Fide Nature of Ambica’s Sale

*Ambica’s Argument:* Ambica claims that its U.S. sale (totaling 7.082 metric tons (MT)) is a partial shipment and is not reflective of Ambica’s normal commercial behavior. Therefore, Ambica argues that its U.S. sale should not be considered bona fide by the Department for the final results. Ambica asserts that the quantity shipped is extremely low in comparison with its sales of other products to the United States, and thus would lead to an unrepresentative price comparison by the Department. Ambica further argues that the per-unit international freight expense on this sale is overstated because Ambica shipped this partial order so it would have an entry into the United States during the new shipper period of review (“POR”) (which would allow Ambica to be eligible to request a new shipper review and receive its own rate). See Ambica’s argument below entitled “Adjustment to International Freight.” In conclusion, Ambica urges the Department to consider the timing of the sale, price and quantity, and overstated international freight expense and declare the sale as not bona fide.

*Petitioners’ Rebuttal:* The petitioners urge the Department to reject Ambica’s arguments and continue to find Ambica’s sale to the United States bona fide. The petitioners argue that Ambica’s participation in this new shipper review was voluntary and solely at the discretion of Ambica. The petitioners state that Ambica was not under distress to rush a partial order to the United States, whereby Ambica claims it incurred higher than normal per-metric-ton international freight expenses. According to the petitioners, Ambica argues that its sale is not bona fide because it is dissatisfied with the preliminary dumping margin of 22.63 percent, calculated from its submitted home market and U.S. sales data. The petitioners also criticize Ambica for making a complete turn around in this new shipper review from all its initial and supplemental questionnaire responses by arguing for the first time in its case brief that its sale was not bona fide. According to the petitioners, Ambica is making this argument because it does

not want to be held responsible for its dumping in the United States during the POR. The petitioners argue that the Department should not accept or entertain such behavior.

*Department's Position:* The Department finds that Ambica's sale during the new shipper POR is bona fide. The Department examined the totality of the circumstances surrounding Ambica's sale to the United States during the new shipper POR in its preliminary results and during verification in New Delhi. Specifically, we looked at factors such as the price and quantity of Ambica's sale, U.S. Customs and Border Protection data, and the identity of the U.S. customer. See Memorandum from Devta Ohri, International Trade Compliance Analyst to the File entitled, "Bona Fide Nature of Ambica Steels Limited's Sales in the New Shipper Review for Stainless Steel Bar from India," dated July 17, 2007 ("Bona Fide Memo"), and Memorandum from Brandon Farlander and Devta Ohri to the File: Verification of the Sales and Cost Response of Ambica Steels Limited in the Antidumping New Shipper Review of Stainless Steel Bar from India, dated November 16, 2007 ("Verification Report") at 10, for details concerning the Department's analysis.

The Department finds that Ambica's arguments concerning the low quantity shipped and the allegedly overstated international freight expenses are not sufficient justification to now declare Ambica's sale to be not bona fide. As the Department has previously noted, Ambica's selling price is on par with that of other exporters. See Bona Fide Memo at 3. In addition, given the wide range of shipment volumes during the POR and the significant number of shipments smaller than Ambica's, we find no evidence to suggest Ambica's shipment volume was aberrationally low. See Bona Fide Memo at 3-4.

Further, Ambica could have raised the bona fide issue at any point in this proceeding, but it did not do so until the briefing period. We find that Ambica was under no duress to have the partial entry arrive before the complete order was ready for shipment. Indeed, Ambica itself voluntarily requested this new shipper review. In addition, Ambica paid the disproportionately expensive international freight willingly and the Department will not disregard the commercial reality of the transaction simply because it has contributed to a high dumping margin for Ambica. Therefore, the Department continues to find that Ambica's sale to the United States during the new shipper POR is bona fide.

## **Comment 2: Weighted-Average Gross Unit Prices and Removal of Size from the Department's Control Number - Application of Total Adverse Facts Available**

*Ambica's Argument:* Ambica argues that it correctly reported weighted-average prices for the same grade because the size of merchandise is irrelevant in its pricing decisions. In addition, Ambica argues that the Department should disregard the size characteristic from the Department's control number for the final results. According to Ambica, the size of the SSB is totally irrelevant to Ambica's pricing and cost of production. Ambica states that it only differentiates the sale prices based on grade. Furthermore, Ambica asserts that it invoiced its customers at different prices for the same grade because there were different orders placed on the same invoice. Since the Department weight averages the prices of the same control number by month, Ambica asserts that its use of weighted-average prices would not make any difference to

the Department's analysis. Therefore, Ambica argues that it should be allowed to continue to report weighted-average gross unit prices for the final results.

*Petitioners' Rebuttal:* The petitioners did not comment on Ambica's arguments regarding its weight-averaged gross unit prices.

Regarding the size issue, the petitioners urge the Department to reject Ambica's argument and keep size as a component of the Department's control number for the final results. According to the petitioners, the control number relied on by the Department for Ambica's margin calculation is the same control number that has been used by the Department for all stainless steel bar respondents, in this and in numerous other SSB proceedings involving other countries. Thus, the petitioners argue that size, as well as the remaining control number characteristics, significantly impacts the price and cost of subject merchandise and, thus, must be considered by the Department when matching products to calculate a dumping margin for Ambica. The petitioners state that Ambica failed to raise the size issue until verification, which occurred after the preliminary results, and that Ambica has provided no evidence that size is not relevant to its pricing or costs. To the contrary, the petitioners state that Ambica's mill test certificates show that Ambica certifies the accuracy of the size of the SSB it sells.

*Department's Position:* For the reasons discussed in the Federal Register notice for the final results, we find that Ambica's incorrect reporting of weighted-average gross unit prices for certain sales resulted in significant errors in the database and provides a basis for application of total adverse facts available. Similarly, we reject Ambica's argument to remove size from the Department's control number. Size has been an integral component of the Department's control number since the start of the AD order on stainless steel bar from India. Our questionnaire specifically instructs Ambica to report its control numbers with regard to general type of finish, grade, remelting, type of final finishing operation, shape, and size. See Questionnaire, dated September 26, 2006, at pages B-30 to B-34. In addition, questions 29-31 of our March 6, 2007, supplemental questionnaire, again request Ambica to properly report its control numbers: "Please correct all reported control numbers in the home market and U.S. sales listings to reflect the compilation of fields 3.1 through 3.6 - type, grade, remelting, type of final finishing operation, shape, and size." Ambica was given ample time to answer both questionnaires, and it still failed to correctly report its home markets sales properly. Further, aside from this particular new shipper review, size is an important control number characteristic used in all stainless steel bar cases before the Department. Size helps define the physical characteristics of the merchandise that have a significant impact on pricing and production costs. In addition, Ambica failed to raise the size issue until verification and has provided no record evidence that size is not relevant to its pricing decisions.

### **Comment 3: Adjustment to Ambica's International Freight Expenses**

*Ambica's Argument:* Ambica argues that the Department should make a downward adjustment to its reported per-unit international freight expenses for the final results. Ambica claims that it

shipped only a partial quantity (7.082 MT) of its order during the POR, while the remaining quantity (approximately 9 MT) of the order was shipped outside the POR. Nonetheless, Ambica states that it paid international freight for approximately 20 MT (as the shipment container could hold up to 20 MT), which Ambica argues overstated its per-unit international freight adjustment. Ambica argues that in arriving at the export price, the Department should disregard the per-unit international freight expenses actually incurred by Ambica and make a downward adjustment by approximately 14,000 Rupees/MT to reflect the freight Ambica would have incurred if it had shipped one entire order instead of two partial orders.

*Petitioners' Rebuttal:* The petitioners urge the Department to reject Ambica's arguments to adjust its international freight expenses downward. According to the petitioners, Ambica is an experienced exporter and knowingly accepted its per-metric-ton international freight expenses.

*Department's Position:* As the Department is applying total AFA to Ambica for the final results, the Department does not need to address Ambica's arguments on this issue.

#### **Comment 4: Inclusion of Excise Taxes in Ambica's Home Market Inland Insurance Expenses**

*Ambica's Argument:* Ambica argues that the allegation in the Department's Verification Report that Ambica incorrectly included excise taxes in its reported inland insurance expenses are baseless and unfounded. Ambica contends that it included the taxes as required by the Indian Finance Act of 1994. Ambica claims that because Indian law requires it to pay the taxes, Ambica correctly included these taxes in its home market inland insurance expenses.

*Petitioners' Rebuttal:* The petitioners did not respond to Ambica's arguments on this issue in their rebuttal brief.

*Department's Position:* As the Department is applying total AFA to Ambica for the final results, the Department does not need to address Ambica's arguments on this issue.

#### **Comment 5: Discrepancies (Rounding) Related to Ambica's Gross Unit Prices Used to Calculate Ambica's Per-Unit Adjustments**

*Ambica's Argument:* Ambica argues that it rounded certain gross unit prices for the sake of convenience. Ambica also argues that this rounding is insignificant and negligible, and that its reported data are correct.

*Petitioners' Rebuttal:* The petitioners did not respond to Ambica's arguments on this issue in their rebuttal brief.

*Department's Position:* As the Department is applying total AFA to Ambica for the final results, the Department does not need to address Ambica's arguments on this issue.

## **Comment 6: Multiple Payment Dates**

*Ambica's Argument:* Ambica argues that, for the sake of convenience, it considered the date when Ambica was paid the major portion of the sale as the payment date for purposes of calculating Ambica's imputed credit expenses when Ambica had multiple payment dates. Thus, Ambica argues that for the final results, the Department should not make an adjustment to Ambica's imputed credit expenses in any scenario where Ambica has multiple payment dates.

*Petitioners' Rebuttal:* The petitioners did not respond to Ambica's arguments on this issue in their rebuttal brief.

*Department's Position:* As the Department is applying total AFA to Ambica for the final results, the Department does not need to address Ambica's arguments on this issue.

## **RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this new shipper review in the Federal Register.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date