

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 Antidumping Duty New-Shipper Review of Stainless Steel Wire Rods from India for the Period of Review December 1, 2005, through November 30, 2006

Summary

We have analyzed the case and rebuttal briefs of interested parties in the new-shipper review of the antidumping duty order on stainless steel wire rods from India for the period December 1, 2005, through November 30, 2006. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this new-shipper review for which we received comments and rebuttal comments by parties:

- Comment 1: Errors in Home-Market Sales
- Comment 2: Incomplete Home-Market Sales
- Comment 3: Miscellaneous Errors
- Comment 4: Ill-Preparedness for Verification

Background

On October 26, 2007, the Department of Commerce (the Department) published the preliminary results of the new-shipper review of the antidumping duty order on stainless steel wire rods from India. See Stainless Steel Wire Rods From India: Preliminary Results of the Antidumping Duty New-Shipper Review (72 FR 60808) (Preliminary Results). The review covers Sunflag Iron & Steel Co., Ltd. (Sunflag). The period of review is December 1, 2005, through November 30, 2006. The Department preliminarily decided to apply adverse facts available to Sunflag's U.S. sales. We invited parties to comment on our Preliminary Results of review. Sunflag filed a case brief on November 26, 2007. Domestic interested parties, Carpenter Technology Corp., North American Stainless, and Universal Stainless & Alloy Products, Inc., filed a rebuttal brief on November 27, 2007. The only comment the petitioners made in their rebuttal brief was that the Department should not change its position for the final results of the new-shipper review.

Discussion of the Issues

1. Errors in Home-Market Sales

Comment 1: Sunflag argues that it was not aware of the errors in its home-market (HM) sales data until the Department officials identified them during its verification of Sunflag's response. Sunflag claims that the errors in the HM sales data it reported are attributable to the SAP system which Sunflag used to generate its HM sales database. Sunflag argues further that it offered to resubmit a corrected version of its HM sales database after the verification. Sunflag alleges that the verification team gave Sunflag the impression that it should prepare the corrected data and that the Department would either request that Sunflag submit the corrected data or calculate Sunflag's margin ignoring the errors.

Department's Position: Neither Sunflag's alleged lack of knowledge of the errors in its reported HM sales database nor Sunflag's attribution of the errors to the automated generation of the data alters the fact that the data are inaccurate and unsuitable for margin-calculation purposes. We maintain our position that we discovered at verification that Sunflag did not report its HM sales properly and failed to provide information in the form and manner we requested. See section 776(a)(2)(B) of the Tariff Act of 1930, as amended (the Act).

Specifically, for its HM database, instead of reporting each sales transaction (*i.e.*, each invoice line item) as a separate observation, Sunflag reported each invoice as a single observation even in the instances where the invoice contained multiple sales of different products. Sunflag assigned the product characteristics, which we use for matching purposes (grade, diameter, and further manufacturing), and gross unit price, which is our base for the calculation of the dumping margin, of one transaction included in an invoice to all transactions included in that invoice. We found one instance of Sunflag's HM reporting error on the end of the second day of the scheduled three-day verification.¹ During the third and fourth days of verification (we extended the verification by one day under the circumstances) we focused on assessing the extent of the HM reporting error in order to determine whether the reporting error was an isolated incident or if it affected several transactions.

As discussed in detail in the memorandum from Catherine Cartsos and Edythe Artman to the file entitled "Verification of the Sales Response of Sunflag Iron & Steel Co., Ltd., in the Antidumping New-Shipper Review of Stainless Steel Wire Rod from India," dated October 19, 2007 (Verification Report), and the October 19, 2007, Memorandum entitled "2005/2006 New-Shipper Review of Stainless Steel Wire Rods from India - Decision to Apply Adverse Facts Available and the Selection of an Appropriate Rate for the Preliminary Results of Review" (AFA Memorandum), we found that the error affected a substantial portion of those sales Sunflag reported to the Department in its HM questionnaire response. For a detailed discussion see AFA Memorandum at pages 2, 4, 5, and 6; we incorporate the AFA Memorandum by reference in this

¹ The Department has a practice of conducting verifications for new-shipper reviews in three days due to the usually low volume of U.S. sales that have occurred during the period of review.

Issues and Decision Memorandum.

Sunflag's alleged impression that the Department indicated that it would either ignore the HM data errors or request that Sunflag correct and resubmit data is not correct. Nowhere on the record is there evidence of a suggestion by Department officials that the errors would be ignored and the incorrect data would be used to calculate a margin. To the contrary, the Department officials communicated to the Sunflag officials that the errors were grave and could have a serious impact on the results of the review. The Department officials explained to the Sunflag officials that the HM errors were pervasive and so crucial to the margin calculation that a margin based on this incorrect data would be extremely inaccurate. See Memorandum from Catherine Cartos and Edythe Artmen through Minoo Hatten to the file, dated January 17, 2008 (Memorandum from Verification Team to File).

Further, when the Sunflag officials asked whether they should compile a new database with correct data, the Department officials told them that they should not do so because the errors were discovered by the Department at verification. The Department officials also stated at verification that, in any case, if the Department were to decide to accept corrected information, it would request the information. See Memorandum from Verification Team to File. As we state in our Verification Agenda dated July 18, 2007 (Agenda), verification is not an opportunity for respondents to submit new information or make major corrections to inaccurate information. The Agenda stated:

Verification is not intended to be an opportunity for submission of new factual information. New information will be accepted at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.

See Agenda at page 2. Therefore, Sunflag was on notice that the Department may not accept a submission of revised data because it would constitute new information.

The Department officials conducting the verification verify the accuracy, completeness, and reliability of the information the respondent has previously submitted to the record. A decision to allow a company to correct a verification finding falls within the decision-making authority of the Assistant Secretary for Import Administration after analysis of the facts and statutory and regulatory requirements. Based on that analysis, the Preliminary Results reflect the Department's decision not to request that Sunflag submit substantially revised HM sales data. Acceptance of a correction to a finding (in this case, a new, revised database) *after* the completion of the Department's verification is impracticable because a post-verification data submission would be unverifiable and therefore unreliable due to the fact that it could not be tested for accuracy and reliability. See section 782(e)(2) of the Act. The purpose of verification is to affirm that the respondent has submitted accurate, complete, and reliable information. Further, it would essentially constitute a totally new response to our questionnaire and would be equivalent to starting the new-shipper review from the beginning after the verification. The Department does not have the resources to verify companies a second time and after giving a respondent adequate time to submit the requested information, the strict statutory deadlines in new-shipper reviews limit the time available to verify information. Therefore, we did not request a post-verification submission of a revised HM database.

2. *Incomplete Home-Market Sales*

Comment 2: Sunflag argues that the fact that it did not report all of its HM sales of foreign like merchandise for the window period should not affect the Department's decision in this review because Sunflag has reported the two sales of similar merchandise it claims the Department should be using in its comparisons. Sunflag states that the HM sales of foreign like product it did not report had invoice dates which either precede or post-date the U.S. sales invoice dates.

Department's Position: First, we reiterate that Sunflag's response is deficient in part because of the aforementioned errors in its HM data. See our response to comment 1 above. In addition, Sunflag failed to report all HM sales of foreign like product that occurred within the reporting period. Therefore, the HM data that Sunflag submitted for the record was a subset of the universe of sales it should have reported.

The Department uses the reported HM data to match HM sales to U.S. sales for margin-calculation purposes. An incomplete database lacks HM sales which are potential matches to the U.S. sales, thus affecting the accuracy of the Department's margin calculations. The fact that Sunflag believes that its HM database includes the two sales to which we should compare its U.S. sales does not make its HM database complete.

Because the database is not complete, we have no way of determining whether we would have used the two transactions Sunflag identifies as similar matches. We maintain our position that, by not reporting all of its sales of foreign like product that it made within the reporting period, Sunflag withheld information we had requested in our questionnaire and two supplemental questionnaires although it had the information necessary to provide a complete and accurate questionnaire response. For a detailed discussion see AFA Memorandum at pages 3 and 4-5. See also section 776(a)(2)(A) of the Act.

3. *Miscellaneous Errors*

Comment 3: Sunflag maintains that, upon the Department's request in one of its supplemental questionnaires, it corrected its reporting methodology for packing cost and resubmitted the information on a per-unit basis. Sunflag argues that errors in its reporting of other variables would have worked to its detriment had the Department used the data to calculate a margin.

Department's Position: In our original questionnaire, dated March 5, 2007, we gave detailed instruction on how each variable should be reported and we requested worksheets demonstrating how the respondent calculated the variable. Sunflag did not follow our instructions on how it should report numerous variables and ignored our request for worksheets illustrating the methodology it used to calculate the variables it reported.

From Sunflag's response it was clear that it had not reported the HM packing cost on a per-unit basis. For a number of other variables it was not clear how Sunflag had calculated the numbers it reported. In our supplemental questionnaires, dated June 11, 2007, and June 25, 2007, we requested that Sunflag recalculate its packing cost and report it on a per-unit basis, and we repeated our requests for worksheets demonstrating the methodology it used to calculate other variables it reported. See questions regarding section B field numbers 23, 25, 26, 31, and section C field numbers 23, 25, 43, and 50.1 in our June 11, 2007, supplemental questionnaire. See also questions 8, 11, 12, 13, 15, 16, 17, 21, and 28 in our June 25, 2007, supplemental questionnaire.

In regards to the HM packing cost, Sunflag recalculated and resubmitted HM packing cost on a per-unit basis. With respect to the other variables, Sunflag either ignored our requests or provided worksheets which purportedly explained the methodology it used to calculate the reported variables; the worksheets Sunflag provided were still vague and confusing.

At verification we realized that Sunflag did not report most of its HM adjustments (four different types of discounts, inland freight, commissions, indirect selling expenses, and home-market variable cost of manufacturing) on a per-unit basis as we had requested. See Verification Report at pages 19-23. As we stated in the AFA Memorandum, we have the information on the record to correct this methodological reporting flaw. In addition, at verification we found discrepancies regarding HM further manufacturing, HM credit, U.S. credit, domestic brokerage and handling for the U.S. sales, HM insurance, HM indirect selling expenses, and HM early-payment discounts. See Verification Report at pages 17, 18, 19, 21, 22. We do not have information on the record to correct these discrepancies. See AFA Memorandum at pages 3 and 4.

Regardless of whether the variable discrepancies and flawed reporting methodology work to Sunflag's detriment, it does not alter the fact that the information Sunflag reported for multiple variables for all transactions in the HM and in the United States is inaccurate. We maintain our position that, although it had the information to provide an accurate response, Sunflag failed to provide information in the form and manner we requested in our questionnaire and supplemental questionnaires. See AFA Memorandum at page 3 and 4. See also section 776(a)(2)(B) of the Act. As we have explained in our response to comment 1, because of these errors in Sunflag's data, we cannot calculate an accurate margin based on Sunflag's response.

4. *Ill-Preparedness for Verification*

Comment 4: Sunflag claims that its ill-preparedness should be attributed to the company's lack of experience in antidumping procedures and to its *pro se* status. Sunflag argues that it should be allowed a new opportunity to present its data to the Department.

Department's Position: Sunflag's lack of experience does not excuse it from its obligations as a respondent in the self-requested new-shipper review. Sunflag is required to provide information that can be verified, meaning that Sunflag should have provided complete and accurate information prior to verification. Sunflag's lack of experience does not afford it an additional opportunity to resubmit its response after the conclusion of verification. See our response to comment 1 above. As we discussed in our AFA Memorandum and the Verification Report, Sunflag's lack of preparedness for verification caused delays in our verification schedule. See AFA memorandum at page 6 and Verification Report at pages 11-14. Due to these delays we did not have adequate time to review many items or to do an in-depth review of others. Consequently, much of Sunflag's data remained substantially unverified. See section 776(a)(2)(D) of the Act.

Sunflag's ill-preparedness for verification is unjustified because, as the record shows, Sunflag officials received our Agenda about two weeks before the verification commenced. The Agenda is a very detailed step-by-step guide on how the team would conduct the verification.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and continuing to base Sunflag's margin on adverse facts available for the final results. If these recommendations are accepted, we will publish the final results of the new-shipper review and the final dumping margin for Sunflag in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date