

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: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review of Stainless Steel Sheet
and Strip in Coils from Japan

Summary

We have analyzed the comments of the interested parties on the preliminary results of the July 1, 2007 – June 30, 2008, administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Japan. As a result of our analysis, we have made changes in the margin calculations for Hitachi Cable Ltd. (Hitachi Cable) and Nippon Kinzoku Co., Ltd. (NKKN), in the final results. 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 administrative review for which we received comments from the interested parties:

Hitachi

Comment 1: Bona Fides of Hitachi Cable’s U.S. Sale

NKKN

Comment 2: Sample Sales in the U.S. Database

Comment 3: SAS Programming Errors

Background

On August 7, 2009, the Department published in the Federal Register the preliminary results of the 2007-2008 administrative review of the antidumping duty order on SSSSC from Japan. See Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 39615 (August 7, 2009) (Preliminary Results).

On November 18, 2009, we received case briefs from the domestic producers of the subject merchandise (i.e., AK Steel Corporation and Allegheny Technologies, Inc.) and NKKN. We received a rebuttal brief from Hitachi Cable on November 25, 2009. Based on our analysis of

the comments contained in these briefs, as well as our findings at verification, we have revised our calculation of the margins for Hitachi Cable and NKKN from the margins calculated in the Preliminary Results.

Margin Calculation

We calculated constructed export price, (CEP), export price (EP) and normal value (NV) using the same methodology described in the Preliminary Results, except as follows:

Hitachi Cable

1. We changed the per-unit cost of manufacturing for the product sold to the United States during the period of review (POR) in accordance with our verification findings. See February 3, 2010, Memorandum to Neal M. Halper from Ji Young Oh entitled “Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Hitachi Cable Ltd.” (COP/CV Calculation Memo).
2. We recalculated the general and administrative expense ratio by excluding from the numerator all non-operating and extraordinary income items, and including all non-operating and extraordinary expense items. We used the cost of goods sold as the denominator. See COP/CV Calculation Memo.

NKKN

1. We deleted observations 35 and 36 from the U.S. database because we determined that they were sample sales. See Comment 2, below.
2. We corrected the SAS programming code to reference the correct subdirectory containing the data sets for the U.S. margin program. See Comment 3, below.
3. We corrected an error in the margin program with respect to the conversion of pounds to kilograms. See Comment 3, below.

Discussion of the Issues

Hitachi Cable

Comment 1: Bona Fides of Hitachi Cable’s U.S. Sale

In the Preliminary Results, the Department found that the sole sale to the United States made by Hitachi Cable during the POR was a *bona fide* commercial transaction. See Preliminary Results, 74 FR at 39617. Specifically, we confirmed at verification that the U.S. sale at issue consisted of a sample of copper clad stainless steel sold for testing purposes. We noted that Hitachi Cable produces a niche product to the exact specifications of each customer and routinely produces test samples for both established and new customers in a similar quantity as that requested by the U.S. customer in this case. Furthermore, we found that although the home market database contains no sales of identical merchandise to serve as a comparison to the U.S sale, it contains

several sales of similar subject merchandise with prices and quantities that are comparable to those of the U.S. sale. *Id.* We also found that the delivery method Hitachi Cable employed for the U.S. sale was not inconsistent with normal industry practice for small-quantity sales, as the same delivery method was used by the other respondent in this review, NKKN. *Id.* Finally, with respect to the payment, we stated that Hitachi Cable established payment terms in accordance with its normal sales process, and provided a reasonable explanation at verification for why the timing of the actual payment was inconsistent with the payment terms indicated on the sales documents. *Id.*

The petitioners argue that, based on the totality of the evidence on the record, the Department should find Hitachi Cable's U.S. sale to be a *non-bona fide* transaction, and rescind the administrative review with respect to Hitachi Cable. The petitioners assert that the Department's standard for evaluating the *bona fides* of sales applies equally to administrative reviews and new shipper reviews. According to the petitioners, in both cases, the Department considers the totality of circumstances and decides on a case-by-case basis whether or not a sale is a *bona fide* commercial transaction.¹ The petitioners argue that the Department has been given authority by the Court of International Trade (CIT) to exclude sales in administrative reviews when information exists on the record that suggests that sales are "atypical of normal business practices" or "commercially unreasonable."²

The petitioners maintain that the circumstances surrounding Hitachi Cable's U.S. sale demonstrate that the sale was inconsistent with Hitachi Cable's normal sales practices, and was crafted for the sole purpose of eliminating or lowering Hitachi Cable's antidumping duty margin. First, the petitioners argue that the record is devoid of any of the documentation that regularly accompanies a U.S. sale, such as price negotiations, sale contracts, and email correspondence. Second, the petitioners state that Hitachi Cable did not provide any information explaining why it selected this particular customer, among numerous other customers, when it decided to enter the U.S. copper-clad market. Third, the petitioners note that, even after the Department requested that Hitachi Cable provide all the sales documentation generated from its U.S. sale, it only provided a one-page purchase order. The petitioners argue that a one-page purchase order, in response to the Department's request, does not satisfy the Department's requirement of providing objective and verifiable record evidence.³ Fourth, the petitioners assert that Hitachi Cable did not provide any documentation to show that its U.S. customer tested the product before or after the sale, despite Hitachi Cable's statements at verification that its normal practice when selling samples is for its customers to test the sample and to provide feedback indicating how the sample worked with their product. Finally, the petitioners argue that no evidence exists

¹ In support of their argument, the petitioners cite to Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 58,642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 4a (Tissue Paper from PRC Decision Memo).

² In support of their argument, the petitioners cite to Windmill Int'l Pte. v. United States, 26 CIT 221, 193 F. Supp. 2d 1303 (2002) (Windmill).

³ In support of their argument, the petitioners cite to Tianjin Tiancheng Pharm. Co. v. United States, 29 CIT 256, 274-76, 366 F. Supp 2d 1246, 1263 (2005) (TTPC).

on the record of this review to indicate that Hitachi Cable had any kind of plan to enter the market for copper-clad steel sheet and strip in the United States.

Furthermore, the petitioners contend that the Department's comparison of Hitachi Cable's U.S. sale to its reported home market sales in order to establish the *bona fides* of the U.S. sale is both unprecedented and improper. They claim that any such benchmarking analysis should be undertaken within the same market as that of the sale at issue (in this case, the U.S. market), to preclude any differences in market dynamics from affecting the *bona fides* analysis. Moreover, they argue that most of the home market sales the Department used in its analysis were not appropriate for determining the commercial reasonableness of the U.S. sale because they were found to be outside of the ordinary course of trade in the Department's margin calculations.⁴

Additionally, the petitioners argue that the quantity of Hitachi Cable's U.S. sale was unusually small when compared to normal commercial transactions in the copper-clad industry. The petitioners acknowledge that a single small-quantity sale is not necessarily non-*bona fide*,⁵ but claim that quantity is an important factor in determining the *bona fides* of a sale.⁶ The petitioners contend that commercial sales of stainless steel sheet and strip are typically sold in 19,000 kg. container loads; thus, Hitachi Cable's U.S. sale was of an unusually small quantity. The petitioners further argue that although Hitachi Cable claims that it had sales of similar quantities in the United States, Japan, and other export markets, those sales were outside of the POR as well as non-subject merchandise. Therefore, the petitioners argue, those sales are outside of the scope of this review and cannot be used to support Hitachi Cable's *bona fides* claim.

Citing U.S. import statistics, the petitioners further argue that the price of Hitachi Cable's U.S. sale was abnormally high when compared to the average unit value for sales made by other Japanese exporters during the POR under the same Harmonized Tariff Schedule (HTS) category. The petitioners assert that although Hitachi Cable states that its U.S. sale was a highly specialized product that is used in "high end" applications, the record lacks any evidence to support this claim. The petitioners also state that Hitachi Cable did not provide any information demonstrating how the price was set or agreed upon with its U.S. customer.

The petitioners also question the timing of the shipment and the shipment method used, noting that the merchandise was shipped via air freight to Hitachi Cable's U.S. customer days before the

⁴ In support of their argument, the petitioners cite to Allied Tube & Conduit Corp. v. United States, Slip Op. 07-107 (July 9, 2007) ("Commerce cannot reasonably conclude that the price of a new shipper's single sale is commercially reasonable if it is only similar to prices that are atypical of the industry").

⁵ In support of their assertion, the petitioners cite to Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (January 3, 2003), and accompanying Issues and Decision Memorandum at Comment 2 (quoting Certain Cut-to-Length Carbon Steel from Romania: Notice of Rescission of Antidumping Duty Administrative Review, 63 FR 47,234 (September 4, 1998)).

⁶ In support of their argument, the petitioners cite to Tissue Paper from PRC Decision Memo at 23.

end of the POR. They argue that shipping the product by air freight was unnecessary, given the length of time between the order date and the date the customer expected delivery.⁷ They add that, although Hitachi Cable claims that shipping products in small quantities by air freight is its normal sales practice, all of the sales that Hitachi Cable placed on the record to support this claim were sales of non-subject merchandise and, therefore, outside of the context of the review.

Finally, the petitioners point out that payment for the sale at issue was not received until several months after the due date, and claim that the record lacks any information showing that Hitachi Cable made any attempts to collect payment. The petitioners argue that Hitachi Cable failed to provide any information to substantiate its claim at verification that payment was late because Hitachi Cable was not an established supplier of its U.S. customer.

Hitachi Cable maintains that the *bona fides* standard applies only to new shipper reviews, and that an administrative review predicated on a single sale does not, in itself, cause the Department to question the commercial reasonableness of the sale under review.⁸ Moreover, Hitachi Cable claims that while Congress has given the Department the authority to exclude home market sales from antidumping margin calculations, the Department has not been given the same authority to exclude U.S. sales.⁹ Nevertheless, Hitachi Cable argues, when its U.S. sale is examined in the context of Hitachi Cable's overall operations, it is clear that the sale is consistent with its commercial operations.

Hitachi Cable asserts that the petitioners' comparisons of its operations, prices and logistics to those of high-volume commodity stainless producers is meaningless, as Hitachi Cable and commodity stainless steel producers operate in entirely different industries. Thus, Hitachi Cable argues, the petitioners' claim that copper-clad stainless steel is typically sold in 19,000 kg. container loads is inapplicable to the specialty market in which it sells its products. Hitachi Cable states that the highest-quantity home market sale that it made during the POR was approximately one-fourth of the quantity the petitioners claim should be the standard quantity for determining whether its U.S. sale was a *bona fide* commercial transaction.

Hitachi Cable argues that the price of its U.S. sale is not aberrantly high when compared to its other U.S. market, home market, and third country market sales of subject and non-subject clad stainless steel merchandise. Hitachi Cable contends that the HTS category referred to by the petitioners in their analysis is a broad basket HTS category. Therefore, by comparing the prices of products sold under this HTS category, the petitioners fail to consider the specialized nature of the products Hitachi Cable sells. Additionally, Hitachi Cable notes that at verification it

⁷ The petitioners cite to Windmill to support their claim that shipping the product by air freight supports a finding that Hitachi Cable's U.S. sale was not a *bona fide* sale. See Windmill Int'l Pte. v. United States, 193 F. Supp. 2d at 1307.

⁸ In support of its argument, Hitachi Cable cites to Tissue Paper from PRC Decision Memo at 21.

⁹ In support of its argument, Hitachi Cable cites to Russello v. United States, 464 U.S. 15, 104 S. Ct. 296, 78 L.Ed. 2d 17 (1983), and The Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States et al., 13 F.3d 398 (Fed Cir. 1994).

provided the Department with a sale of non-subject clad stainless steel merchandise with a price similar to that of the sale under review to support its claim that it had similarly-priced sales in the United States within the POR. Hitachi Cable also states that it had similarly-priced sales in its home market and third country markets of both subject and non-subject merchandise.

Hitachi Cable argues that shipping products by air freight is common in all of the markets that it sells its products, noting that more than half of all its export transactions during the POR were air freighted, and that this shipping method reflects the highly specialized industry in which Hitachi Cable operates. It adds that shipping its products via ocean vessel would not only be impractical, given the small size of the majority of its export transactions, but it would also not be cost-effective as the expenses associated with using this shipping method would exceed the revenue of most of its sales.

Department's Position:

In evaluating whether a sale is *bona fide*, the Department considers, *inter alia*, such factors as 1) the timing of the sale; 2) the price and quantity; 3) the expenses arising from the transaction; 4) whether the goods were resold at a profit; and 5) whether the transaction was made on an arm's-length basis. See TPPC at 1250. Therefore, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." See Hebei New Donghua Amino Acid Co., Ltd. V. United States, 374 F. Supp. 2d 1333, 1342 (CIT 2005), citing Fresh Garlic from the PRC: Final Results of Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002).

The Department may evaluate the *bona fides* of a sale in an administrative review if it determines that information on the record warrants such an analysis. See, e.g., Tissue Paper from PRC Decision Memo at 21. As this analysis is done on a case-by-case basis, the methodology may vary according to the facts and circumstances surrounding each sale. See TPPC, 366 F. Supp. 2d at 1260, citing Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at 20 (Mushrooms from PRC Decision Memo).

For the reasons explained below, we disagree with the petitioners' analysis and conclusion that Hitachi Cable's U.S. sale is not a *bona fide* transaction. In this case, evidence on the record supports Hitachi Cable's claim that it is a specialty steel producer of niche products. Therefore, to fairly assess the commercial reasonableness of Hitachi Cable's sole U.S. sale, it is necessary to analyze this sale in the context of the particular industry in which Hitachi Cable sells its products. As Hitachi Cable points out, it sells clad stainless steel products on a per-kilogram basis; therefore it is unreasonable to apply industry standards for commodity stainless steel products sold in container loads or by the metric ton, as the petitioners suggest. For the same reason, the petitioners' average price comparisons based on the broad HTS category for flat-rolled stainless steel products are not meaningful to the *bona fides* analysis, because the HTS category includes a general "basket" of stainless steel sheet and strip products that do not reflect the characteristics of Hitachi Cable's product or industry.

For the Preliminary Results, we compared all of Hitachi Cable's home market sales of specialty steel products with similar quantities to the U.S. sale under review to determine if the price of Hitachi Cable's U.S. sale was abnormally high, as alleged by the petitioners.¹⁰ We found that the price of the U.S. sale fell within the range of the prices of home market sales used in our analysis.¹¹ This benchmarking methodology was reasonable, given that there is no other sales information on the record to use for benchmarking purposes, and the petitioners suggested no alternatives to this methodology. See, e.g., Notice of Final Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 71 FR 43444 (August 1, 2006), and accompanying Issues and Decision Memorandum at Comment 1. For the final results, we have refined our analysis, in light of the petitioners' comments, to exclude sales outside of the ordinary course of trade. In so doing, we found that the price of the U.S. sale remains within the range of the prices of the majority of home market sales, regardless of quantity. See February 3, 2010, Memorandum to the File entitled "Hitachi Cable Ltd. Final Results Margin Calculations." Furthermore, contrary to the petitioners' assertion, the record shows that Hitachi Cable's normal business practice includes selling products in small quantities. See Hitachi Cable's November 26, 2008, submission, at 4.

Moreover, we disagree with the petitioners' argument that the delivery method Hitachi Cable employed for the U.S. sale was unrepresentative of its normal business practice. Hitachi Cable placed information on the record to substantiate its claim that the majority of its sales are shipped by air freight.¹² As Hitachi Cable has made many shipments of various products by air, we find that this mode of transportation was not unusual within the context of Hitachi Cable's normal business practices. Hitachi Cable explained that it is commercially reasonable and cost effective to ship these small-quantity products by air freight rather than by ocean vessel. See Memorandum to the File entitled "Verification of the Sales Responses of Hitachi Cable Limited (HCL) and Hitachi Cable America (HCA) (collectively, Hitachi Cable) in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Japan," (July 20, 2009) (Hitachi Cable Sales Verification Report) at 6 and Hitachi Cable's rebuttal brief at 9. Moreover, the same delivery method was used by NKKN, the other respondent in this review. See Memorandum to the File entitled "Verification of the Sales Responses of Nippon Kinzoku Co., Ltd. (NKKN) in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Japan" (July 31, 2009). While the petitioners also suggest that Hitachi Cable established the delivery terms for its U.S. sale without any input from its U.S. customer, documentation on the record shows that the delivery terms were in fact a part of the sales negotiations between Hitachi Cable and its U.S. customer. See Hitachi Cable's December 23, 2008, supplemental questionnaire response (SQR) at Exhibit 4.

¹⁰ See Memorandum to the File entitled "Hitachi Cable Ltd. Preliminary Results Margin Calculations," (August 7, 2009).

¹¹ Additionally, at verification we examined documentation for a U.S. sale of similar merchandise with a price similar to that of the U.S. sale. The sale of this product was made after the POR and although it does meet the thickness (gauge) criteria for the scope of the review, the product is not considered subject merchandise because it does not meet the width criteria. See Hitachi Cable Sales Verification Report, at 9.

¹² See Hitachi Cable's November 26, 2008, letter to the Department at Exhibit A.

The petitioners also maintain that the abnormally late payment for Hitachi Cable's U.S. sale supports a finding that the U.S. sale under review is not a *bona fide* commercial transaction. At verification, we questioned Hitachi Cable officials regarding the late payment. Hitachi Cable provided an email exchange with its U.S. customer showing that Hitachi Cable requested payment for the merchandise in the same month that payment was due, and that the customer provided instructions for joining its supplier list in order to be paid. See "Hitachi Cable Sales Verification Report" at 14. Therefore, we find that Hitachi Cable has demonstrated that it made a reasonable attempt to collect payment in a timely manner.

Although the petitioners assert that Hitachi Cable failed to submit to the Department any of the documentation that would normally accompany a U.S. sale, we note that the following documentation was either submitted to the Department as part of Hitachi Cable's questionnaire responses or placed on the record as a verification exhibit: customer purchase order, HCA's record of order information, document from HCA describing the terms of sale with its customer, invoice from Hitachi Cable Ltd. to HCA, invoice from HCA to its customer, packing list, air waybill, international freight carrier invoice, customs entry documentation, email between HCA and its customer concerning the addition of HCA to the customer's supplier list, and the customer's check for payment. See Hitachi Cable Sales Verification Report at Exhibit 20, Hitachi Cable's October 3, 2008, Section A questionnaire response at Exhibit 7, Hitachi Cable's October 24, 2008, Section C questionnaire response at Exhibit C-3, and SQR at Exhibits 4 and 5. Therefore, the petitioners are incorrect in their statements that the record lacks the normal evidentiary documents required by the Department. Furthermore, certain types of information that the petitioners argue are not part of the record are not normally required for our analysis (e.g., a record of Hitachi Cable's efforts to enter the U.S. copper clad market and Hitachi Cable's marketing or business plans). Accordingly, we have determined that the documentation on the record pertaining to the sale in question is sufficient for our analysis.

In sum, we have examined whether the sale at issue was made on an arm's-length basis and consistent with Hitachi Cable's normal business practices in the specialty steel industry. Absent additional evidence that the sale was distortive or unreflective of Hitachi Cable's normal business practices, the fact that it may have been a small-quantity shipment sent via air freight does not warrant a finding that the sale is not *bona fide*.¹³ Accordingly, based on the totality of the circumstances surrounding this sale, we continue to find Hitachi Cable's U.S. sale to be a *bona fide* commercial transaction. Consequently, there is no basis to rescind the review with respect to Hitachi Cable.

NKKN

Comment 2: Sample Sales in the U.S. Database

In the Preliminary Results, we included two transactions in our margin calculation that NKKN had designated as sample sales in the U.S. database. NKKN argues that the Department should remove these transactions from the U.S. database because they were not true sales. NKKN points out that its original Section C response dated November 12, 2008, describes the terms of

¹³ See, e.g., Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (January 3, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

this particular shipment and explains that a nominal invoice value was assigned to each sample solely for Customs purposes. NKKN notes that its questionnaire response included the invoice (which stated that there was no commercial value for the small quantities delivered), packing list, and airway bill corresponding to the two sample sales. NKKN therefore asserts that it is clear both from the documents submitted and the explanation in the questionnaire response that the “invoice amounts” listed were only for customs clearance purposes. According to NKKN, because there was no consideration paid by the customer for the samples, there was no “sale” within the meaning of the antidumping duty law. Therefore, NKKN maintains that the Department should remove these two line items from the U.S. sales database.

No other party commented on this issue.

Department’s Position:

We agree with NKKN. After reviewing the documentation on the record of this review relevant to the two transactions at issue, we have reconsidered our position in the Preliminary Results and have removed the two transactions from the U.S. sales database for purposes of our final margin calculation. Specifically, the invoice covering these transactions states, “no commercial value; value for customs purposes only,” and thereby supports NKKN’s claim that these transactions were not for consideration and, therefore, do not constitute sales. See, e.g., NSK Ltd. v. United States, 115 F.3d 965, 975 (Fed. Cir. 1997) (in which the Federal Circuit defined a sale as requiring “both the transfer of ownership to an unrelated party and consideration.”). Moreover, the specific products involved in these transactions were not sold by NKKN to the same customer at any other time during the POR. As such, we have excluded them from our final margin calculation consistent with our normal practice.

Comment 3: SAS Programming Errors

NKKN argues that the Department erred in its Preliminary Results margin calculation by referencing the incorrect name and location of the subdirectory containing the SAS data sets for the U.S. margin program. According to NKKN, this error causes a different set of data to be used with the U.S. margin program than was intended. NKKN argues that the Department should change its SAS programming code to reference the correct subdirectory containing the SAS data sets for the U.S. margin program.

No other party commented on this issue.

The petitioners argue that the Department made an error in attempting to convert quantity in pounds to quantity in kilograms when it multiplied the quantity in pounds by a factor of 2.2046 when it should have divided by that factor. The petitioners maintain that the overstatement of the quantity of NKKN’s U.S. sales results in a significant overstatement of the total value of NKKN’s U.S. sales which then results in an understatement of NKKN’s weighted-average dumping margin. Accordingly, the petitioners request that the Department correct this calculation error for the final results.

No other party commented on this issue.

Department's Position:

We agree with both parties and have corrected the above-described programming errors in NKKN's margin program for the final results. See February 3, 2010, Memorandum to the File entitled "NKKN Final Results Margin Calculations."

Recommendation

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

Agree _____

Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)