70 FR 13458, March 21, 2005

A-122-822
POR: 8/01/2002 – 7/31/2003
AD/CVD Office 6: SMC/ CKW
Public Document

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from Canada

SUMMARY

We have analyzed the case and rebuttal briefs of the interested parties in response to the preliminary results of review. As a result of our analysis, we have made changes, including corrections of certain errors in the margin calculation. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a complete list of the issues in this administrative review for which we received comments and rebuttal comments by the interested parties.

ISSUES

1. Surface Type Characteristics for Model Match
2. New Assessment Policy for Resellers
3. Treatment of Channel "2" Sales
4. Calculation of CEP Profit
5. Sales Subject to Review
6. Margin Program Adjustments
7. Normal Value Currency Conversion
8. Identification of DJG in Customs Instructions
9. Inclusion of Importer in Liquidation Instructions

BACKGROUND

On September 13, 2004, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Canada. See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review ("Preliminary Results"), 69 FR 22138 (September 13, 2004). The merchandise covered by the order is certain corrosion-resistant steel, and includes flat-rolled carbon steel products ("CORE"), as described in the "Scope of the Review" section of the Federal Register notice. The period of review ("POR") is August 1, 2002, through July 31, 2003. In accordance with section 351.309(c)(ii) of the Department's regulations, we invited parties to comment on our Preliminary Results. On November 9, 2004, Petitioner[1], Dofasco[2], Parkdale International ("Parkdale"), and Russel Metals Export ("Russel"), filed comments. On November 15, 2004, Petitioner filed rebuttal comments and Dofasco withdrew its argument claiming that its channel 2 sales should be treated as Export Price (EP) sales. Dofasco is a producer/exporter of subject merchandise, and Parkdale and Russel are Canadian resellers of subject merchandise. We did not receive any comments from Stelco, Inc.

DISCUSSION OF THE ISSUES

Comment 1: Surface Type Characteristics for Model Match

Dofasco argues that the Department should include surface type in the model match used in this administrative review. Dofasco notes that the Department has incorporated surface quality level into its model match in the antidumping duty orders involving carbon and certain alloy steel wire rod from various countries. See e.g., Appendix V of the Department's December 9, 2003, questionnaire issued in the first administrative review of carbon and certain alloy steel wire rod from Canada.

In the instant review, Dofasco points to a product brochure which shows the material performance standards of its exposed product as compared against its unexposed product. Specifically, Dofasco notes that its exposed product exhibits superior formability; is less sensitive to cratering defects; allows for better image distinctness; and, performs better in stone chipping test. Dofasco states that other steel producers and users recognize the material characteristics of exposed products that meet specific material standards.

Dofasco disagrees with the Department's Certain Corrosion-Resistant Carbon Steel Flat Products from Canada Model Matching Memorandum dated August 30, 2004, where we concluded that a product's suitability for exposed or unexposed use is based on customer preference. Dofasco argues that a customer's preference for an exposed product presupposes that there is a physical difference between the exposed and unexposed product. According to Dofasco, preferences are based on the applications that the customer intends for the product, and translate into different physical characteristics. Dofasco notes that relying on customer preference theory does not take into account that the same conclusions could be drawn for each of the other model match characteristics.

[1] United States Steel Corporation is the Petitioner in the case.
[2] Dofasco Inc., Sorevco Inc., and Do Sol Galva Ltd., Partnership are collectively referred to as Dofasco.

Dofasco states that the Department erroneously concluded that its Extragal products are interchangeable. According to Dofasco, the literature placed on the record by the Department at most, suggests that the exposed higher-end products may be used for certain lower-end applications. In addition, Dofasco asserts that the Department relied on one sentence out of context in drawing an erroneous conclusion. Dofasco states that its joint venture agreement between Dofasco and Arcelor is provided in Appendix I.A-30 of its January 26, 2004, section A questionnaire response provide the correct facts on the record pertaining to Extragal.

Dofasco asserts that the Department's decision not to change its model match characteristics in the past is irrelevant in the current review, given that there have been technological advancements in this field. Dofasco contends that the instant administrative review is the first review under this order to have substantive information on the record for the Department's consideration. In addition, Dofasco states that the Department has previously changed the model match for this order since the investigation, to add the "reduction process" characteristic, and a subcategory to the "quality" characteristic.

Dofasco contends that a change to the model match criteria would not be detrimental to the monitoring party since Dofasco is the responding party. According to Dofasco, by asking for the model match change, it is waiving its right to rely on the Department's previous approaches to the model match.

Finally, Dofasco contends that there are significant cost differences between exposed and unexposed galvanized steels. Dofasco argues that the Department's approach of using total cost of manufacturing in its cost analysis brings many other cost factors into the equation, and thereby, does not isolate the cost differences related only to exposed and unexposed galvanized steel. Dofasco states that there are a number of factors that affect specific costs within identical models such as production quantity, ranges within a certain physical criteria, different grades of steels, and minor further processing done in the United Sates. Dofasco contends that even if there were no cost differences, by itself that would not disqualify surface characteristics as a legitimate model match criterion.

Petitioner contends that the Department should continue to reject Dofasco's request to add a new "surface type" characteristic to the model match. According to Petitioner, Dofasco has not met the high factual threshold by providing evidence relevant to the industry as a whole, nor has it made a compelling argument in order to effect a change in the model match criteria.

Petitioner maintains that there have been no technological changes or other developments to warrant adding a surface characteristic to the model match. According to Petitioner, this characteristic was initially addressed in the investigation, when Petitioner submitted comments to the Department on its draft model match. See Exhibit 1 of Petitioner's June 7, 2004, submission. Petitioner notes that it again unsuccessfully proposed a surface characteristic in the fifth administrative review, when Dofasco opposed Petitioner's

proposal by noting that "nothing 'new' has occurred that would justify adding an additional physical characteristic." Id.. at page 6 of Exhibit 3. Finally, Petitioner notes that Dofasco reported this characteristic for all of its home market and U.S. sales in the sixth and ninth administrative reviews, but the Department did not recognize this characteristic as a model match criterion.

According to Petitioner, Dofasco's attempt to differentiate hot-dipped galvanizing from hot-dipped galvannealing is irrelevant since Dofasco is not requesting a surface type characteristic soley for hot-dipped galvanized steel. Petitioner asserts that Dofasco's claim that this hot-dipped galvanizing technology is new to the North American market is incorrect, since published accounts show that Stelco Inc. has had a facility for producing hot-dipped galvanized and galvannealed steel since 1991. See Exhibit 5 of Petitioner's June 17, 2004, submission. Finally, petitioner argues that Dofasco cannot dispute that this technology was widely used in other countries subject to antidumping orders on subject merchandise for many years, and there have been no industry-wide technological changes or developments that warrant adding an additional model match characteristic for surface type.

Department's Position

We disagree with Dofasco's argument that the Department should alter its model match criteria for corrosion-resistant carbon steel flat products for the following reasons: (1) Dofasco has not defined its proposed new product characteristic in sufficiently precise terms for the Department to appropriately integrate this characteristic into its model match hierarchy; (2) Dofasco has not demonstrated that any industry-wide, commercially accepted standards exist that recognize the material characteristics of exposed products made only from the hot-dipped galvanized process; (3) we do not find significant cost differences between exposed and unexposed galvanized steels; (4) we continue to find a degree of interchangeability of use for Dofasco's Extragal products that can reasonably be attributed to the subjective preferences of the customer rather than commercially significant differences in the physical characteristics of the product: and, (5) the record evidence demonstrates that there have been no new technological advancements in this field since the original investigation.

The Department's model match hierarchy for corrosion-resistant carbon steel flat products has never included a characteristic for surface quality. In the instant review, Dofasco has not provided a commercially accepted description, definition or industry standard that defines "exposed" versus "unexposed" steel products. Instead, Dofasco has noted a number of features exhibited by its exposed, hot-dipped galvanized product (Extragal), as compared to its unexposed quality steels. These include superior formability, less sensitivity to cratering defects, better image distinctness when painted, and better performance in stone chipping tests. In support of its argument, Dofasco relies on its company brochure for Extragal that notes the product's uses, and states that the product is acceptable for "all exposed applications." See Appendix I.B-22 of Dofasco's section B questionnaire response dated January 26, 2004, for the Extragal product

brochure. Thus, Dofasco maintains, none of the current model match criteria are sufficient to capture the differences between exposed and unexposed surface types.

We do not find that a product brochure from a single company is authoritative or representative of an industry standard for a commercially accepted definition of surface type for exposed and unexposed steel products. Furthermore, we do not find this brochure to be substantial evidence that Dofasco's proposed characteristic is a commercially significant physical characteristic as defined by section 771(16) of the Tariff Act of 1930, as amended ("the Act") and the Department's practice. See New World Pasta v. United States, 316 F. Supp. 2d 1338, 1352 (CIT 2004) (discussing the Department's practice of considering only significant physical characteristics). Although Dofasco states that other steel producers and users recognize the material characteristics of exposed products that meet specific material standards, Dofasco has not provided sufficient record evidence of specific properties that uniformly define "exposed" products for all producers and all customers. Rather, Dofasco's definition is recognition of what it perceives as "exposed" steel.

Dofasco attempts to draw a parallel between the order under review and the order on carbon and certain alloy steel wire rod from Canada. Dofasco correctly notes that the Department used a surface quality characteristic for wire rod in its questionnaire, however, Dofasco does not comment on the fact that this surface quality characteristic includes references to "surface defect and decarburization standards," and "standards for certain critical applications such as cold heading quality (CHQ), PC strand, tire bead, or tire cord." In administering the antidumping duty orders on wire rod, the Department requires respondents to provide "all technical materials, such as International Fastener Institute (IFI) and AISI standards, customer specifications, and other requirements used to classify" the sales in question. See Dofasco's November 10, 2004, case brief at page 13. Accordingly, in order for respondents to determine a surface quality code for its model match in wire rod, a respondent must provide standards that are recognized throughout the industry and are commercially definable. However, Dofasco provides no such industry standards regarding its Extragal products for its "exposed" surface quality features.

The surface quality characteristic that is used in wire rod relies on a recognizable industry standard that is defined by an excruciating level of detail. For example, two wire rod products explicitly excluded from the scope of the order include the following technical specifications for surface quality:

> This grade 1080 tire cord quality rod is defined as: {…} (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

> This grade 1080 tire bead quality rod is defined as: {…} (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified)."

See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 65944 (October 29, 2002). However, Dofasco has provided no sufficiently analogous technical definition on which the Department can rely for purposes of integrating surface type into the model match hierarchy of the instant proceeding.

Accordingly, we continue to find the surface type information provided by Dofasco to be an insufficient basis on which to define exposed versus unexposed surface types. See Model Match Memo at pages 4-5. For example, Dofasco provides a "vision graphic" from this brochure that allegedly shows acceptable level of defects for exposed and unexposed products. This graphic is barely legible, includes no scales, and provides no ranges that would indicate where the level of defects would warrant recognizing the surface type as exposed or unexposed. In addition, the information included on formability in the product brochure provides a single set of data for evaluating the drawing performance of Extragal as compared to electrogalvanized and galvannealed, presumably in the making of exposed steel.

Similarly, the information presented in Dofasco's brochure fails to define "distinctness of image" or DOI, a feature that it contends is related to the paint appearance of exposed steel. Instead, Dofasco provides only a line graph with one axis covering distinctness of image (DOI) range of 50 to 100, and another axis that seems to represent a crystal size/morphology range of 0.5 to 2.5. Along this graph are various points within which Extragal, electrogalvanized, and galvannealed products fall. Again, it is impossible to indicate what Dofasco is attempting to demonstrate with this line graph, and where, within these ranges, exposed and unexposed subject merchandise would fall for each of these three production processes. The only loose "generalization" that one could draw from this graph is that an acceptable exposed product with a DOI of nearly a hundred can be produced using Extragal, or it can be produced with a DOI in the low sixties using what seems to be a galvannealed process. This type of information hardly reaches the level of detail the Department normally requires before including a characteristic in its model match criteria.

Our review of the record evidence shows that Dofasco has not sufficiently demonstrated that there is a significant cost difference between exposed and unexposed galvanized

steel. To the contrary, the information included in Dofasco's case brief further supports both our views that there are no significant cost differences, and that there is a measure of interchangeability for both visible and non-visible parts used in the numerous automotive applications. See Model Match Memo, at pages 4-5. Specifically, Dofasco states that "{o}rders that are intended to meet exposed surface quality may in fact fail to meet the higher standard for such steels. In that case, the finished product may be suitable for unexposed applications. Nevertheless, since the merchandise was processed to be exposed surface standards, the pieces carry the higher costs associated with the exposed product." See Dofasco's November 9, 2004, case brief at page 30. This supports our conclusion in the Model Match Memo that "at the time it leaves the production line, the product's application is uncertain, and this interchangeability of use indicates that any differences in surface type are not significant physical characteristics." Id. at page 5. We find it reasonable to conclude that products intended to be exposed steel can fail on the basis of whether one customer's application for exposed steel differs from another customer's application for exposed steel. Dofasco itself noted that for a number of years, customers accepted exposed parts made through the galvannealing process even though a large proportion preferred electrogalvanized products. See Dofasco's November 9, 2004, case brief at page 23. This provides additional evidence that customers have varying opinions as to what they consider to be exposed steel, and that the physical characteristics between exposed and unexposed steel are not significant.

Finally, the Department finds that there have been no technological changes or other developments since the investigation to warrant adding a surface characteristic to the model match. As Dofasco itself pointed out in its earlier argument against adding a surface characteristic to the model match, "Dofasco has been producing this product for numerous years. In fact, Dofasco produced this product during the initial investigation. Moreover, even if Dofasco had just begun producing this product, the fact is that many other respondents produced hot-dipped product during the initial investigation." See Exhibit 3 of June 2, 2004 submission at page 5.

Comment 2: New Assessment Policy for Resellers

Parkdale maintains that the Department should not apply its new assessment policy to entries of subject merchandise imported by Parkdale before the publication of the new policy on May 6, 2003. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) ("Reseller Policy"). Parkdale argues that for entries entered before May 6, 2003, by manufacturers, producers, or exporters for which the Department did not conduct an administrative review, Customs should liquidate entries at the cash deposit or bonding rate required at the time of entry.

Parkdale argues that the Department's new assessment policy for resellers is retroactive and therefore, prohibited by law unless such authority is explicitly granted by Congress to the Federal Agency. Parkdale cites numerous cases supporting its assertion that federal agencies cannot apply retroactive prescriptions without explicit Congressional authorization because it would be unfair to the interests of a private party that had reasonably relied on the agency's previous position.

According to Parkdale, retroactivity occurs when a provision "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." See Landgraf v. USI Film Prods., 511 U.S. 280,114 S. Ct. at 1505. Parkdale states that as a reseller, it reasonably relied on the assumption that the cash deposit rate would be the assessment rate unless the reseller or Petitioner requested an administrative review of the reseller. Furthermore, Parkdale contends resellers do not have the option of undoing importations before the May 6, 2003, date of the Department's new assessment policy, and therefore, any contrary rule that is applied to entries prior to this date is retroactive.

Parkdale argues that the Department cannot apply a rule retroactively based on the "clarifying" exception without considering the following factors outlined in Farmers Telephone Co. v. FCC, 184 F.3d 1241, 1251 (10th Cir 1999): (1) whether the case is one of first impression; (2) whether the rule is an abrupt departure from well-established practice; (3) whether the party against whom the new rule is applied relied on the former rule; (4) whether the retroactive order or new rule imposes a burden; and, (5) whether there is a statutory interest in applying a new rule despite reliance of a party on an old standard.

Parkdale contends that this is not a case of first impression regarding the application of the automatic liquidation rule since the Department has applied the former rule for many years. Second, Parkdale notes that the Department, in Consolidated Bearings Co. v. United States, Ct. No. 98-09, 02799, Slip Op. 04-104 (CIT 2004), admitted that the Reseller Policy is "not consistent with its past practice of liquidating resellers' merchandise at the cash deposit rate in effect at the time of entry because it calls for assessing resellers' entries at the all-others rate." Third, Parkdale has relied on the old interpretation of the automatic liquidation rule. Fourth, the new rule imposes a burden since, according to Parkdale, this rule would have an adverse impact on its financial health as a result of the large difference between the 4.24 percent cash deposit rate at which its subject merchandise was entered and the 18.71 percent rate applied as the "all others" rate for purposes of assessing duties on and liquidating the entries. Furthermore, Parkdale notes that it did not have access to the basic cost information from its unaffiliated supplier, and therefore, was limited to asking the Department not to apply its new policy retroactively. Finally, Parkdale states that there is no statutory interest in applying this new rule retroactively because it is not plausible that years of operating under the old automatic liquidation rule failed to serve the statutory interest.

Russel argues that the change recently proposed by the Department with respect to non-reviewed resellers in Non-Market Economies (NME) is inconsistent with the approach announced in the Reseller Policy. See Separate-Rates Practice in Antidumping Proceedings involving Non-Market Economy Counties, 69 FR 56188 (September 20, 2004). Russel states that this proposed change would allow non-reviewed NME resellers to be assessed antidumping duties determined on the basis of the current administrative review. However, Russel states that under the Reseller Policy, non-reviewed resellers in market economy cases are assessed at the "all others" rate that is

based on the weighted average margin determined in the original investigation. As a result, Russel states that it would be assessed the 18.71 percent "all others" rate even though the current margin of its reviewed supplier was preliminarily determined to be *de minimis*.

Russel claims that it fully intended to participate in the current review, but due to the Department's failure to address Russel's request for the use of acquisition price instead of its producer's costs, to which it did not have access, Russel was unable to respond to the Department's questionnaire. Russel states that it sent the Department a letter on November 21, 2003, indicating that it would be unable to complete the questionnaire without guidance, and claims that it did not receive a response from the Department. In addition, Russel notes that the Government of Canada had earlier requested guidance and assistance from the Department, and requested that unaffiliated resellers be allowed to use the resellers' acquisition costs in responding to Department questionnaires.

Finally, Russel endorses the argument noted by Parkdale above, that the Department cannot apply its May 6, 2003, reseller policy retroactively as a matter of law. Accordingly, Russel argues that its entries should be liquidated at the cash deposit rates in effect at the time of entry rather than the "all others" rate from the original investigation.

Petitioner argues that Parkdale's argument that the new reseller methodology constitutes an unlawful retroactive application of a rule should be rejected. Petitioner contends that this is not a retroactive application since the conduct that triggers the regulation's activity is the ultimate liquidation of entries, which occurs well after the effective date of the clarified reseller methodology. Petitioner cites Syva Co. v. United States, 681 F.Supp. 885, 886 (CIT 1988), where the plaintiff argued against paying interest on goods entered before the enactment of a legislative amendment providing for interest on delinquent duty payments. According to Petitioner, the Court disagreed, stating that the operative triggering event for assessment of interest was the liquidation of the entries, which occurred after the statute was enacted, thereby rendering "no retroactive application which would deprive plaintiff of any substantive right." Id. Petitioner states that the same principle applies in this case since there would be no retroactive action in applying it to entries made before, but liquidated after, the effective date of the Department's clarification of policy.

Petitioner states that even if, *arguendo*, one does deem this to be a retroactive action, it is well established that clarifications of unsettled or confusing areas of the law may be applied retroactively. See, e.g., Pope v. Shalala, 998 F.2d 473, 483 (7th Cir. 1993). Petitioner notes that the Department observed that there was confusion among parties importing merchandise into the United States subject to an antidumping duty order regarding the application of the Department's regulation on automatic liquidation where a reseller has been involved. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 63 FR 55361, 55362 (October 15, 1998). Petitioner further contends that in order to rebut the presumption of retroactivity, the courts

generally require the parties to demonstrate a reasonable and detrimental reliance on a prior rule.

Petitioner argues that Parkdale and Russel cannot demonstrate such a reasonable reliance since they have been on notice as early as October 1998 with the Department's initial published notice that it was considering this reseller issue. Id. In addition, the Department requested additional comments on March 25, 2002, four months prior to the start of the POR in the instant administrative review. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties; Additional Comment Period, 67 FR 13599 (March 25, 2002). Furthermore, Petitioner points to Parkdale's submission of comments on April 1, 2002, noting Russel's support of Parkdale's views, which were filed in response to the Department's request for additional comments on its proposed reseller methodology. According to Petitioner, these comments are evidence that Parkdale and Russel were aware of the Department's new methodology. Therefore, Petitioner states that any reliance on the part of Parkdale and Russel on a methodology other than the approach clarified by the Department was unreasonable.

Petitioner states that there is no inconsistency between the Department's reseller methodology and the proposed changes to its separate rates policy in NME cases. Petitioner notes a fundamental difference in how the Department treats NME countries as opposed to market economy countries. Petitioner states that in NME countries, prices and costs are deemed to be artificial, and the Department begins with a rebuttable presumption that all companies within the country are subject to government control and should be assigned a single country-wide rate.

According to Petitioner, the proposed change in NME cases would simply allow an NME producer or exporter that is not selected as a mandatory respondent to obtain an antidumping duty rate separate from the country-wide rate. Petitioner states that the Department's clarified market economy reseller methodology has nothing to do with country-wide rates which do not exist in market economy cases. Accordingly, Petitioner argues that there is no basis on which to make a comparison between the market economy and NME methodologies.

Finally, Petitioner contends that the Department provided sufficient guidance and assistance to resellers in responding to the Department's questionnaire. Petitioner notes that Russel requested an administrative review and sought clarification in completing the questionnaire response, but withdrew from the review on December 24, 2003, because Russel stated that it did not receive a response from the Department. However, Petitioner states that on December 29, 2003, the Department granted Russel an extension of time to file its response and replied to Russel's request for guidance. Specifically, the Department's letter stated:

> Russel Metals, like all other respondents, is expected to complete the questionnaire to the best of its ability. If any information requested in the questionnaire is not available or if Russel Metals is unable to provide the

> requested information, please explain fully why it is not possible for you to answer the question. In instances where Russel Metals is unable to provide requested information, whatever the reason, the Department will examine the issues surrounding this information, and proceed accordingly with the review process as instructed in 19 CFR 351.

Petitioner also notes that the Department contacted Russel after they received Russel's withdrawal letter, and Russel confirmed its interest in withdrawing from the review despite the Department's guidance and assistance. Therefore, Petitioner argues that the Department complied with its obligations under section 782(c)(2) of the Act, in accounting for difficulties experienced by small companies in supplying information requested by the Department.

Department's Position

The Department disagrees with Parkdale's and Russel's characterization of the new reseller methodology as a retroactive prescription. As the Department noted in Comment 7 of its Reseller Policy, this methodology does not retroactively apply duties to the subject entries since duties are owed on imports of the subject merchandise and the question is one of the proper rate to be applied. The fact that the subject merchandise may have entered before the publication of this clarification is immaterial because interested parties were aware of the new methodology prior to the start of the instant administrative review. See Reseller Policy, 68 FR 23954, 23956. Furthermore, all resellers in the instant proceeding had the opportunity to request and participate in this administrative review if they believed that the cash deposit and possible final assessment rates did not reflect the resellers' pricing practices. Parkdale chose not to participate and receive its own rate, when it did not request an administrative review. Although Russel initially did request a review, it later withdrew from the review without submitting a questionnaire response. See Corrosion-Resistant Carbon Steel Flat Products from Canada: Notification of Recission, in Part, of Antidumping Duty Administrative Review, 69 FR 16521 (March 30, 2004).

Regarding the comparison of methodologies used in NME cases and market economy cases, Petitioner correctly noted that in NME cases, the Department begins its analysis with the rebuttable presumption that all companies within the NME country are subject to government control and should be assigned a single, country-wide rate. As the Department explained in Wooden Bedroom Furniture from the People's Republic of China: Final Determination of Sales at Less Than Fair Value:

> In NME investigations, the Department may determine as many as three different types of rates. The mandatory respondents receive a rate based on the Department's analysis of their responses to all sections of the antidumping questionnaire. Companies which the Department does not select as mandatory respondents may file timely responses to Section A of the antidumping questionnaire and the Department examines whether the company is eligible for a rate separate from the rate the Department determines for the state-controlled

> NME-wide entity. Finally, the Department establishes a rate for the companies which did not respond to any section of the questionnaire and which are presumed to be within the state-controlled NME-wide entity. The issues parties raised and which we address in this section of the memorandum concern our determination of the so-called Section A rate for non-mandatory respondents which demonstrated that their export activities are independent of government control. The Department's practice is to establish this Section A rate under section 735(c)(5) of the Act, which addresses the Department's calculation of the estimated all-others rate.

See Wooden Bedroom Furniture from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 69 FR 67313 (November 17, 2004) ("Wooden Bedroom Furniture"), and accompanying Issues and Decision Memorandum at Comment 5.

Therefore, Russel's argument that non-reviewed resellers in NME cases are assessed a current "all others" rate is incorrect. Rather, to the contrary, as detailed in Wooden Bedroom Furniture, a reseller in an NME proceeding must participate in the investigation or review by completing the Department's separate rates questionnaire in order to rebut the presumption of government control. Only then will the Department determine whether the reseller should receive the "all others" rate in accordance with section 735(c)(5) of the Act. A non-reviewed reseller that does not participate in an NME proceeding would receive the presumptive, adverse, country-wide rate.

We also disagree with Russel's assertion that it failed to receive guidance in responding to the Department's questionnaire. As noted in the Department's December 29, 2004, letter to Russel, the Department stated that it would examine the issues concerning Russel's inability to provide information, and proceed accordingly with the review. The Department only requested that Russel explain fully why it could not answer a particular question. Russel still elected not to file a questionnaire response with the information available to Russel, and include an explanation for the information that it could not obtain. The Department also made clear in Comment 5 of its Reseller Policy, that "the Department may consider the specifics of any given respondent in determining whether it acted to the best of its ability. Such decisions can be made by the Department on a case-by-case basis."

Finally, the record evidence indicates that Parkdale and Russel had direct knowledge of the Department's proposed reseller methodology no later than April 1, 2002, when Parkdale submitted comments on this proposal and noted Russel's support of Parkdale's views.

Comment 3: Treatment of Channel "2" Sales

Petitioner contends that the Department inadvertently failed to treat Dofasco's Channel "2" sales in the United States as constructed export price ("CEP") sales. According to Petitioner, Dofasco classified these Channel "2" sales as EP sales. The Department

stated in the Preliminary Results that it was treating these sales as CEP sales. Petitioner contends that the Department did not include the proper programming language to make this modification to Dofasco's reported data.

Respondents did not comment on this issue.

Department's Position

Petitioner is correct that the Department, consistent with the final results of the last administrative review, intended to classify Dofasco's Channel 2 sales as CEP sales. See Proprietary Memorandum: Classification of Dofasco's sales as either EP or CEP, dated January 6, 2004, a public version of which is on file in the Department's Central Records Unit. Accordingly, we are modifying our programming to correctly treat these Channel 2 sales as CEP sales.

Comment 4: Calculation of CEP Profit

Petitioners argue that the Department should revise its calculation for Dofasco of CEP profit in the final results. Petitioners claim that the statute and the Department's regulations direct the Department, when calculating CEP profit, to use the total actual profit realized by the respondent on its U.S. sales of the subject merchandise. However, in its calculation of CEP profit for Dofasco in the preliminary results, Petitioners claim, the Department did not do so. For a detailed discussion of Petitioner's argument and the proprietary information on which it is based, see Analysis for Dofasco, Inc. (Dofasco) for the Final Results of the Tenth Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, March 14, 2005.

Respondents did not comment on this issue.

Department's Position

Total actual profit as defined by section 772(f)(2)(D) of the Act includes all revenues and expenses resulting from the respondent's EP sales, as well as from its CEP and home market sales. See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18476 (April 15, 1997). We agree with Petitioner that we inadvertently excluded certain U.S. revenue items from our calculation of CEP profit for Dofasco. Accordingly, we will correct our calculation of CEP profit to include these revenue items in accordance with section 351.402(d)(1) of the Department's regulations.

Comment 5: Sales Subject to Review

Petitioner argues that the Department should follow its practice from the previous administrative review in the calculation of Dofasco's dumping margin and should use all of the United States sales of subject merchandise reported by Dofasco in its section C sales database. Petitioner claims that the methodology employed by the Department in

the Preliminary Results, inappropriately excludes certain reported U.S. sales from the section C sales database from the universe of reported U.S. sales considered by the Department in its dumping margin analysis for Dofasco.

Respondents did not comment on this issue.

Department's Position

Dofasco reported its Channels 1, 2, and 4 U.S. sales to the Department as EP sales and its Channel 3 sales as CEP sales. As noted in the Preliminary Results, we have reclassified Dofasco's Channel 2 sales as CEP sales. We stated that this classification was consistent with our determination in the last review, where we classified Dofasco's Channel 2 sales as CEP sales. See also Comment 3, above. In the Preliminary Results, we also stated that we were treating all of Dofasco's other sales (i.e., Channels 1, 3, and 4), as EP sales. We wish to clarify this statement and correctly note that in the last review, the Department found Dofasco's Channel 3 sales to be CEP sales as well. See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 68 FR 2566 (January 16, 2004), and accompanying Issues and Decision Memo at Comment 1. Accordingly, since our intent was to classify Dofasco's U.S. sales consistent with our determination in the last review, only Channels 1 and 4 are categorized as EP sales. Thus, for these final results, we have categorized Dofasco's Channels 1 and 4 U.S. sales as EP sales, and its Channels 2 and 3 U.S. sales as CEP sales.

We note that in section 751(a)(2)(A) of the Act, a dumping calculation should be performed for each entry during the POR. While section 351.213(e) of the Department's regulations does give the Department some flexibility in this regard by stating that the review can be based on entries, exports, or sales, it is our preference to base the review on entries where possible. In this case, we find no compelling reason to move away from our standard practice of using entries to determine the universe of U.S. sales to be reported for EP sales. See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32836 (June 6, 1998), at Comment 2. Accordingly, we have included in our analysis for these final results all entries of EP sales made during the POR.

The Department's normal practice for CEP sales made after importation is to report each transaction that has a date of sale within the POR. See section 351.212 of the Department's regulations and the preamble to that section of Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27314-15 (May 19, 1997). However, in Notice of Final Results of Antidumping Duty Administrative Review of Circular Welded Non-alloy Steel Pipe from the Republic of Korea, 66 FR 18747 (April 11, 2001), at Comment 2, the Department recognized unique circumstances that could lead us to base the margin for CEP sales on the sales entered, rather than sold during the POR. In that case, there was no dispute that the respondents could tie their sales to specific entries during the POR because its U.S. sales were made to order, the date of sale occurred prior to the date of entry, the merchandise was shipped directly from the factory to the final

customer, and the respondents were generally the importer of record. Further, we noted that we based our prior reviews on entries rather than sales, and that we did not direct respondents to revise their databases on a date of sale basis.

We find that Dofasco's Channel 2 and 3 CEP sales follow a similar fact pattern and therefore, we consider the date of entry to be the appropriate date for establishing the universe of sales for purposes of calculating a margin. First, we are able to tie these sales to entries since Dofasco, in the instant review, provided entry dates for all of its U.S. sales. See Dofasco's January 26, 2004, section C questionnaire response at page C-69. Second, the merchandise was shipped directly from the factory to the location specified by this customer. See Dofasco's January 26, 2004, section A questionnaire response at page A-29. Third, since the majority of these sales were made pursuant to long-term contracts, and the date of the long-term contract was used as the date of sale, the dates of sale occurred prior to the dates of entry. See Dofasco's January 26, 2004, section A questionnaire response at page A-25. Therefore, for these reasons, we have based the margin calculations on these Channel 2 and 3 CEP sales on entries, not dates of sale, during the POR. However, in subsequent reviews, we may reconsider this issue and we may revise our methodology at that time if the facts of that review indicate that it would be appropriate to do so.

Comment 6: Margin Program Adjustments

Dofasco argues that the Department inadvertently failed to make the appropriate currency conversions for certain home market expenses and adjustments in its home market and U.S. sales programs. In addition, Dofasco claims the Department inadvertently failed to make a deduction for inland freight for home market sales where actual freight was not available. Petitioner agrees with Dofasco that these are ministerial errors that should be corrected in the final results.

Department's Position

The Department agrees with Dofasco and Petitioner regarding the ministerial errors noted above. Accordingly, we will revise both the home market and U.S. sales programs to correct these errors.

Comment 7: Normal Value Currency Conversion

Petitioner argues that the Department should correct the currency conversion of the normal value for Dofasco's home market sales. Petitioner maintains that in the preliminary results, the Department incorrectly performed the currency conversion of the normal value for Dofasco's home market sales.

Respondents did not comment on this issue.

Department's Position

We agree with Petitioner and have corrected the currency conversion error by removing the additional exchange rate conversion from the calculation of normal value.

Comment 8: Identification of DJG in Customs Instructions

Dofasco argues that the Department should amend certain aspects of its draft liquidation and draft cash deposit instructions. Dofasco claims that paragraph 2 of the draft liquidation instructions regarding DJG may lead to confusion in the administration of these liquidations. Dofasco states that DJG is not a producer of subject merchandise, but rather, a toll processor of merchandise supplied by Dofasco. In accordance with section 351.401(h) of the Department's tolling regulation, and as noted in the Department's findings in earlier administrative reviews of this proceeding, Dofasco was named the producer of the subject merchandise, regardless of whether it was processed at DJG prior to entry into the United States. Accordingly, Dofasco argues that the Department should continue to apply the Dofasco rate to such merchandise, and delete paragraph 2 of the draft liquidation instructions and paragraph 4 of the draft cash deposit instructions.

Petitioner did not comment on this issue.

Department's Position

We disagree with Dofasco that the language in the draft customs instructions may lead to confusion in the administration of these instructions. The paragraphs in question for both the liquidation and cash deposit instructions begin with the following language: "For merchandise supplied by Dofasco, Sorevco, or Dosol Galva and *processed* by DJ Galvanizing Ltd. Partnership (DJG) (formerly DNN Galvanizing Ltd)"(emphasis added). Both paragraphs continue with instructions to either assess entries at the rate indicated for Dofasco, Sorevco, and Dosol Galva, or to apply the cash deposit rate for Dofasco, Sorevco, and Dosol Galva. We find this language is quite specific, and contains no misleading references such that DJG could be considered a producer of the subject merchandise. Furthermore, there is no rate assigned to DJG that is referenced in the body of either the cash deposit or liquidation instructions. Accordingly, we find that this language is clear with respect to the producers in question and the rates to be applied in the administration of these instructions.

Comment 9: Inclusion of Importer in Liquidation Instructions

Dofasco claims that the Department inadvertently failed to include an importer in its draft liquidation instructions. According to Dofasco, the Department's draft liquidation instructions include importer-specific assessment rates for two entities. However, Dofasco claims it reported another entity as an importer as well. Therefore, for the final liquidation instructions, Dofasco contends that the Department should also include the calculated importer-specific assessment rate for shipments of subject merchandise

imported by this entity. Dofasco notes, in this regard, that DSG has been collapsed with Dofasco in the current administrative review. See Memorandum to the File: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Collapsing of Dofasco Inc. (Dofasco) and Do Sol Galva Ltd., Partnership (DSG) (Collapsing Memo), issued concurrently with the Preliminary Results. Therefore, treatment of Dofasco or DSG steel products imported by this entity should receive the same treatment as imports made by the other named importers. Failure to correct this error, Dofasco claims, would lead to the unlawful liquidation at the "all others" rate of Dofasco or DSG steel products imported by this entity, despite the fact that such sales through this importer have been used to calculate Dofasco's dumping margin.

Petitioner did not comment on this issue.

Department's Position

In accordance with our finding in the Collapsing Memo in which we determined that Customs and Border Protection should assess Dofasco's rate on any entries from DSG, and as a result of no new information since the Preliminary Results to alter our finding, we agree with Dofasco that entries of subject merchandise imported by this third entity should receive the same treatment as the other named importers. We will revise our draft customs instructions to include this third importer.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the positions and calculation adjustments to the programs noted above. If accepted, we will publish the final results of this review and the final weighted-average dumping margins for this review in the Federal Register.

AGREE_____ DISAGREE_____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date