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March 12, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 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 comments in the case and rebuttal briefs submitted by interested parties in the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products (CORE) from Canada covering the period August 1, 2004 through July 31, 2005. As a result of our analysis, we have made certain changes in the margin calculations. Each of these changes is addressed in the "Discussion of Interested Party Comments" section below. We recommend that you approve the positions described and set forth in the "Discussion of Interested Party Comments" section of this memorandum.

Issues

Comment 1: Treatment of Dofasco's bad debt allowance
Comment 2: Application of the major input rule to Dofasco's purchase of iron ore fluxed pellets from Quebec Cartier Mining (QCM)
Comment 3: Treatment of Dofasco's indirect selling expenses incurred in Canada
Comment 4: Treatment of Dofasco's inventory carrying costs incurred in Canada
Comment 5: Application of the arm's length test
Comment 6: Treatment of Dofasco's home market indirect selling expenses in the calculation of the net price used in the sales below cost test
Comment 7: Calculation of credit expense for certain of Stelco's U.S. sales

Background

On September 11, 2006, the Department of Commerce (the Department) issued its preliminary results in the antidumping duty administrative review of CORE from Canada. See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 53363 (September 11, 2006) (Preliminary Results). The period of review (POR) is August 1, 2004 through July 31, 2005. This review covers the following Canadian producers/exporters of subject merchandise: Dofasco Inc., Sorevco Inc., and DoSol Galva Ltd., which have been collapsed into a single entity (collectively, Dofasco) for purposes of calculating a dumping margin, and Stelco Inc. (Stelco). See the "Affiliation and Collapsing" section of the Preliminary Results, 71 FR at 53365. The petitioner is U.S. Steel Corporation. We gave interested parties an opportunity to comment on our Preliminary Results. Petitioner submitted case briefs for Dofasco and Stelco on October 11, 2006. Dofasco submitted a rebuttal brief on October 16, 2006. None of the parties requested a hearing.

Discussion of Interested Party Comments

Comment 1: Treatment of Dofasco's bad debt allowance

Petitioner argues that the Department has an established practice to exclude items such as reversals of bad debt allowances from both the indirect selling expense and general and administrative ("G&A") expense calculations. Thus, the Department should recalculate Dofasco's U.S. indirect selling expense accordingly.

Dofasco argues that bad debts are an element of U.S. indirect selling expenses to be reported for the submission. Dofasco argues that its U.S. affiliate, Dofasco USA, Inc. (DUSA), reported its U.S. indirect selling expenses in accordance with the amounts reflected in its normal books and records. In the current review, Dofasco argues, DUSA's evaluation of accounts receivable indicated that the creditworthiness had improved and it therefore recorded a reduction to its reserve generating a credit to its bad debt expense accounts.

Therefore, Dofasco argues, the Department should reject petitioner's implicit assertion that U.S. GAAP accounting standards distort their reported costs. In addition, Dofasco states that it "is unaware of any case precedent in which the Department has determined U.S. GAAP to be unreasonable." Dofasco quotes the Final Results of Redetermination Pursuant to Court Remand, Micron Technology, Inc. v. the United States and LG Semicon Co., Ltd. and LG Semicon America, Inc., Court No. 96-06-01529, Slip Op. 99-12 (January 28, 1999), at Comment 2 in its case brief for its argument: "the Department has stated that U.S. GAAP, which has been 'expressly recognized and approved in the SAA, can be used as a benchmark for determining whether a company's records reasonably reflect costs.'"

Department's Position:

We have followed the Department's practice with respect to such items; however, the detailed information pertaining to this issue is business proprietary. As such, the full discussion of this comment is set forth in the Memorandum from Douglas Kirby (AD/CVD Analyst) through Maureen Flannery (Program Manager) to the File; Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Analysis of Dofasco Inc. (Dofasco) for the Final Results (March 12, 2007) (Dofasco Final Results Analysis Memorandum), at Issue 1.

Comment 2: Application of the major input rule to Dofasco's purchase of iron ore fluxed pellets from QCM

Petitioner argues that, in calculating Dofasco's cost of manufacture (COM) for one of the major inputs, iron ore fluxed pellets, the Department inappropriately used the transfer price from Dofasco's affiliated supplier. Petitioner claims Dofasco's own evidence shows that the supplier of iron ore fluxed pellets, QCM, was affiliated with Dofasco throughout the period of review (POR), and that prices from unaffiliated suppliers were higher than the prices charged by QCM for this input. Petitioner argues that the Department should therefore revise Dofasco's COM to reflect the market prices for iron ore fluxed pellets and adjust Dofasco's cost of manufacture accordingly by using a POR weighted-average to calculate the necessary adjustment to cost of manufacture. The details of petitioner's argument are proprietary; therefore, for a complete summary of the issue, see Dofasco Final Results Analysis Memorandum at Issue 2.

Dofasco contends that the Department should reject petitioner's request for changes to the cost of iron ore fluxed pellets. Dofasco argues that, as explained in its December 22, 2005 section A questionnaire response at page A-10, Dofasco held only non-voting preferred shares in QCM, and was not in a position to legally or operationally control QCM. Dofasco claims that data on the record clearly show that Dofasco purchased fluxed pellets from other suppliers and QCM sold pellets to other customers during the POR, and therefore there was no "reliance" of one party on the other based on this supplier/purchaser relationship. Dofasco argues that, while it had a non-voting representative on the board of QCM as a result of its outstanding loan, the position was one of an observer since the representative could not exercise restraint or direction over QCM. Accordingly, Dofasco submits that QCM is not affiliated, as defined by the Department, and therefore the major input rule is inapplicable.

Dofasco further argues that the affiliation issue is moot because purchases of iron ore fluxed pellets pass the major input rule if applied to purchases from QCM. That is, if the Department determines that the major input rule applies to purchases from QCM, the evidence on the record demonstrates that purchases of iron ore fluxed pellets were made at market prices and exceed QCM's cost of production. Dofasco states that Petitioner's suggestion that the selling prices to Dofasco were significantly less than the prices charged to other unaffiliated customers is erroneous.

Dofasco argues that, instead of using a simple POR analysis, the Department should use the price comparison submitted in Dofasco's supplemental section D response, which shows that, on average, the QCM prices are higher than the prices for the "other unaffiliated supplier." Therefore, Dofasco argues, there is no basis upon which to adjust the reported costs.

Department's Position:

Based on our analysis of all the information on the record, the Department determines that QCM was affiliated with Dofasco during the POR. Prior to the POR, Dofasco held a significant ownership stake in QCM. Due to a restructuring arrangement between the two companies, Dofasco did not have majority ownership or voting rights for most of the POR. However, the record evidence shows that, during the interim, Dofasco maintained a potential to exercise restraint or direction over QCM due to its debt financing of QCM and other relationships. Since many of the details of this relationship are business proprietary, the full analysis is set forth in Dofasco Final Results Analysis Memorandum at Issue 2.

Furthermore, a second restructuring occurred within one month prior to the ending of the POR, when Dofasco's wholly-owned subsidiary, 168754 Canada Inc., purchased all of the preferred shares of QCM owned by CAEMI of Brazil and Investissement Quebec. Effective July 22, 2005, all of the outstanding preferred shares of QCM were converted into common shares, resulting in 168754 Canada Inc. holding approximately 98.7 percent of the common shares of QCM. Therefore Dofasco once again assumed control of QCM. As the Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Rep. No. 130-826 at 838; reprinted in 1994 U.S.C.C.A.N. 4040, 4174-75, makes clear, the statutory standard for affiliation was intended to encompass more than control through equity relationships. Instead, under the SAA, affiliation based on "control" may exist where one company has the potential to exercise restraint or direction over another through debt financing, close supplier relationships, and corporate groupings. Thus, the Department does not consider the restructuring arrangement between Dofasco and QCM as having ended their affiliated relationship during the current POR, since Dofasco still possessed the potential to exercise restraint or direction over QCM, as the reversal of the restructuring arrangement prior to the end of the POR demonstrates.

According to Dofasco's June 14, 2006, supplemental questionnaire response, iron ore fluxed pellets purchased by Dofasco from QCM during the POR were at prices above the cost of production; therefore, pursuant to section 773(f)(3) of the Tariff Act of 1930 (the Act), the major input rule does not apply to these purchases. However, section 773(f)(2) of the Act, the transactions disregarded rule, does apply. Under section 773(f)(2) of the Act, the value of this input should be based on the higher of transfer price or market price. We found that the average transfer price was below the average market price during the POR. Therefore, we conducted an analysis to compare the prices of Dofasco's purchases of iron ore fluxed pellets from QCM and the unaffiliated suppliers.

It is the Department's practice to analyze major inputs using a POR weighted-average comparison. See, e.g., Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004) and accompanying Issues and Decisions Memorandum at Comment 32. Dofasco has not pointed to any authority that supports its argument or that would cause us to depart from our normal practice. Therefore, in accordance with section 773(f)(2) of the Act, we increased Dofasco's cost of iron ore fluxed pellets purchased from QCM to reflect the market price of this input. Further business proprietary details of our analysis can be found in the Dofasco Final Results Analysis Memorandum at Issue 2.

Comment 3: Treatment of Dofasco's indirect selling expenses incurred in Canada

Petitioner argues that Section 772(d)(1) of the Act provides that the price used to establish constructed export price (CEP) shall be reduced by "expenses generally incurred by or for the account of the producer or exporter . . . in selling the subject merchandise." Petitioner argues that, in accordance with the statute, the Department in the Preliminary Results stated that it deducted "U.S. indirect selling expenses . . . incurred in the United States and Canada associated with economic activities in the United States." Petitioner states that Dofasco reported that it incurred indirect selling expenses in Canada on its U.S. sales (DINDIRSU). Therefore, petitioner argues the Department should deduct DINDIRSU from the net price calculation for the final results. Dofasco did not comment on this issue.

Department's Position:

The Department agrees with petitioner. We intended to deduct Dofasco's indirect selling expenses incurred in Canada on U.S. sales in the Preliminary Results of this review. Therefore, pursuant to section 772(d)(1) of the Act, we have included the deduction of indirect selling expenses incurred in Canada on U.S. sales (DINDIRSU) in the net price calculation for CEP sales for the final results of this review. See Dofasco Final Results Analysis Memorandum at Issue 3.

Comment 4: Treatment of Dofasco's inventory carrying costs incurred in Canada

Petitioner argues that, in accordance with section 772(d)(1) of the Act, the Department in the Preliminary Results stated that it deducted U.S. inventory carrying costs incurred in the United States and Canada associated with economic activities in the United States, but that it inadvertently failed to deduct such expenses.

Dofasco argues that a proper reading of the Department's Preliminary Results by no means indicates that the Department intended to deduct inventory carrying costs in Canada on U.S. sales (DINVCARU) from net CEP price. More importantly, Dofasco contends, the Department has explicitly rejected petitioner's interpretation of section 772(d)(1) of the Act. Specifically, the Department's preamble to its Antidumping Duties; Countervailing Duties, 62 FR 27296

(May 19, 1997) (Preamble) discusses the question of the deduction of expenses in calculating CEP. The Department changed its proposed regulatory language stating that the Department would adjust for "expenses associated with commercial activities in the United States, no matter where incurred." See Preamble, 62 FR at 27351. The Department's final regulations removed the clause "no matter where incurred," and Dofasco argues that the deduction of DINVCARU in this case would be the deduction of an expense that is incurred before importation, and does not relate to activities between importation and resale. Dofasco argues further that the nature of DINVCARU expense itself reflects the general nature of the imputed expense, rather than a U.S.-market-specific expense.

Department's Position:

We find that inventory carrying costs incurred in Canada on U.S. sales should not be deducted when calculating CEP. The Department's consistent practice has been not to deduct inventory carrying costs on U.S. sales to unaffiliated customers incurred in the comparison market from CEP. See, e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 62 FR 965, 967-968 (January 7, 1997); see also Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of New Shipper Review and Antidumping Duty Administrative Review, 68 FR 2313 (January 16, 2003) and accompanying Issues and Decisions Memorandum at Comment 2.

Comment 5: Application of the arm's length test

Petitioner argues that, in accordance with section 351.403(c) of the Department's regulations, the Department's normal value calculation included Dofasco's home market sales to affiliated customers only where such sales were made at arm's length prices. However, petitioner argues, the Department made an inadvertent error in its application of the arm's-length test. Dofasco did not comment on this issue.

Department's Position:

The Department agrees with petitioner and has corrected the calculation in the arm's length test accordingly. Because the details of this calculation are business proprietary, a complete discussion of our analysis is found in the Dofasco Final Results Analysis Memorandum at Issue 4.

Comment 6: Treatment of Dofasco's home market indirect selling expenses in the calculation of the net price used in the sales below cost test

Petitioner argues that, in the Preliminary Results, the Department compared Dofasco's product-specific cost of production (COP) to the company's home market sales in order to determine whether such sales had been made at prices below the COP. The Department stated that, in accordance with section 773(b)(1) of the Act, it compared home market prices "less any movement charges, discounts and rebates, and direct and indirect selling expenses" to the COP.

However, petitioner claims, the Department did not subtract all of the variables that it stated it had subtracted from home market prices. Dofasco did not comment on this issue.

Department's Position:

The Department agrees with petitioner, and we have made the appropriate adjustment in Dofasco's margin program for the final results of this review. The detailed information pertaining to this issue is business proprietary. As such, the full discussion of this comment is set forth in the Dofasco Final Results Analysis Memorandum at Issue 5.

Comment 7: Calculation of credit expense for certain of Stelco's U.S. sales

Petitioner argues that, according to its practice, the Department should recalculate the credit expenses for certain of Stelco's U.S. sales. The details of petitioner's argument are proprietary; therefore, for a complete summary of the issue, see Memorandum from Joshua Reitze (AD/CVD Analyst) through Maureen Flannery (Program Manager) to the File; Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Analysis of Stelco Inc. (Stelco) for the Final Results (March 12, 2007) (Stelco Final Results Analysis Memorandum), at Issue 1. Stelco did not comment on this issue.

Department's Position:

The Department agrees with petitioner that the Department should recalculate the credit expenses for certain of Stelco's U.S. sales. The detailed information pertaining to this issue is business proprietary. As such, the full discussion of this comment is set forth in the Stelco Final Results Analysis Memorandum), at Issue 1.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

Agree____ Disagree____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
(Date)