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New Shipper Administrative Review
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MEMORANDUM TO: Richard W. Moreland
Acting Assistant Secretary for
Import Administration

FROM: Susan Kuhbach
Acting Deputy Assistant Secretary, Group I
Import Administration

DATE: November 12, 2002

SUBJECT: Issues and Decision Memorandum for the Final Results of the New
Shipper Antidumping Duty Administrative Review of Stainless
Steel Bar from India: Uday Engineering Works.

BACKGROUND

On August 19, 2002, the Department of Commerce ("the Department") published the preliminary results of the new shipper antidumping duty administrative review from India in which it invited parties to submit comments (see Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review, 67 FR 53775 (August 19, 2002)). The respondent subject to this review, Uday Engineering Works ("Uday"), submitted an affirmative case brief on October 2, 2002. On October 28, 2002, Uday filed a submission in response to the petitioners' rebuttal brief. Since Uday's submission is untimely and does not meet the definition of case or rebuttal briefs established in 19 CFR 351.309, we are not addressing the arguments Uday set forth in that submission. The petitioners submitted a rebuttal brief on October 16, 2002. We have analyzed the case and rebuttal briefs, and, as a result of our analysis, we have only corrected a certain inadvertent clerical error in the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is a complete list of the issues for which we received comments:

- Comment 1. Calculation of U.S. Imputed Credit Expenses
- Comment 2. Variable Cost of Manufacturing
- Comment 3. Duty Drawback

DISCUSSION OF ISSUES

Comment 1: Calculation of U.S. Imputed Credit Expenses

Uday argues that the Department incorrectly recalculated the credit expense for its U.S. sale in the preliminary results. Specifically, Uday contends that the Department incorrectly applied a credit expense for a time period in which no interest charges were actually incurred by Uday (*i.e.*, June 7 to June 21, 2001). Uday argues, therefore, that the Department should remove this time period from its calculation of the credit expense for its U.S. sale in the final results margin calculations.

The petitioners counter that Uday's contention reflects a misunderstanding of the Department's policy with respect to credit expense calculations. The petitioners argue that the Department provided clear instructions to Uday in the original questionnaire and in the June 5, 2002, supplemental questionnaire explaining imputed credit expenses and exactly how they are calculated (*i.e.*, imputed expenses are designed to capture the opportunity cost of financing the sale from the time it is shipped from Uday to when Uday received payment). The petitioners assert that Uday reported a shipment date of June 7, 2001, but credit expenses reported by Uday only covered the period June 21 through August 2001. Thus, petitioners contend that the Department's methodology for applying imputed credit expenses for Uday in its preliminary results margin calculations by including the credit period excluded by Uday (*i.e.*, June 7 through June 21, 2001) was correct, and this approach should continue to be used in the Department's final results margin calculations.

Department's Position:

We agree with the petitioners that Uday failed to include the entire imputed credit period in its credit calculation. As stated in the Department's antidumping duty questionnaire, credit expenses are "the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer." Normally, the Department imputes this expense to capture the "opportunity costs (rather than actual costs) that are not reflected in the financial records of the company being investigated, but which must be estimated and reported for purposes of an antidumping inquiry." Uday incurred an actual cost for a portion of the normal credit period defined by the Department (*i.e.*, between June 21, 2001, and when the payment was received) for its U.S. sale. In the preliminary results, we used the actual credit cost incurred by Uday, as illustrated by bank documents included in Uday's questionnaire responses, for the portion of the credit period in which those actual costs were incurred. Then, we applied an imputed credit expense for the portion of the credit period not covered by these actual costs (*i.e.*, for the period between June 7 through June 21, 2001). Since the credit expense for Uday's U.S. sale must cover the entire credit period, as spelled out in our antidumping duty questionnaire, we are continuing to calculate Uday's credit expense for its U.S. sale as we did in the preliminary results, inclusive of the imputed credit period described above.

Comment 2: Variable Cost of Manufacturing

Uday argues that the Department should revise the variable cost of manufacturing ("VCOM") for its U.S. sale. Specifically, Uday argues that it incorrectly applied the full cost of the die to its VCOM calculation and that the cost of the die should be amortized over the life of the die. Uday submitted certain information (*i.e.*, "test certificates") which it argues supports this change in reporting methodology. Uday contends, therefore, that the Department should revise its VCOM

in the final results margin calculation.

The petitioners counter that the Department must reject Uday's VCOM argument because it constitutes untimely filed new factual information. The petitioners cite to section 351.301(b)(4) of the Department's regulations which states that the deadline to submit new factual information is 100 days after the publication of the notice of initiation of the review. Petitioners argue that Uday missed the deadline to submit new factual information by 239 days. Petitioners further contend that to reject the VCOM information in Uday's case brief is consistent with Department practice. See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002).

The petitioners contend that if the Department considers the new information, Uday's proposed methodology for revising its VCOM by amortizing its die costs over the full life of the die improperly distorts the Department's dumping analysis and deviates from Uday's normal accounting practices. The petitioners argue that Uday's proposed approach understates the cost of its dies by overstating production quantity by 150 percent. The petitioners also argue that Uday has provided no evidence that the dies it purchased for the production of subject merchandise in the United States were used or ever would be used for their purported full life span. The petitioners argue that Uday's manufacturing account for FYE March 31, 2001, shows a fully loaded cost for dies and tools as part of manufacturing expenses and that nowhere in Uday's financial records is there an amortization of the cost of dies. The petitioners cite the Final Results of Antidumping Administrative Review: Canned Pineapple Fruit from Thailand, 63 FR 7392 (February 13, 1998) where the Department stated that its "longstanding practice, now codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records" and "the Department must consider whether reported allocations 'have been historically used by the exporter or producer.'"

Department's Position:

The Department agrees with the petitioners that the argument presented by Uday concerning its VCOM data is based entirely on new factual information presented for the first time in Uday's case brief. The Department's regulations state that a submission of factual information for the final results of a new shipper review is due no later than 100 days after the date of the publication of the initiation of the new shipper review unless it is specifically requested by the Department (see 19 CFR 351.301(b)(4) and 19 CFR 351.301(c)(2)). Uday submitted the unsolicited new factual information in its case brief on September 27, 2002, well after the deadline for submitting new information. Therefore, the Department is not addressing Uday's VCOM argument for the final results. Since we are not considering Uday's VCOM information, petitioners' other arguments concerning the veracity of the information are moot and, therefore, will not be addressed. For the final results, we have continued to use the VCOM data, as reported by Uday, as we did in the preliminary results.

Comment 3: Duty Drawback

Concerning its claimed duty drawback, Uday explains that the Indian Duty Entitlement Passbook Scheme ("DEPB") allows firms either to pay no import duties or to sell the duty credit they receive on imported materials. Uday also explains that the duty credit is only transferrable and cannot be converted into cash. Uday asserts that, in this instance, it received the duty credit against an export obligation which it fulfilled without actually importing raw materials. Uday

explains that the duty credit was then sold to an importer. Uday argues that the Department should not view the DEPB scheme as an export incentive given by the Indian government but as a certificate issued for the duty free import of goods which is transferrable in the name of the importer to be considered as an offset to the cost of the material imported.

The petitioners counter that Uday's explanations and arguments do not alter the fact that it has failed to demonstrate that it meets the Department's criteria for granting a duty drawback adjustment. The petitioners argue that the record clearly shows that Uday did not import input materials and did not pay any import duties. Rather, petitioners assert, Uday only received a transferrable license from the Indian government. The petitioners argue, therefore, that the Department was correct in the preliminary results by determining that Uday failed to satisfy the Department's requirements for the granting of a duty drawback adjustment because it failed to demonstrate that it has paid sufficient import duties for the amount of the duty drawback being claimed. The petitioners argue that in Stainless Steel Round Wire from India; Final Determination of Sales at Less Than Fair Value, 64 FR 17319 (April 9, 1999) the Department rejected a duty drawback adjustment based on a respondent's claim pertaining to the DEPB scheme because the DEPB amounts failed to meet the Department's two-pronged test for a duty drawback adjustment, as the respondent had provided no information which would link the claimed rebate amounts to actual imports of raw materials.

Department's Position:

We agree with the petitioners that Uday does not meet the requirements for receiving a duty drawback adjustment to U.S. price. Section 772(c)(1)(B) of the Act provides that export price (or constructed export price) shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that there is (1) a sufficient link between the import duty and the rebate and (2) sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product ("the two-pronged test"). See Rajinder Pipes Ltd. v. U.S., 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999). See also Federal Mogul Corp. v. United States, 862 F. Supp. 384, 409 (Ct. Int'l Trade 1994) and Certain Welded Carbon Standard Steel Pipes and Tubes from India, 62 FR 47632 at 47635 (September 10, 1997).

Uday has failed to demonstrate that it meets the Department's two-pronged test for granting a duty drawback adjustment. On June 5 and July 3, 2002, the Department issued supplemental questionnaires to Uday specifically asking for documentation showing the necessary links between the import duty paid and the rebate received, and that a sufficient amount of the input raw materials was imported and used in the production of the final exported product. While the subsequent information submitted by Uday does show that Uday received a rebate from the Indian government, it does not provide the necessary nexus between the import duty paid and the rebate, nor does it demonstrate that there were sufficient imports to account for the drawback received on the export of the manufactured product. Uday only provided documentation associated with rebates received on exportation of the subject merchandise. However, Uday did not provide the necessary documentation showing that it paid the import duties or linking import duties paid to the export rebate received. Furthermore, Uday has failed to demonstrate that sufficient amounts of imported raw materials were used in the manufacture of subject merchandise that were then exported to the United States. As Uday's case brief stated, it received DEPB "benefits" from the Indian government "without even {i}mporting the material"

(see “Preliminary Results Stainless Steel Bar for Uday Engineering Works; Comments on Preliminary Results” dated September 27, 2002, at page 2). Since Uday was not able to meet both portions of the Department’s two-pronged test, we will calculate the final result’s margin absent the claimed duty drawback adjustment, as we did in the preliminary results.

RECOMMENDATION

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

Agree_____ Disagree_____

Richard W. Moreland
Acting Assistant Secretary for
Import Administration

(Date)