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MEMORANDUM TO: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: Laurie Parkhill
Office Director
AD/CVD Operations 5

SUBJECT: Issues and Decision Memorandum for Mukand Limited in the
Antidumping Duty Administrative Review of Stainless Steel Wire
Rods from India for the Period of Review December 1, 2004, through
November 30, 2005

Summary

We have analyzed the comments of the respondent, Mukand Limited (Mukand), and Carpenter Technology Corporation, the petitioner, in the administrative review of the antidumping duty order on stainless steel wire rods from India for the period December 1, 2004, through November 30, 2005. We did not receive comments from any parties regarding our intent to rescind the review with respect to Viraj Alloys, Ltd., Viraj Forgings, Ltd., Viraj Imexpo, Ltd., Viraj Smelting, Viraj Profiles, and VSL Wires, Ltd., (collectively, the Viraj entities). Mukand presented four comments regarding our intent to rescind the administrative review based on the lack of suspended entries of merchandise subject to the order during the period of review. We have addressed these comments together as one issue.

As a result of our analysis of the comments concerning Mukand and because we did not receive comments regarding the Viraj entities, we have determined to rescind the review with respect to both Mukand and the Viraj entities. We recommend that you approve the position we have developed in the Discussion of the Issues section of this memorandum.

Background

On May 19, 2006, the Department of Commerce (the Department) requested comments with respect to its intent to rescind the administrative review of stainless steel wire rods from India for the Viraj entities, and Mukand due to the lack of suspended entries of merchandise subject to the order during the period of review (POR). See Stainless Steel Wire Rods from India: Notice of Intent to Rescind Antidumping Duty Administrative Review, 71 FR 29124 (May 19, 2006). The Department received comments on Mukand from the respondent and the petitioner but did not receive comments from any parties regarding the Viraj entities. At the request of Mukand, we held a hearing on our intent to rescind the administrative review as to Mukand on June 21, 2006.

Discussion of the Issue

Rescission of Review

Comment: Mukand argues that the Department should not rescind the 2004-2005 administrative review with respect to Mukand for the following reasons: Mukand had POR shipments and the Department's regulations allow for reviews based on POR shipments or sales; Mukand had an import entry of subject merchandise during the POR; the Department's practice is to conduct reviews in situations where the respondent is not the importer of record and is only aware of shipment dates and not entry dates; if this particular POR shipment is not reviewed until the next administrative review, thereby using POR costs of the next review, the Department would violate the statutory language which mandates that the production-cost calculation period should reasonably correspond to the production period of the shipment at issue.

First, Mukand argues that the Department's regulations allow for administrative reviews based on POR shipments or sales, not only entries. Mukand cites 19 CFR 351.213(d) which states that the Department "may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." Mukand cites to Hynix Semiconductor, Inc. v. United States, 424 F.3d 1363 (Fed. Cir. 2005), and argues that the courts have affirmed this regulation to establish the universe of sales covered by an administrative review according to entries, exports, or sales during the POR. Mukand contends that the regulation and case law support its view that shipments and sales during the POR are sufficient to warrant an administrative review.

Next, Mukand argues that, contrary to the Department's claim, there was a POR entry of subject merchandise. Mukand asserts that 19 CFR 141.68(a) provides that the entry date is the day that U.S. Customs and Border Protection (CBP) releases the merchandise unless the importer requests a different date. Mukand explains that it shipped subject wire rod from India in October 2005 and CBP released this shipment for consumption in the United States in November 2005. Mukand qualifies this statement in a footnote, stating that "Customs first issued a November 29, 2005 release date for the subject wire rod entry, at the Port of Angeles. That wire rod then moved in bond from Los Angeles to Chicago. When it arrived in Chicago Customs, Customs indicated a December 5, 2006, release date as the arrival date in the Port of Chicago." Mukand argues that the "first release date" should apply to this administrative review.

Mukand argues that the Department's claim that Mukand did not have any entries during the POR is based on insufficient evidence. Citing Certain Corrosion-Resistant Carbon Steel Flat Products from France: Notice of Rescission of Antidumping Duty Administrative Review, 71 FR 16553 (April 3, 2006), Mukand asserts that, in that case, the Department concluded that the respondent did not have any entries during the POR only after reviewing CBP data and also after it examined the entry documentation provided by the respondent that demonstrated that the shipments entered before the POR. Mukand asserts that the Department should follow a similar practice in this case and conduct an administrative review after examining the entry documentation provided by Mukand.

Third, Mukand states that, when the respondent does not know the entry dates, the Department uses another basis to select transactions for review, such as a respondent's shipment dates. Mukand cites Certain Preserved Mushrooms from the People's Republic of China, 66 FR

31204 (June 11, 2001) (Mushrooms from the PRC), to demonstrate this point. Moreover, Mukand argues, the Department's questionnaire instructs respondents to report export-price sales by shipment date if the respondent does not know the entry date. Thus, Mukand argues, the Department should conduct an administrative review because Mukand was not the importer of record and, while it did not know the entry date, it did report a shipment date within the POR.

Further, Mukand argues that in the instant administrative review for Mukand, the circumstances are the same as in Mushrooms from the PRC. Mukand asserts that its transaction is a single sale and corresponding entry during the POR where the Department can tie Mukand's sale of subject merchandise to the entry of that merchandise into the United States and issue entry-specific liquidation instructions to CBP based on the documentation submitted by Mukand. Moreover, Mukand argues, it has responded fully to the Department's questionnaire to determine the dumping margin on the single sale.

Finally, Mukand asserts that, if the Department waits until the next administrative review to review the sale in question, it would seek production costs of the product for the 2005-2006 period even though the product shipped was clearly produced before that period. Citing sections 773(a)(1)(A), (b)(3)(A), and (e)(1) and (2) of the Tariff Act of 1930, as amended (the Act), Mukand comments that such an action would violate statutory language that such costs be determined as to the period before, not after, shipment and in particular would not involve a cost-calculation period that reasonably corresponds to the production period for the shipment in question. Mukand also asserts that it would violate the established and well-known statutory mandate to calculate an accurate dumping margin.

The petitioner argues that there is no factual or legal basis for the Department to alter its proposed rescission of the administrative review with respect to Mukand. The petitioner states that Mukand's transaction in question did not enter until after the end of the POR. The petitioner refers to Mukand's statement in a footnote on page 5 of its case brief and asserts that, according to Mukand itself, the wire rod was moved in bond from Los Angeles to Chicago, and on December 5, 2005, a week after the POR ended, CBP actually released the goods from under bond, releasing the merchandise into commerce for consumption. Further, the petitioner asserts, the Department should not review the post-POR entry in this review based on Mukand's request to consider the transaction under the precedent set in Mushrooms from the PRC. The petitioner argues that, in addition to the actual CBP data showing that the merchandise did not enter U.S. commerce for consumption until after the POR, the Department also does not have the resources to conduct the review using accurate and timely information.

Department's Position: Section 751(a) of the Act provides that, when conducting administrative reviews, the Department shall determine the dumping margin for entries during the POR. Further, according to 19 CFR 351.213(d)(3), the Department "may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." Mukand argues that our regulations allow for reviews based on POR shipments and sales. While the Department maintains the discretion to conduct reviews of sales or exports if circumstances warrant, it is the Department's consistent, long-standing practice, supported by substantial precedent, to require that there be entries during the POR upon which to assess antidumping duties, irrespective of the export-price

or constructed export-price designation of the U.S. sales. See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review, 71 FR 30656 (May 30, 2006) (Hot-Rolled Steel from Romania); Certain Corrosion-Resistant Carbon Steel Flat Products from France: Notice of Rescission of Antidumping Duty Administrative Review, 71 FR 16553, 16555 (April 3, 2006); Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review, 70 FR 44088 (August 1, 2005); Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review, 69 FR 20859, 20861 (April 19, 2004). Moreover, the United States Court of International Trade and the Court of Appeals for the Federal Circuit have upheld the Department's practice. See Chia Far Industrial Factory Co., Ltd. v. United States, 343 F. Supp. 1344, 1373-74 (CIT 2004), and Allegheny Ludlum Corp. v. United States, 346 F.3d 1368 (Fed. Cir. 2003). Therefore, based on its established practice, the Department has determined that the circumstances and factual record in this case do not warrant a review of Mukand's sale for the 2004-05 period.

While Mukand claims that it had an entry during the POR based on entry documentation it submitted, we have determined that the entry in question entered after the POR. We disagree with Mukand that the "first release date", as described by Mukand, should apply to this administrative review. We found that the entry documentation submitted by Mukand was pre-filed and indicated an entry date elected by the broker rather than the actual date of entry. Moreover, as stated above, Mukand itself acknowledges that the entry was not released from bond until after the POR. Due to the proprietary nature of the facts relating to this issue, we have analyzed the facts on the record in a separate memorandum. For a detailed discussion, see Memorandum from Analyst to File through Minoo Hatten, Program Manager, "2004-2005 Entry of Stainless Steel Wire Rods From India by Mukand Limited," dated July 12, 2006.

Mukand also argues that the Department's practice is to conduct reviews in situations where the respondent is not the importer of record and is only aware of shipment dates and not entry dates. As we stated above, while we have the discretion to conduct reviews of sales or exports if circumstances warrant, given that Mukand had no entries of subject merchandise during the POR that correspond to the sale which occurred during the POR, we would be unable to instruct CBP to assess any antidumping duties resulting from this administrative review on a POR entry.

While Mukand has submitted a questionnaire response, we are not in a position to comment on whether Mukand responded completely because it was during the time in which we were analyzing the response and drafting a supplemental questionnaire that we discovered that Mukand had no entry during the POR. Had we released a supplemental questionnaire and received a response from Mukand, we would be in a better position to comment on whether Mukand responded fully. Regardless of whether the Department can tie Mukand's sale to its corresponding entry in the United States, Mukand did not have an entry of merchandise subject to the order during the POR and therefore the Department has no entries on which it can assess antidumping duties. Despite Mukand's arguments based on Mushrooms from the PRC, the Department's more recently established practice is to conduct a review based on entries. See Hot-Rolled Steel from Romania.

As for Mukand's final argument that we would violate the statutory mandates if we

review this particular POR shipment for the next administrative review, we will not address that issue in the context of the decision to rescind this review. If an interested party requests a review of the entry in question for the next review period, we will analyze the facts of the record of that review and address any concerns at that time.

With respect to the petitioner's comment regarding resources available to the Department, this argument is moot because the Department is rescinding the review due to the lack of an entry from Mukand during the POR.

In the present review, we have weighed case precedent, our practice under 19 CFR 351.213(e), and the information on the record of this proceeding in determining whether we should rescind this administrative review. The record for this segment of the proceeding does not support a conclusion that we should deviate from our normal practice of conducting administrative reviews of entries rather than sales.

Recommendation

Based on our analysis of the comments received regarding Mukand, we recommend rescinding the administrative review with respect to Mukand. We also recommend rescinding the administrative review with respect to the Viraj entities. If these recommendations are accepted, we will publish the notice of the rescission of the review in the Federal Register.

Agree _____

Disagree _____

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

Date