



A-485-805
Administrative Review
POR: 8/01/17 – 7/31/18
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October 15, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Carbon and Alloy Seamless Standard, Line and Pressure Pipe
(Under 4.5 Inches) from Romania: Issues and Decision
Memorandum for the Final Determination of No Shipments; 2017-
2018

I. Summary

The Department of Commerce (Commerce) published the preliminary determination of no shipments of carbon and alloy seamless standard, line and pressure pipe (under 4.5 inches) from Romania on July 1, 2019.¹ The period of review (POR) is August 1, 2017 through July 31, 2018. We analyzed the case and rebuttal briefs that interested parties submitted on the record. Based on our analysis of the comments received, these final results do not differ from the *Preliminary Results*. We recommend that you approve the position described in the “Discussion of the Issue” section of this memorandum.

II. Background

Based on record evidence, we preliminarily determined that ArcelorMittal Tubular Products Roman S.A. (ArcelorMittal) and Silcotub S.A. had no shipments of subject merchandise during the POR. After publishing the *Preliminary Results*, we received information from U.S. Customs and Border Protection (CBP) regarding entries of subject merchandise made by ArcelorMittal during the POR.² On July 16, 2019, Commerce placed CBP entry documentation for ArcelorMittal on the record of this review.³ Also on July 16, 2019, we issued a letter to

¹ See *Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) from Romania: Preliminary Determination of No Shipments; 2017-2018*, 84 FR 28007 (June 17, 2019) (*Preliminary Results*).

² See Memorandum, “No shipment inquiry with respect to the company below during the period 08/01/2017 through 07/31/2018,” dated June 28, 2019 (CBP Memo ArcelorMittal).

³ See Memorandum, “Entry Documents Requested,” dated July 16, 2019.

ArcelorMittal requesting that it explain the apparent discrepancy between its claim of no exportation of subject merchandise to the United States during the POR and the CBP information.⁴ ArcelorMittal responded to this request on August 1, 2019.⁵ The petitioner⁶ submitted a case brief on August 12, 2019.⁷ ArcelorMittal submitted its rebuttal brief on August 19, 2019.⁸ On August 27, 2019, we requested two additional entry packages for shipments identified in the CBP data and placed the information on the record for comment.⁹ On October 1, 2019, the petitioner and ArcelorMittal timely submitted comments on the entry documentation consistent with their briefs.¹⁰

Commerce exercised its discretion to toll all deadlines affected by the partial government closure from December 22, 2018 through the resumption of operations January 29, 2019.¹¹ Accordingly, the revised deadline for these final results is October 15, 2019.

III. Scope of the Order

The merchandise subject to the order is small diameter seamless carbon and alloy other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the American Society for Testing and Materials (ASTM) A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the American Petroleum Institute (“API”) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter,

⁴ See Commerce’s Letter, “2017-2018 Administrative Review of Carbon and Alloy Seamless Standard Line and Pressure Pipe (under 4.5 inches) from Romania,” dated July 16, 2019 (Commerce’s July 16 Letter).

⁵ See ArcelorMittal’s Letter, “Antidumping Duty Administrative Review of Carbon and Alloy Seamless Standard Line, and Pressure Pipe (under 4.5 inches) from Romania – ArcelorMittal Tubular Products Roman S.A. Response to Department July 16, 2019 Letter,” dated July 31, 2019.

⁶ The petitioner is United States Steel Corporation.

⁷ See Petitioner’s Letter, “Carbon and Alloy seamless Standard, Line, and Pressure Pipe (Under 4.5 Inches) from Romania: Case Brief of United States Steel Corporation,” dated August 12, 2019 (Petitioner’s Case Brief).

⁸ See ArcelorMittal’s Letter, “Respondent AMTP Roman Rebuttal Brief,” dated August 19, 2019 (ArcelorMittal’s Rebuttal Brief).

⁹ See CBP Memo ArcelorMittal; *see also* Memoranda, “Request for U.S. Entry Documents – 2017-2018 Administrative Review of Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) from Romania (A-485-805-004),” dated August 27, 2019; and “2017-2018 Administrative Review of Carbon and Alloy Seamless Standard Line, and Pressure Pipe (Under 4.5 Inches) from Romania: Entry Documents Requested,” dated September 26, 2019.

¹⁰ See Petitioner’s Letters, “Carbon and Alloy Seamless Standard Line, and Pressure Pipe (Under 4 1/2 Inches) from Romania: U.S. Steel’s Comments Upon CBP Entry Data,” dated October 1, 2019; and “Antidumping Duty Administrative Review of Carbon and Alloy Seamless Standard Line, and Pressure Pipe (under 4-1/2 inches) from Romania – ArcelorMittal Tubular Products Roman S.A. Submission of Comments to Department’s September 26, 2019 Memo,” dated October 1, 2019.

¹¹ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day.

regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The merchandise subject to this order is currently classifiable under items: 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS classification is provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil

field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these reviews. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line, or pressure applications.

With regard to the excluded products listed above, the Department will not instruct Customs to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

IV. Discussion of the Issue: Certification of No Shipments

The Petitioner's Arguments

- The petitioner does not contest Commerce's finding of no reviewable shipments during the POR with respect to Silcotub S.A.
- While ArcelorMittal provided a no shipment certification, it made no attempt to explain the discrepancy between its certification and the CBP entry data or provide evidence to support its statements of no shipments.¹²
- Because ArcelorMittal failed to support its no shipments certification with necessary factual information, it should have filed a complete questionnaire response by the established deadline.¹³
- Commerce has previously confirmed that the amended adverse facts available (AFA) statutory provisions provide that Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping duty order pursuant to section 776 of the Act.¹⁴
- Commerce has previously explained that it no longer corroborates a margin from the less-than-fair-value investigation in selecting an AFA rate in an administrative review of the same proceeding.¹⁵
- Accordingly, Commerce should reverse its finding of no shipments and apply an AFA rate of 15.15 percent (the highest dumping margin found in the history of the proceeding) to ArcelorMittal for failing to submit a complete questionnaire response.
- If Commerce continues to find for the final results that ArcelorMittal made no shipments to the United States during the POR, Commerce should apply the "Reseller Policy" and instruct CBP to liquidate at the all others rate of 13.06 percent *ad valorem*, entries made during the POR under the cash deposit rate of ArcelorMittal Roman (A-485-805-004).¹⁶

ArcelorMittal's Rebuttal

- The petitioner provides no publicly available information or other evidence to support its belief that ArcelorMittal made shipments to the United States during the POR.
- ArcelorMittal followed the instructions in Commerce's initial questionnaire and timely submitted a no shipment certification confirming that it did not export or sell the subject

¹² See Petitioner's Case Brief at 4, (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2012-2013, 80 FR 40998 (July 14, 2015) and accompanying Issues and Decision Memorandum at Comment 5 (*Crystalline Silicon Photovoltaic Cells*) (Commerce rejected a statement of no shipments when CBP data invalidated that certification and those data remained un rebutted)).

¹³ See Petitioner's Case Brief at 5, (citing *Dongtai Peak Honey Indus. v. United States*, 777 F.3d 1343 (Fed. Cir. 2015) (*Dongtai Peak*); *Suntec Indus. Co. v. United States*, 857 F.3d 1363, at 1363 (Fed. Cir. 2017) (*Suntec*)).

¹⁴ See Petitioner's Case Brief at 7, (citing *Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2013-2014, 80 FR 61369 (October 13, 2015)).

¹⁵ See Petitioner's Case Brief at 7, (citing *Uncovered Innerspring Units from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 80 FR 53105 (September 2, 2015)).

¹⁶ See Petitioner's Letter, "Carbon and Alloy Seamless Standard Line, and Pressure Pipe (Under 4 ½ Inches) from Romania: U.S. Steel's Comments Upon CBP Entry Data," dated October 1, 2019.

merchandise to the United States during the POR. A full questionnaire response was not required.

- ArcelorMittal fully responded to Commerce’s July 16 Letter and again confirmed that it neither exported nor sold the subject merchandise to the United States during the POR, did not import subject merchandise into the United States during the POR, and did not have knowledge of subject merchandise destined for the United States.
- The only party that could be subject to review would be the one that exported subject merchandise produced by ArcelorMittal to the United States. However, neither this party nor the petitioner requested a review of such entries.
- The petitioner’s assertion that Commerce should apply total AFA to ArcelorMittal is baseless; ArcelorMittal was not required to submit a complete questionnaire response or other documentation specified by the petitioner. ArcelorMittal has fully cooperated with Commerce’s requests for information.
- Commerce should affirm its finding of no shipments with respect to ArcelorMittal for the final results.

Commerce’s Position:

We disagree with the petitioner that Commerce should reverse its preliminary finding of no shipments and apply an AFA rate to ArcelorMittal for the final results.

In Commerce’s July 16 Letter, we asked ArcelorMittal to: (1) explain the apparent discrepancy between its claim of no exportation of subject merchandise to the United States and the CBP information; (2) explain whether it made any sales to third country entities during the POR; and (3) explain whether it had knowledge of subject merchandise ultimately destined for the United States after sale to a third country. Contrary to the petitioner’s claim, we did not ask ArcelorMittal to provide specific documentation in support of its no shipment claim. Because ArcelorMittal’s claim of no shipments during the POR involves business proprietary information, our analysis of the issue is contained in the No Shipment Certification Memo.¹⁷

Furthermore, *Crystalline Silicon Photovoltaic Cells* cited by the petitioner is not applicable in the instant review. In that case, Commerce placed on the record entry documents and data from CBP and requested that parties who continued to claim that their subject merchandise was not entered into, exported to, or sold to the United States during the relevant POR should explain in detail why the entry documentation did not call into question their claim. Commerce found that the respondent failed to demonstrate that the merchandise at issue was admitted to a U.S. foreign trade zone and, therefore, outside the scope of the U.S. antidumping laws until entered for consumption. In the instant case, the entry documentation confirms ArcelorMittal’s no shipment claim. None of the entry documentation indicates that the merchandise was sold by

¹⁷ See Memorandum, “No Shipment Certification – ArcelorMittal Tubular Products Roman S.A.,” dated concurrently with this memorandum (No Shipment Certification Memo).

ArcelorMittal directly to the United States or with knowledge that the merchandise was ultimately destined for the United States via a third country.

We also disagree with the petitioner that an AFA rate is applicable to ArcelorMittal because it did not submit a complete questionnaire response. The cover letter to the questionnaire¹⁸ specifically states:

“If, after examining sections A and C of the questionnaire, you conclude that your company and its affiliates did not have any U.S. sales or shipments during the review period identified above, please submit a statement to that effect, following the data submission requirements specified in the general instructions. If you do not submit such a statement for the administrative record in this case, we may conclude that your company has not been responsive to this questionnaire and may proceed on the basis of the facts otherwise available, as defined in the glossary at Appendix I of the attached questionnaire.”

The record indicates that ArcelorMittal received the questionnaire on March 6, 2019 and submitted a no shipment claim on March 20, 2019, the due date for a response to Section A of the questionnaire.¹⁹ In doing so, ArcelorMittal followed the instructions set forth in Commerce’s questionnaire and has cooperated fully in this administrative review.

With respect to the petitioner’s citations to *Dongtai Peak* and *Suntec*, neither case is applicable here. The issue in *Dongtai Peak* concerned a respondent’s failure to timely file a supplemental questionnaire response. Commerce determined that without the supplemental response, the record lacked sufficient information to calculate an antidumping duty margin for the respondent, and applied AFA. In this case, ArcelorMittal timely responded to Commerce’s antidumping questionnaire by stating that it made no shipments of the subject merchandise to the United States during the POR. In *Suntec*, the Court of Appeals for the Federal Circuit upheld Commerce’s determination not to grant Suntec a rate separate from the China-wide rate given that it did not submit a separate rate application, even though the company claimed that it was unaware of the review until on or about the issuance of the final results. In this case, however, because ArcelorMittal submitted a no shipment certification, a complete response to Commerce’s questionnaire was unnecessary. Accordingly, there is no reason to apply AFA to ArcelorMittal for the final results of this review.

Finally, for all shipments of carbon and alloy seamless standard, line and pressure pipe (under 4.5 inches) from Romania produced but not exported by ArcelorMittal, we will instruct CBP to assess antidumping duties at the all-others rate in effect on the date of entry in accordance with our practice.²⁰

¹⁸ See Commerce Letter re: Antidumping Duty Questionnaire, dated February 27, 2019.

¹⁹ See Memorandum, “Documentation Confirming Receipt of the Antidumping Duty Questionnaire by ArcelorMittal Tubular Products Roman S.A.,” dated March 7, 2019; Commerce Letter re: Antidumping Duty Questionnaire, dated February 27, 2019.

²⁰ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

V. Recommendation

Based on our analysis of the comment received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this no shipment determination in the *Federal Register*.

Agree

Disagree

10/15/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance