



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
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February 24, 2017

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Senior Director, Office I  
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review: Stainless Steel Bar  
from Spain; 2015-2016

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## SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel bar (SSB) from Spain. The review covers one producer/exporter of the subject merchandise, Gerdau Aceros Especiales Europa, S.L. (Gerdau). The period of review (POR) is March 1, 2015, through February 29, 2016. We preliminarily find that Gerdau made sales of the subject merchandise at prices below normal value (NV).

## BACKGROUND

On March 2, 1995, the Department published in the *Federal Register* the antidumping duty order on SSB from Spain.<sup>1</sup> On March 1, 2016, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSB from Spain.<sup>2</sup> On March 31, 2016, Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, Petitioners) filed a request for administrative review

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<sup>1</sup> See *Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar from Spain*, 60 FR 11656 (March 2, 1995).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 10580 (March 1, 2016).



of sales made by Gerdau.<sup>3</sup> Pursuant to this request, on May 2, 2016, the Department published in the *Federal Register* the *Initiation Notice*.<sup>4</sup>

On October 26, 2015, the Department extended the time period for issuing the preliminary results by 120 days.<sup>5</sup>

## **SCOPE OF THE ORDER**

The merchandise subject to the order is SSB. The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections. The SSB subject to the order is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.<sup>6</sup>

## **USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

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<sup>3</sup> See Letter to the Secretary of Commerce from Petitioners, “Stainless Steel Bar from Spain: Petitioners’ Request for 2015/2016 Administrative Review” (March 31, 2016).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 26203 (May 2, 2016).

<sup>5</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Ryan Mullen, International Trade Compliance Analyst, Office V, “Stainless Steel Bar from Spain: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review” (October 26, 2016).

<sup>6</sup> The HTSUS numbers provided in the scope changed since the publication of the order. See *Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar from Spain*, 60 FR 11656 (March 2, 1995).

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>7</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.<sup>8</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>9</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>10</sup>

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available (AFA) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>11</sup>

#### A. Application of AFA to Gerdau

On December 9, 2016, the Department issued a supplemental questionnaire regarding Gerdau’s response to section D of the initial questionnaire.<sup>12</sup> In this supplemental questionnaire, the Department requested a variety of information necessary to understand the company’s reported costs, including: a full explanation of, and calculation worksheet for, one of the reported variables;<sup>13</sup> the existence of additional input suppliers, along with supporting documentation;<sup>14</sup> additional information about the process of sourcing inputs, as well as supporting documentation regarding the negotiation process;<sup>15</sup> the terms and conditions and interest rates for any loans obtained from affiliated parties;<sup>16</sup> the quantity and value of Gerdau’s purchases of billets and

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<sup>7</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>8</sup> See also 19 CFR 351.308(c).

<sup>9</sup> See also 19 CFR 351.308(d).

<sup>10</sup> See SAA at 870 (1994).

<sup>11</sup> See section 776(d)(1)-(2) of the Act; See also the Trade Preferences Extension Act of 2015 (TPEA), section 502(3).

<sup>12</sup> See Letter from Catherine Bertrand, Program Manager, Office V, “Stainless Steel Bar from Spain: Section D Supplemental Questionnaire” (December 9, 2016).

<sup>13</sup> *Id.* at Question 8.

<sup>14</sup> *Id.* at Question 11.

<sup>15</sup> *Id.* at Question 12.

<sup>16</sup> *Id.* at Question 15.

blooms from all suppliers;<sup>17</sup> information regarding charges made to customers in both the home and United States markets;<sup>18</sup> supporting documentation regarding the company's handling of scrap;<sup>19</sup> information regarding the control numbers provided for the home and United States markets;<sup>20</sup> and a demonstration of all calculations reported in the cost of production database for three individual control numbers.<sup>21</sup> This information is necessary to determine whether Gerdau accounted for all of its production costs relating to the subject merchandise and to otherwise ensure the accuracy of the cost data provided. Gerdau failed to submit a response to this supplemental questionnaire by the due date of December 19, 2016, nor did the company request an extension of time. The company had previously requested, and the Department had granted, numerous extensions for the submission of questionnaire responses.<sup>22</sup>

On December 20, 2016, counsel for Gerdau submitted an untimely request for an extension to file the company's Section D supplemental questionnaire response.<sup>23</sup> In that submission, counsel acknowledged that the request was untimely, and stated that this resulted from preoccupation with other cases.<sup>24</sup> The Department denied this untimely request, because Gerdau's counsel failed to meet the "extraordinary circumstances" standard required under 19 CFR 351.302(c).<sup>25</sup> Gerdau later submitted a second extension request, which stated that the company's retention of new counsel constituted extraordinary circumstances that justified granting an untimely extension request.<sup>26</sup> The Department denied this second request, finding that the company's subsequent decision to hire new counsel was not an intervening extraordinary cause which led to its failure to file a timely extension request.<sup>27</sup>

In accordance with section 776 of the Act, the Department preliminarily determines that the use of total AFA is warranted with respect to Gerdau. When the Department determines that a questionnaire response is deficient, section 782(d) of the Act requires the Department to "inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency{.}"As discussed above, the Department afforded Gerdau an opportunity to remedy its response by issuing a supplemental questionnaire, but the company did not provide a variety of information requested by the Department. Without this information, the Department is unable to determine whether Gerdau accounted for all of its production costs relating to the subject merchandise.

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<sup>17</sup> *Id.* at Question 13.

<sup>18</sup> *Id.* at Question 16.

<sup>19</sup> *Id.* at Question 5.

<sup>20</sup> *Id.* at Question 4.

<sup>21</sup> *Id.* at Question 7.

<sup>22</sup> *See, e.g.*, Letter from Minoo Hatten, Program Manager, Office I (July 8, 2016); Memorandum to the File from Ryan Mullen, International Trade Compliance Analyst, Office V, "Extension Request for Section A Supplemental Questionnaire" (November 15, 2016).

<sup>23</sup> *See* Letter to the Secretary of Commerce from Gerdau, "Stainless Steel Bar from Spain: Extension request" (December 20, 2016).

<sup>24</sup> *Id.*

<sup>25</sup> *See* Letter from Catherine Bertrand, Program Manager, Office V, "Stainless Steel Bar from Spain: Section D Supplemental Questionnaire Extension Request" (December 22, 2016).

<sup>26</sup> *See* Letter to the Secretary of Commerce from Gerdau, "Stainless Steel Bar from Spain: Extension Request for Section D Supplemental Questionnaire Response" (December 27, 2016).

<sup>27</sup> *See* Letter from Catherine Bertrand, Program Manager, Office V, "Stainless Steel Bar from Spain: Section D Supplemental Questionnaire Extension Request" (December 29, 2016).

Thus, the Department is unable to rely on Gerdau's submitted costs. Because Gerdau has not provided the necessary information on the record, the use of facts available for the preliminary results of review is warranted, pursuant to section 776(a)(1) of the Act. Furthermore, because Gerdau has withheld requested information, failed to provide such information in the form and manner required, impeded this review, and reported information that could not be verified, the use of facts available for the preliminary results is warranted, pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act.

Despite the request for additional information pursuant to 782(d) of the Act, the company failed to provide adequate cost data that we could use in our calculations. Therefore, we find that Gerdau has failed to cooperate to the best of its ability. Consequently, the Department has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.<sup>28</sup>

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to timely comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.<sup>29</sup> Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping duty order when applying an adverse inference, including the highest of such margins.<sup>30</sup> The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what a dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged" commercial reality" of the interested party.<sup>31</sup> Further, section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal, except that the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>32</sup> As total AFA, we have applied the AFA rate determined in the 2005-2006 administrative review of this case, which is 62.85 percent.<sup>33</sup>

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<sup>28</sup> See Section 776(b) of the Act.

<sup>29</sup> See SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

<sup>30</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

<sup>31</sup> See section 776(d)(3) of the Act; TPEA section 502(3).

<sup>32</sup> See section 776(c)(2) of the Act; TPEA section 502(2).

<sup>33</sup> See *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 42395 (August 2, 2007).

#### XIV. CONCLUSION

We recommend applying the above methodology for these preliminary results.



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Agree

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Disagree

2/24/2017

**X** *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance