




A-423-808
Changed Circumstances Review
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DATE: April 4, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman 
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Stainless Steel Plate in Coils from Belgium

SUBJECT: Issues and Decisions Memorandum for the Final Results of the
Changed Circumstances Review of the Antidumping Duty Order
on Stainless Steel Plate in Coils from Belgium

Summary

We have analyzed the case brief submitted by the respondent, Aperam Stainless Belgium N.V. (Aperam).¹ As a result of our analysis, we have made no changes from the Preliminary Results.² We recommend that you approve the positions described in the Discussion of Interested Party Comments, *infra*. Outlined below is the complete list of the issues in this review for which we have received comments from Aperam.

¹ The case brief was submitted by Aperam on November 23, 2011. The petitioners did not submit a case brief or rebuttal brief. The petitioners in this case are Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (collectively, the petitioners).

² See Stainless Steel Plate in Coils from Belgium: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review 76 FR 66271 (October 26, 2011) (Preliminary Results).



I. Background

On October 26, 2011, the Department of Commerce (the Department) published in the Federal Register the preliminary results of this changed circumstances review. See Preliminary Results. This review covers one manufacturer/exporter of the subject merchandise: Aperam Stainless Belgium N.V. (formerly known as ArcelorMittal Stainless Belgium (AMS Belgium)). The Department preliminarily determined that Aperam is the successor-in-interest to AMSB and should be treated as such for purposes of the antidumping duty order.

II. List of Comments

Comment 1: Retroactive Application of the Final Results

III. Discussion of Interested Party Comments

Comment 1: Retroactive Application of the Final Results

The sole issue raised by Aperam in its case brief concerns the effective date of the Department's successor-in-interest determination. Specifically, the draft Customs and Border Protection (CBP) instructions that the Department issued concurrently with the Preliminary Results, includes language stating that the effective date of the Department's determination is the "date of publication of Final Results of Changed Circumstances Review unless another effective date was determined."³ Aperam asserts that, instead of using the date of publication of the final results of the instant changed circumstances review as the "effective date," the Department should rely on the date of the corporate name change (i.e., the date of AMSB's spin-off as Aperam) as the "effective date," and requests that this date be reflected in the Department's instructions to Customs.

Aperam argues that the Department will not give full effect to its finding that Aperam and AMSB are the same entity if it does not use the date of its corporate name change as the effective date. Aperam states that it has been entering its subject merchandise under the "all others rate" pending the final results of this review. As a consequence, Aperam states that, should the Department not undertake a complete administrative review for the 2011/2012 period of review (POR), Aperam's merchandise will liquidate "as entered" for all merchandise entered between May 1, 2011 (i.e., beginning of the 2011/2012 POR) and the "effective date" of the Department's determination in the ongoing Changed Circumstances Review. Aperam asserts that this would be contrary to the Department's successor-in-interest finding and Aperam argues that it would not "receive the same antidumping duty treatment" as its predecessor for this period. Aperam states that the law provides that successors are deemed to be the same legal entity as their predecessors. Therefore, as a matter of law, Aperam asserts that it assumed AMSB's rights

³ See Memorandum from The Team to The File re: "Draft Customs Instructions for the Final Results of the Changed Circumstances Review of Stainless Steel Plate in Coils from Belgium," dated November 10, 2011, at Appendix 1.

and liabilities at the time Aperam came into legal existence, not on the date when the Department issued its final determination. Aperam argues that the Department's proposed instruction violates this black-letter law principle and asserts that this result is also contrary to good policy. Aperam states that, in the event a company had a margin that was higher than the "all others rate," under the rule followed by the Department here, if the company were to reorganize, it would get the benefit of a lower rate for the period between its reorganization and the Department's final results of a successorship review. Aperam asserts that, if no party requests a review of this company, it could continue depositing at the all others rate for years. Aperam argues that the Department's purported rule, therefore, would be rife for abuse. The petitioners did not comment on this issue.

Department's Position:

The Department disagrees with Aperam's assertion that, unless the effective date is based on the date of its corporate name change, Aperam would not "receive the same antidumping duty treatment" as its predecessor for this period. Aperam (formerly known as AMSB) may request an antidumping review for the 2011/12 POR. Based on the Department's finding in the instant changed circumstances review, Aperam and AMSB will receive the same antidumping duty treatment in a subsequent review. The Department only gives retroactive effect to successor-in-interest determinations in changed circumstances reviews when a successor company is a successor-in-interest to a predecessor company that had been excluded from the order.⁴ Otherwise, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive by the Department. If Aperam believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate and receive a refund of any excess deposits.⁵

Aperam hypothesizes that, in the event a company had a margin that was higher than the "all others rate," under the rule followed by the Department here, if the company were to reorganize, it would get the benefit of a lower rate for the period between its reorganization and the Department's final results of a successorship review. Because the issues in each segment are case-specific, the Department need not resolve Aperam's hypothetical scenario, which is not present in the instant review. However, the Department again emphasizes that interested parties have the opportunity to request an administrative review every anniversary month of the order. Therefore, should such a situation outlined by Aperam occur and an interested party believes that the deposits paid by a particular company understate the actual amount of dumping, that interested party may request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate for the aforementioned company.

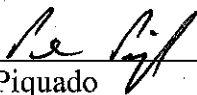
⁴ See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Final Results of Changed-Circumstances Antidumping Duty Review, 74 FR 8904 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

⁵ See, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, 64 FR 66880, 66881 (November 30, 1999).

Accordingly, consistent with the Department's practice, the Department will use the date of the publication of the final results of the instant changed circumstances review in the Federal Register as the effective date which will be included in the instructions that the Department will issue to CBP.

IV. Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this changed circumstances review in the Federal Register.



Paul Piquado
Assistant Secretary
for Import Administration

9 APRIL 2012

Date