



A-351-825

POR: 2/1/2017-8/8/2017

Public Document

AD/CVD I: HP

DATE: April 8, 2019

MEMORANDUM TO: 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

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Stainless Steel Bar from Brazil: Issues and Decision
Memorandum for the Final Results of Antidumping Duty
Administrative Review

I. SUMMARY

We analyzed the case brief submitted by the respondent, Villares Metals S.A. (Villares) in the administrative review of the antidumping duty order on stainless steel bar (SSB) from Brazil covering the period of review (POR), February 1, 2017, through August 8, 2017. We did not make changes to the margin calculations as a result of our analysis of comments submitted by Villares in its case brief. We recommend that you approve the position we developed in the “Discussion of the Issue” section of this memorandum.

II. BACKGROUND

On October 31, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review and invited interested parties to comment.¹ On November 30, 2018, Villares submitted a case brief.² Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.³ If the new deadline falls on a non-business day,

¹ See *Stainless Steel Bar from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 83 FR 54715 (October 31, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

² See Villares’ Case Brief, “Stainless Steel Bar from Brazil: Case Brief of Villares Metals SA,” dated November 30, 2018 (Villares Case Brief).

³ 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



in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the final results of this review is now April 9, 2019.

III. 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.⁴

IV. DISCUSSION OF THE ISSUE

Issue: Whether to adjust the Comparison Time Periods for Purposes of applying the Cohen's *d* Test

Villares Argument

Villares argues that, because Commerce truncated the POR as a result of the outcome of a five-year (sunset) review that resulted in the revocation of the order,⁵ Commerce should have adjusted the comparison time periods for purposes of applying the Cohen's *d* test in the *Preliminary Results*.⁶ Villares asserts that, in conducting the Cohen's *d* test, Commerce used quarters to define the time periods, which, according to Villares, did not mirror the adjusted POR.⁷ Villares alleges that it was not appropriate for Commerce to use quarterly time periods in the *Preliminary Results*, because the POR was truncated from a normal 12-month period to an 8-

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.

⁴ The HTSUS subheadings provided in the scope changed since the publication of the order. See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995).

⁵ See *Stainless Steel Bar from Brazil, India, Japan, and Spain: Continuation of Antidumping Duty Order (India) and Revocation of Antidumping Duty Orders (Brazil, Japan, and Spain)*, 83 FR 49910 (October 3, 2018).

⁶ See Villares Case Brief at 1-2.

⁷ *Id.* at 1.

month period. Villares contends that, as a result, Commerce's margin calculation was based on an incorrect Cohen's *d* test that unfairly skewed the results of the test in Commerce's margin analysis for Villares.⁸ The programming language Villares provides in its case brief indicates that Commerce should use two-month time period intervals instead of quarterly intervals.⁹

Villares requests that Commerce adjust the comparison time periods to mirror the duration of the truncated POR for purposes of the final results to ensure a more accurate comparison of sales.

The petitioner did not submit rebuttal comments.

Commerce's Position: We disagree with Villares that we should adjust the duration of time periods as it suggested for purposes of applying the Cohen's *d* test in the final results. As an initial matter, we point out that there is nothing in section 777A(d) of the Tariff Act of 1930, as amended, (the Act) that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the average-to-average (A-to-A) method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute¹⁰ here is a gap filling exercise properly conducted by Commerce.¹¹ As we explained in the *Preliminary Results*, and in various other proceedings,¹² Commerce's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

In general, the Cohen's *d* and ratio tests are used to establish whether there exists a pattern of prices that differ significantly among purchasers, regions or time periods. As detailed in the SAA,¹³ the purpose of the pattern is to establish whether conditions exist as a result of which dumping may be masked.¹⁴ Thus, the Cohen's *d* test, which is used to examine a respondent's

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ See *Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

¹¹ See *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984) (*Chevron*) (recognizing deference where a statute is ambiguous, and an agency's interpretation of the statute is reasonable); see also *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322, 1330-33 (Fed. Cir. 2017) (affirming the Court of International Trade's application of *Chevron* deference in the context of the Department's interpretation of section 777A(d)(1) of the Act).

¹² See, e.g., *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4.

¹³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. 1 (1994) at 842-43.

¹⁴ See, e.g., *Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016), and accompanying IDM at 34-37 ("When the respondent's pricing behavior exhibits conditions in which masked dumping may be a problem – i.e., where there exists a pattern of prices that differ significantly – then the Department considers whether the standard A-to-A method can account for 'such differences'").

pricing behavior in the U.S. market, is to reflect determinative factors of the respondent's pricing behavior.

Under the facts of the present review, we agree with Villares' contention that the time periods used in the Cohen's *d* test should be similar to the truncated POR to ensure the comparability of average prices between different time periods. However, contrary to Villares' assertion, we did not truncate the POR from a 12-month period to an 8-month period. As a result of the five-year (sunset) review, we limited the POR to a six-month and seven day period (February 1, 2017, through August 8, 2017), not an 8-month period as argued by Villares. Commerce, in applying the Cohen's *d* test as part of a differential pricing analysis, relies on time periods, by default, that are "defined by the quarter within the period of review based upon the reported date of sale."¹⁵ Commerce has consistently relied on quarterly time periods because they provide a "uniform and predictable period of time."¹⁶ Since Commerce normally relies on quarterly, three-month, intervals to define the comparison time periods, and such periods are relatively the same, we have not adjusted the amount of time normally used in the Cohen's *d* test, except to rely on two three-month quarters, rather than four.

Although we maintain the discretion to modify time periods, for purposes of the Cohen's *d* test, from quarterly periods to monthly periods, we do not find it appropriate to do so in the present review. In *Copper Pipe and Tube from China*,¹⁷ Commerce applied the Cohen's *d* test on a monthly basis, instead of a quarterly basis, because there was evidence on the record indicating that copper prices fluctuated on a monthly basis as determined under contract.¹⁸ We specifically stated that, "{b}ecause a major contractually-determined portion of the price changes monthly, there exists a logical basis for grouping sales by month when examining whether there are prices that differ significantly among time period."¹⁹ Thus, in *Copper Pipe and Tube from China*, there was contractual evidence indicating that it was appropriate to adjust the time period reviewed in the Cohen's *d* test from quarterly intervals to monthly intervals. In the present review, however, we find no evidence on the record that Villares' prices of SSB from Brazil are somehow determined on a monthly basis. Furthermore, there is no evidence on the record indicating that another time interval, rather than the quarterly interval, would be more appropriate. As noted above, we have already taken into account the truncated POR and adjusted the time period for purposes of the Cohen's *d* test accordingly by relying on two three-month quarters, rather than four.

Lastly, we disagree that our normal use of quarters to define time periods in the Cohen's *d* test has distorted the results of our dumping analysis. Villares has provided no evidence on the record supporting its claim that our application of the Cohen's *d* test in the *Preliminary Results* unfairly skewed the results for Villares.

In conclusion, we find no reason to modify the Cohen's *d* test for purposes of calculating Villares' weighted-average dumping margin for the final results. Accordingly, we have not

¹⁵ See *Preliminary Results* and PDM at 4.

¹⁶ See *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 55595 (September 16, 2015), and accompanying IDM at Comment 7.

¹⁷ See *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 23324 (April 28, 2014), and accompanying IDM at Comment 6 (*Copper Pipe and Tube from China*).

¹⁸ *Id.*

¹⁹ *Id.*

made changes to the differential pricing analysis when calculating Villares' weighted-average dumping margin for these final results.

V. 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 administrative review and the final weighted-average dumping margin in the *Federal Register*.

☒

Agree

☐

Disagree

4/8/2019

X 

Signed by: GARY TAVERMAN

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