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June 4, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the 2001-2003 Administrative Review of Stainless Steel Bar from Italy; Final Results

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SUMMARY

We have analyzed the case briefs and rebuttal brief of interested parties in the first administrative review of stainless steel bar from Italy. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttals by parties:

Comment 1: Foroni S.p.A.'s ("Foroni") Indirect Selling Expenses
Comment 2: Foroni's Director's Fees and Auditor's Fees in its Reported Cost Data
Comment 3: Foroni's Financial Expense Ratio
Comment 4: Additional Adjustments to Foroni's Cost Data
Comment 5: Understatement of Foroni's Constructed Export Price ("CEP") Profit
Comment 6: Total Adverse Facts Available for Ugine Savoie-Imphy S.A. ("Ugine")
Comment 7: Collapsing of Ugine and Trafilerie Bedini S.p.A. ("Bedini")

BACKGROUND

On February 5, 2004, the Department of Commerce ("the Department") issued the preliminary

results of the first administrative review of the antidumping duty order on stainless steel bar from Italy. See Stainless Steel Bar from Italy: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 5488 (February 5, 2004) ("Preliminary Results"). The period of review ("POR") is August 2, 2001, through February 28, 2003.

We invited parties to comment on the preliminary results of the review. On March 9, 2004, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL-CIO/CLC) (collectively, "petitioners"), filed case briefs. On March 15, 2004, the respondent Foroni filed a rebuttal brief. The petitioners filed an amended case brief on March 19, 2004.

DISCUSSION OF ISSUES

Comment 1: Foroni's Indirect Selling Expenses

Petitioners' Argument: The petitioners argue that the Department should revise Foroni's indirect selling expenses to include property taxes and franchise taxes. The petitioners argue that property taxes and franchise taxes are a cost of doing business and are, therefore, a cost that Foroni incurs when selling products in the United States. The petitioners state that Foroni's exclusion of these taxes in the current review was based on the fact that these taxes were excluded from indirect selling expenses in the less-than-fair-value investigation. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002), as amended, 67 FR 8288 (February 22, 2002) ("LTFV Investigation"), and accompanying Issues and Decision Memorandum ("LTFV Decision Memo"). The petitioners contend that the Department's verification report in the LTFV Investigation noted that Foroni had excluded these taxes from its reported U.S. indirect selling expenses, but it did not state that Foroni's exclusions were appropriate. See "Verification of the Constructed Export Price Sales of Foroni S.p.A.'s U.S. Affiliate, Foroni Metals of Texas" dated October 23, 2001 ("LTFV VR"). The petitioners argue that not addressing this issue in the LTFV Investigation should have no bearing on whether the adjustment is appropriate in the current review.

To support their argument, the petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15505-15506 (March 31, 1999) ("SSPC from Taiwan"). In that case, the Department agreed with the petitioners' claim that the respondent's expenses for property taxes were general expenses that should be included in indirect selling expenses.

Respondent's Argument: Foroni confirms that Foroni Metals of Texas' ("FMT") reported U.S. indirect selling expenses were examined by the Department at verification in the LTFV Investigation. Foroni contends that the Department did not make any adjustments to FMT's reported U.S. indirect

selling expenses in the LTFV Investigation and the petitioners did not challenge the exclusion of these tax payments. Foroni asserts that FMT did not include a detailed explanation or justification for the exclusion of the tax payments in the current review because FMT was only following the Department's practice.

Concerning the Texas franchise tax, Foroni points to the description published on the Texas Comptroller of Public Accounts website. See http://www.window.state.tx.us/taxinfo/franchise/index.html. According to the website, the Texas Franchise tax is calculated as the greater of 0.25 percent per year of net taxable capital or 4.5 percent of the net taxable earned surplus. Foroni argues that because the tax was calculated as a percentage of FMT's earned surplus, this tax is actually a type of indirect tax on the company's profits (i.e., income). As such, Foroni contends that the tax payments were correctly excluded from its reported U.S. indirect selling expenses.

Foroni explains that the property tax payments are incurred with respect to real property (e.g., FMT's warehouse) and personal property (e.g., automobiles, furniture). Foroni argues that the verification team had an opportunity to examine the exclusion of these amounts during verification in the LTFV Investigation. Foroni argues that it is not possible to revisit this issue in a fair and detailed manner at this late stage of the current review. As a result, Foroni states that it is distinctly disadvantaged in defending the reported tax exclusions. Foroni asserts that it would be reasonable to permit FMT to follow Department practice and exclude the property tax payments from its reported U.S. indirect selling expenses.

Finally, Foroni argues that the petitioners have not cited any precedent to show that property taxes must be deducted from CEP calculations. Foroni counters that the petitioners citation of SSPC from Taiwan is misplaced. According to Foroni, the respondent in that case conceded that it had misallocated numerous indirect selling costs to non-subject merchandise that should have been allocated to subject merchandise.

Department's Position: We agree with the petitioners that property taxes should be included in indirect selling expenses. Regarding the franchise tax, however, we agree with Foroni that this tax is actually a type of income tax and does not constitute an indirect selling expense. This treatment is consistent with the Department's practice regarding taxes and the cost of production, i.e., we include payments to governments that are periodic general taxes levied on the company and which are not based on revenues. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324 (April 9, 1999); Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18448 (April 15, 1997); and High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of

Investigation and Partial Dismissal of Petition, 56 FR 32376 (July 16, 1991). Property taxes are considered periodic general taxes while income taxes are considered to be levied on revenues (or the excess of revenues over expenses). Further, periodic general taxes are considered general in nature and, therefore, are appropriately classified as general expenses.

Moreover, while Foroni is correct that the issue raised in SSPC from Taiwan addressed allocation of expenses, property taxes were among the taxes being allocated and deducted from the U.S. price as an indirect selling expense. Therefore, SSPC from Taiwan supports the position we are taking here of deducting property taxes as an indirect selling expense.

Concerning Foroni's contention that the reported expense was verified, the information examined by the Department at verification established that the numbers reported were accurate, not that the methodology reported was necessarily correct. Therefore, we revised Foroni's U.S. indirect selling expenses to include property taxes for the final results. See "Final Results Calculation Memorandum for Foroni S.p.A. and Foroni Metals of Texas" ("Final Calc Memo") and the "Cost of Production and Constructed Value Calculation Adjustments for the Final Results" ("Final COP Memo").

Comment 2: Foroni's Director's Fees and Auditor's Fees in its Reported Cost Data

Petitioners' Argument: The petitioners argue that the Department should revise Foroni's reported general and administrative ("G&A") expenses to include the director's fees and auditor's fees. In support of their contention, the petitioners argue that the Department revised Foroni's reported G&A expenses to include director's fees in its preliminary determination in the LTFV Investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Italy, 66 FR 40214 (August 2, 2001) ("Prelim LTFV"). See also "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination Memorandum" dated July 26, 2001 ("LTFV COP Memo") at 1. The petitioners note that the Department also upheld the inclusion of Foroni's director's fees in its G&A expenses in the final determination (see LTFV Decision Memo, at Comment 21).

Respondent's Argument: Foroni counters that the director's fees and auditor's fees were, in fact, reported in its G&A expenses. Foroni points to its July 2, 2003 section D questionnaire response and its September 30, 2003 supplemental questionnaire response. Foroni argues, therefore, that there is no basis to modify its reported G&A expenses since the director's fees and auditor's fees have already been included in the reported figure.

Department's Position: We agree with the respondent that the director's fees and auditor's fees were included in the numerator of Foroni's G&A expense factor. See Memo to Neal Halper from LaVonne Jackson, "Verification Report on the Cost of Production and Constructed Value Data Submitted by

Foroni, S.p.A." ("Cost Verification Report") (December 23, 2003), cost verification exhibit ("CVE") 6, p. 27 and 44, and CVE 11, p. 4. Therefore, to avoid double counting, we have not adjusted Foroni's G&A expense factor calculation as suggested by the petitioners.

Comment 3: Foroni's Financial Expense Ratio

Petitioners' Argument: The petitioners argue that the Department should revise Foroni's financial expense ratio to include bank commissions that were not reported by Foroni. The petitioners note that, during verification, Foroni officials stated that certain bank expenses were excluded because the company does not consider these expenses to be interest expenses. See Cost Verification Report. The petitioners assert that the cost of obtaining funds and dealing with banks or other lending institutions is not limited to items that are specifically labeled as "interest" charges. The petitioners argue that Foroni incurred charges by its banks to obtain funds to finance its continuing operations. As such, the petitioners contend that these charges should be included in Foroni's financial expenses.

The petitioners further argue that the Department should not allow Foroni's interest expenses to be offset by interest on receivables. According to the petitioners, because the Department does not include value added tax ("VAT") in its analysis, deductions such as the interest on the 1999 VAT should not be allowed. Furthermore, the petitioners assert that the receivables on the 1999 VAT applies to sales that are outside of the POR.

Finally, the petitioners argue that the Department should not allow interest on receivables due from shareholders as an offset to Foroni's interest expenses. The petitioners note that Foroni reported that one hundred percent of Foroni's stock is owned by Foroni family members. See Foroni's questionnaire response dated June 12, 2003, at A-8. The petitioners, therefore, assert that the receivables from the shareholders are an intra-company transfer of funds that should not be used to reduce Foroni's interest expense. According to the petitioners, allowing this interest as an offset would permit Foroni's owners to eliminate all interest expenses simply by taking loans from the company. The petitioners further argue that the Department adjusted Foroni's claimed interest expense ratio to exclude interest income from receivables in the Prelim LTFV. See also LTFV COP Memo, at 4.

Respondent's Argument: Foroni contends that the Department should not revise its financial expense ratio. Foroni states that it does not contest the Department's preliminary decision to include foreign exchange gains and losses incurred in fiscal year 2002. See the "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results" memorandum dated January 30, 2004. However, Foroni notes that the petitioners' proposed revision in aggregate would fall well below the level for "insignificant adjustments" set forth in section 351.413 of the Department's regulations.

Concerning the interest on receivables, Foroni explains that it reported interest earned on two types of

receivables as an offset to its reported interest expense. The first type was interest earned on loans to two of Foroni's shareholders. Foroni argues that these loans were legitimate arm's-length transactions between a company and two of its shareholders which are subject to review and approval by the Italian tax authorities. Moreover, Foroni asserts that Italian commercial law mandates that a company such as Foroni collect appropriate interest on all such loans and recognize the interest in its books and records. Foroni contends that the petitioners have not provided any evidence showing that the applicable interest rates were inflated or that the terms of the loans otherwise were not at market rates.

Foroni explains that the second type of receivable involved interest payments received from the Government of Italy concerning overpayments of VAT. Foroni notes that the Department disregards VAT in its cost analysis because respondents "recapture" VAT payments upon selling merchandise produced with purchased components. According to Foroni, the interest reported was separate and apart from this payment and recapturing cycle. Rather, these payments were similar to other interest received on loans to third parties. In this case, Foroni contends that the third party was the Government of Italy.

Foroni further argues that the petitioners' reference to the Prelim LTFV adjustment is irrelevant to the interest received under the two programs in the current review. In the Prelim LTFV, the Department adjusted Foroni's "net financial expenses to exclude foreign exchange gains and losses on accounts receivable, bond interest income and interest income from receivables." See Prelim LTFV, at 69 FR 40218. According to Foroni, the Department did not address the two types of loans at issue here in the Prelim LTFV because no interest was received during the period of investigation ("POI").

Department's Position: With respect to bank commissions, we agree with the petitioners that these expenses should be included in Foroni's calculation of its financial expense factor. The Department considers bank commissions to be general expenses (i.e., not sales specific) and as such we have included these commissions in Foroni's financial expenses. See Oil Country Tubular Goods from Taiwan; Final Determination of Sales at Less Than Fair Value, 51 FR 19731 (May 29, 1986). Therefore, for the final results, we have increased the numerator of Foroni's financial expense factor to include these expenses.

Regarding interest on receivables, we agree with the petitioners and have excluded these offsets from the calculation of Foroni's financial expense factor. The Department's long-standing practice is to allow a respondent to offset financial expenses (i.e., the numerator of the financial expense factor) with interest earned on short-term interest bearing accounts (i.e., less than one year to maturity). See, e.g., Timken v. United States, 852 F. Supp 1040, 1048 (CIT 1994); see also Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from the United Kingdom, 64 FR 30688 (June 8, 1999). In the instant case, both of the accounts in question are not short-term in

nature. The interest on VAT receivables account was generated on a VAT reimbursement for 1999 that was requested by the company in 2000. See Cost Verification Report, CVE 12, p. 2 and 4. The interest on receivables due from shareholders related to transactions were also long-term in nature. See Cost Verification Report, CVE 12, p. 3. Because neither of these accounts is short-term in nature, the Department's practice does not allow Foroni to offset its financial expenses for the interest earned on these accounts. Therefore, we have adjusted Foroni's financial expense factor to exclude these offsets. In addition, because the Department finds these accounts to be long-term in nature, all other arguments presented by both the petitioners and the respondent are moot.

Comment 4: Additional Adjustments to Foroni's Cost Data

Petitioners' Argument: The petitioners argue that the Department should adjust Foroni's cost data to include costs that Foroni failed to report in its questionnaire response. According to the petitioners, the Department discovered several cost items during verification that were not included in Foroni's reported cost of production. Citing to the Department's verification report, the petitioners assert that costs for electrical transportation charges and for truck and vehicle insurance expenses were omitted from Foroni's reported costs. See Cost Verification Report, at 20-21. The petitioners contend that the costs excluded by Foroni should be added to Foroni's variable overhead ("VOH") because electricity and truck usage vary with the levels of production.

Respondent's Argument: Foroni counters that the petitioners erroneously assert that it excluded the "transportation charges" in its reported VOH. According to Foroni, the "transportation charges" at issue are taxes imposed on electrical consumption. Foroni explains that these tax revenues are used to maintain the country's electrical grid (i.e., transportation network). Foroni maintains that the total amount for these payments was included in its reported VOH. Foroni notes that the costs cited by the petitioners were included in the Cost Verification Report, CVE 6. Foroni contends that there is no basis for making the petitioners' proposed adjustment since it properly reported these costs.

With respect to the petitioners' claim that it failed to report insurance expenses for trucks and vehicles, Foroni points out that it did note this error at the beginning of verification and provided a worksheet to officials describing the error. See Cost Verification Report, CVE 1. Foroni states that it would not object to the Department taking this figure into account for the final results. However, Foroni contends that insurance on these vehicles is a type of fixed overhead ("FOH") expense that cannot be tied to specific products or markets. Therefore, Foroni argues that these expenses should be allocated over total production. Foroni further notes that the resulting adjustment to FOH would fall well below the level for "insignificant adjustments" set out in section 351.413 of the Department's regulations.

Department's Position: Regarding the transportation expenses, we agree with the respondent. Although the transportation costs (i.e., taxes) for electricity were not included in Foroni's reported per-

unit electricity costs, these costs were included in Foroni's calculation of its variable overhead costs (see Cost Verification Report, CVE 6, pp. 24 and 28). Therefore, to avoid double counting, we have not adjusted Foroni's reported per-unit electricity costs as suggested by the petitioners.

Regarding the truck and vehicle insurance expenses, we agree with both the petitioners and the respondent that these costs should be included in Foroni's reported costs. The truck and vehicle insurance expenses for the POR were appropriately excluded from Foroni's reported cost of manufacturing because truck and vehicle insurance expenses for fiscal year 2002 were included in Foroni's calculation of its G&A expenses (see Cost Verification Report, CVE 6, p. 44 and CVE 11, p. 4). Therefore, we have not made any additional adjustments for these truck and vehicle expenses in order to avoid double counting.

Comment 5: Understatement of Foroni's CEP Profit

Petitioners' Argument: The petitioners argue that the Department should correct clerical errors in the calculation program that result in an understatement of CEP profit. The petitioners contend that U.S. commissions were double counted. As a result, the calculation program overstated total selling expenses included in total expenses. Furthermore, the petitioners assert that imputed credit was erroneously included in the calculation of total selling expenses which also resulted in an overstatement of total expenses. These overstatements of total expenses resulted in an understatement of total CEP profit. The petitioners argue that the Department should correct these two clerical errors for the final results.

Respondent's Argument: Foroni agrees with the petitioners that it appears that the Department deducted U.S. commissions for U.S. sales twice. Furthermore, Foroni also agrees that imputed credit should not have been included in the calculation of total selling expenses.

Department's Position: We agree with the petitioners and the respondent concerning the calculation of total selling expenses and have revised our calculations accordingly. See Final Calc Memo.

Comment 6: Total Adverse Facts Available for Ugine

Petitioners' Argument: The petitioners assert that the Department should continue to find that Ugine failed to cooperate to the best of its ability by refusing to respond to the Department's request for information. See Preliminary Results, 69 FR at 5489. As such, the petitioners argue that the Department should continue to apply adverse facts available for the final results.

There were no other comments on this issue.

Department's Position: Consistent with the Preliminary Results, we continue to find that Ugine failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information and that an adverse inference is warranted for the reasons set out in the Preliminary Results. Accordingly, for the final results, we continue to assign Ugine a margin of 33.00 percent, the highest margin from any segment of the proceeding, which is also the highest margin alleged in the petition, in accordance with section 776(b)(1) of the Tariff Act of 1930, as amended.

Comment 7: Collapsing of Ugine and Bedini

Petitioners' Argument: The petitioners contend that Ugine and Bedini are affiliated producers in Italy and that the Department should collapse the two entities. Citing the LTFV Decision Memo, at Comment 8, the petitioners state that Ugine and Bedini acknowledged their affiliation in the LTFV Investigation. The petitioners assert that the Department could not explore the relationship between Ugine and Bedini during the course of this review because Ugine refused to respond to the Department's questionnaire. According to the petitioners, Ugine's failure to respond should not only apply to the selection of a dumping rate but to other issues (e.g., affiliation) that would have otherwise been addressed during the course of the current administrative review. The petitioners argue that Ugine should be deemed as affiliated with Bedini and that any issues related to affiliation be viewed adversely to Ugine.

The petitioners highlight two reasons for Bedini and Ugine to be considered as a single entity. First, the petitioners contend that Ugine and Bedini maintain an overlap of production operations. The petitioners note that both Ugine and Bedini are producers of stainless steel bar and that a strong supplier relationship exists between the two entities. See LTFV Decision Memo, at Comment 8. Second, the petitioners contend that Ugine and Bedini maintain an overlap of selling operations. The petitioners point out that all of Ugine's and Bedini's sales of products to the United States were made through their U.S. sales affiliate, Ugine Stainless and Alloys, Inc. ("US&A").[1] Moreover, the petitioners contend that Bedini sold subject merchandise that it had further manufactured from Ugine-produced bar and rod, and that Ugine made sales in Italy of merchandise that had been further manufactured by Bedini.[2]

The petitioners further argue that the statute, the regulations, and the Department's practice require the Department to treat affiliated entities like Bedini and Ugine as a single entity. The petitioners cite AK Steel Corp. v. United States, 22 CIT 1070, 1079-80, 34 F. Supp. 2d 756, 764 (1998, aff'd in part and rev'd in part on other grounds, 203 F. 3d 1330 (Fed. Cir. 2000)) ("AK Steel"); and Queen's Flower de Colombia v. United States, 21 CIT 968, 971, 974, F. Supp. 617, 622 (1997) ("Queen's

[1]See LTFV Decision Memo, at Comment 8.

[2]Id.

Flower") and note that the statute does not directly address the issue of whether affiliated parties should be treated as a single entity for the purpose of calculating dumping margins. However, the petitioners contend that the statute does define affiliated parties under 19 U.S.C. § 1677(33). The petitioners rely on 19 C.F.R § 351.401(f) of the Department's regulations to support their position.

The petitioners also cite AK Steel and Queen's Flowers, and contend that the courts have generally upheld the Department's authority to collapse affiliated entities. Furthermore, the petitioners note that the courts have recognized the importance of ensuring that the antidumping duty laws are not evaded and cite to Tung Mung Dev. Co. v. United States, 219 F. Supp. 2d 1333 (CIT August 22, 2002), aff'd, 354 F. 3d 1371 (Fed. Cir. 2004) ("Tung Mung II"); and Mitsubishi Elec. Corp. v. United States, 12 CIT 1025, 1046, 700 F. Supp. 538, 555 (1988), aff'd 898 F. 2d 1577 (Fed. Cir. 1990) ("Mitsubishi").

The petitioners argue that Ugine and Bedini satisfy the regulatory requirements for treatment as a single entity. First, the petitioners assert that Ugine had the legal and operational ability to exercise restraint or direction over Bedini. Second, both Ugine and Bedini produce the subject merchandise. Accordingly, neither producer would have to substantially retool its manufacturing facilities to produce stainless steel bar. Third, Ugine's ownership of Bedini results in a significant potential to alter its own or Bedini's production operations to manipulate prices or production. According to the petitioners, merchandise was commonly transferred between Ugine and Bedini.[3] See 19 C.F.R § 351.401(f)(2). The petitioners assert that the totality of the circumstances weigh in favor of collapsing Ugine and Bedini. The petitioners cite Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42854 (August 19, 1996). In that case, the Department based a decision to collapse entities by applying a totality of circumstances which weighed in favor of collapsing two entities. The petitioners conclude that Ugine and all affiliated entities, including Bedini, should receive the 33.00 percent dumping rate for the final results. As such, the petitioners contend that the Department should liquidate any unliquidated entries for this POR and should suspend liquidation on all future entries by Ugine and any affiliated entities, including Bedini.

The petitioners further argue that because Ugine has failed to cooperate and given the affiliation between Ugine and Bedini, the Department at minimum should assign Bedini a dumping rate in combination with Ugine's rate. According to the petitioners, while Congress has not provided statutory guidance,[4] the use of combination rates have been upheld by the courts and are consistent with the Department's practice as noted below. The petitioners point to section 351.107 of the Department's

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[3]Id.

[4]The petitioners cite Alleghany Ludlum Corp., et al. v. United States, 239 F. Supp. 2d 1381 (CIT 2002), aff'd, 354 F. 3d 1371 (Fed. Cir. 2004); and Tung Mung II.

regulations which establishes cash deposit rates for non-producing exporters based on "combination rates."

The petitioners assert that the Department has a practice of assigning an exporter a rate in combination with the producer in those "instances where the potential for circumvention has been high and then only to eliminate the incentive to circumvent antidumping duties." To support this contention, the petitioners cite Antidumping Duties; Countervailing Duties, 62 FR 27303 (May 19, 1997); Alleghany Ludlum Corp., et al. v. United States, 239 F. Supp. 2d 1381, aff'd, 354 F.3d 1371 (Fed. Cir. 2004); Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 2; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan, 64 FR 20592 (June 30, 1999); and Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (January 3, 2003) and accompanying Issues and Decision Memorandum at Comment 10.

According to the petitioners, the potential for circumvention is particularly high when the Department calculates a zero or de minimis margin for an exporter and a particular producer is given a much higher rate than the exporter. See Carbon and Certain Alloy Steel Wire Rod from Canada; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, 69 FR 8623 (February 25, 2004) ("CSWR from Canada").[5] The petitioners further assert that the Department should clarify that the de minimis rate would only apply to those products that are produced and exported by Bedini.[6]

In this case, the petitioners contend that Ugine satisfies the requirements of section 351.107(b) of the Department's regulations for a combination rate for the following reasons. First, Ugine and Bedini are the identifiable producer and exporter, respectively. Second, Ugine's 33.00 percent dumping margin is substantially higher than Bedini's de minimis dumping margin. According to the petitioners, Bedini's de minimis margin will serve as an incentive for Ugine to export through Bedini and circumvent its 33.00 percent dumping margin.

Department's Position: In this case, we are basing Ugine's margin on total adverse facts available, and Bedini is excluded from the order. Therefore, we have not collapsed Ugine and Bedini. However, as discussed below, Bedini's exclusion only applies to merchandise produced and exported by Bedini. Concerning the petitioners' assertion that the Department should assign Bedini a dumping rate in

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[5]The petitioners note, however, that the facts in this case are somewhat distinct from CSWR from Canada in that the producer has not been deemed to be affiliated with the exporter.

[6]The Department assigned Bedini a de minimis dumping margin in the LTFV Investigation and, therefore, Bedini has been excluded from the order on stainless steel bar from Italy. See LTFV Investigation.

combination with Ugine, we do not believe that a producer-exporter combination rate is appropriate given the circumstances in this case. While we agree with the petitioners that Ugine should not benefit from Bedini's exclusion from the order, Bedini and Ugine do not have the supplier-exporter relationship that a combination rate is designed to address. The evidence on the record in the LTFV Investigation indicated that Ugine was both a producer (through its tolling arrangement with Bedini) and exporter of the subject merchandise. In the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Italy, 66 FR 40214 (August 2, 2001), the Department stated that the merchandise Bedini processed as part of a tolling operation that was owned by Ugine and substantially transformed into subject merchandise was a product of Italy. Bedini, as the toller of the merchandise, could not be considered the manufacturer or producer. See 19 C.F.R. § 351.401(h). Based on the fact that Ugine was itself a producer of the subject merchandise and there is no evidence to indicate that subject merchandise produced by Ugine is being exported by Bedini, a combination rate is not necessary in this instance.

We agree with the petitioners that the exclusion from the antidumping duty order with respect to Bedini applies only to products that are produced and exported by Bedini and that clarification may be warranted. Accordingly, the Department will clarify in its instructions to U.S. Customs and Border Protection ("CBP") that the exclusion from antidumping duty liabilities applies only to those entries of subject merchandise produced and exported by Bedini. Further, our final results instructions to CBP will state that the cash deposit rate for subject merchandise produced and exported by Ugine is 33.00 percent.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE _____ DISAGREE _____

_____

James J. Jochum
Assistant Secretary
for Import Administration

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Date