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MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
Administrative Review of Stainless Steel Wire Rod from the Republic  
of Korea for the period September 1, 2004, through August 31, 2005

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on stainless steel wire rod from the Republic of Korea for the period September 1, 2004, through August 31, 2005. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and ministerial errors, in the margin calculations. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by parties:

1. Offsetting of Negative Margins
2. Model Match
3. Inland-Freight Expenses
4. Affiliated-Party Inputs
5. General and Administrative Expenses

Background

On October 11, 2006, the Department of Commerce (the Department) published Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 59739 (Preliminary Results). The review covers two manufacturers/exporters which we determined to be a single entity. See Preliminary Results, 71 FR at 59739. The period of review is September 1, 2004, through August 31, 2005. We invited interested parties to comment on the preliminary results.

## Company Abbreviations

Changwon – Changwon Specialty Steel Co., Ltd.

Dongbang – Dongbang Specialty Steel Co., Ltd.

The respondent – Changwon Specialty Steel Co., Ltd. and Dongbang Specialty Steel Co., Ltd., collectively

The petitioners – Carpenter Technology Corporation; Dunkirk Specialty Steel, LLC, a subsidiary of Universal Stainless & Alloy Products; North American Stainless

## Other Abbreviations

Antidumping Agreement – Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994)

CAFC – Court of Appeals for the Federal Circuit

CEP - constructed export price

CIT – Court of International Trade

COP – cost of production

CV – constructed value

EC – European Community (currently known as European Union)

G&A – general and administrative expenses

The Act – The Tariff Act of 1930, as amended

WTO – World Trade Organization

## Discussion of the Issues

### 1. *Offsetting of Negative Margins*

Comment 1: The respondent argues that the Department should not treat negative margins as if they were zero margins. Citing, among others, United States – Laws, Regulations, and Methodology for Calculating Dumping Margins (“Zeroing”), Report of the Appellate Body, WT/DS294/AB/R, April 18, 2006 (US – Zeroing (EC)), the respondent contends that the WTO Appellate Body has held the practice of “zeroing” negative margins in administrative reviews is inconsistent with the “fair comparison” requirement of the WTO Antidumping Agreement. Citing United States – Laws, Regulation and Methodology for Calculating Dumping Margins (“Zeroing”): Agreement under Article 21.3(b) of the DSU, WT/DS294/19, August 1, 2006, the respondent asserts that the U.S. government has committed to accept and implement the Appellate Body’s decision on zeroing in administrative reviews. For these reasons, the respondent concludes, the Department should abandon its practice of zeroing negative margins.

The petitioners argue that the Department should continue to treat negative margins as if they were zero margins. The petitioners contend that the decisions that the respondent cited were “as applied” findings in the context of the specific proceedings at issue. Because of this, the petitioners

contend, those decisions do not apply to the instant proceeding and the Department is not compelled by WTO rules to apply those decisions in this proceeding. The petitioners also assert that the Department has not yet determined how to implement the Appellate Body's decision on zeroing. The petitioners assert further that it is possible that the zeroing debate will ultimately be resolved through further negotiation within the WTO. Finally, the petitioners contend, the U.S. courts have consistently upheld the Department's practice of zeroing despite the WTO rulings.

Department's Position: We disagree with the respondent. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise" (emphasis added). The Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export price or CEP. As no dumping margins exist with respect to sales where normal value is equal to or less than export price or CEP, the Department does not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir.), cert. denied sub nom., and Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). See also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006).

The respondent has cited a WTO dispute-settlement report finding the denial of offsets by the United States in specific administrative determinations to be inconsistent with the Antidumping Agreement. The Department announced recently that it was modifying its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews (71 FR at 77724). In addition, the United States has not yet gone through the statutorily mandated process of determining how to implement the report with respect to the specific administrative reviews that were subject to the US – Zeroing (EC) dispute. See 19 U.S.C. 3538.

As such, the Appellate Body's report in US – Zeroing (EC) has no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Corus Staal, 395 F.3d at 1347-49, and Timken, 354 F.3d at 1342. Accordingly, the Department has continued in this case to deny offsets to dumping based on export transactions that exceed normal value.

## 2. *Model Match*

Comment 2: The respondent argues that the Department used the incorrect variable to designate the grade of steel when attempting to search for the most similar model. According to the respondent, because of this error, the Department used the numerical-grade codes rather than the concordance of the grades which the Department stated it would use in its preliminary results analysis

memorandum dated October 2, 2006. The respondent provides computer-programming language which it suggests will correct the error.

The respondent also contends that, based on its analysis, the Department will find that a number of U.S. sales of grade 52 merchandise will not match to any of the three most similar grades identified in the concordance because the home-market sales of the three most similar grades are not contemporaneous with the U.S. sales or have a difference-in-merchandise adjustment of greater than 20 percent. The respondent argues that the dumping margins for these sales should be based on constructed value. If the Department decides to look for additional home-market grades beyond the three grades most similar to grade 52 (*i.e.*, grades 2, 1, or 5), the respondent suggests the use of additional grades (*i.e.*, 3, 4, and 27) which it asserts are the three grades next most similar to grade 52.

The petitioners agree with the respondent but suggest slightly different programming language from that which the respondent suggested. The petitioners also argue that the Department should not expand the model match beyond the three most similar grades because the Department's standard practice in this proceeding has been to only look for matches among the three most similar grades. The petitioners contend that the respondent's suggestion of the three additional grades appears to be a self-serving comment by the respondent because its argument was only made with regard to grade 52 and no other grades.

Department's Position: We agree with the respondent and petitioners that we made an inadvertent ministerial error in our computer-programming language by using the wrong variable in our model match. We have corrected this error for these final results of review and recalculated the respondent's margin accordingly. We used the programming language suggested by the respondent because the only difference in the language between that which the respondent and the petitioners suggested was to change the "%LET CMCHAR" statement in the macro program. The macro program has no "%LET CMCHAR" statement; the only "%LET CMCHAR" statement in our calculations appears in section 1-E of the margin program. By correcting the "%LET CMCHAR" statement in the margin program (which all parties and we agree should be changed), we are able to implement the model match to use the correct variable and to match grades as we intended. See the Memorandum from K. Gziryman and M. Burke to the File Regarding the Calculations for the Preliminary Results dated October 2, 2006, at Attachment 2. As we explained in that memorandum, we intended to incorporate in our model matching the ranking of the most similar grades sold in the home market for every grade sold in the U.S. market. See Appendix SB-6 of the respondent's February 27, 2006, submission.

In making product comparisons, we selected identical and the most similar foreign like products based on the physical characteristics reported by the respondent in the following order of importance: grade, diameter, further processing, and coating. See Preliminary Results, 71 FR at 59741. With respect to matching by grade, we instructed the respondent in our questionnaire to "create a table indicating and ranking the three most similar home market grades for each and every grade sold in the U.S. market." See the October 11, 2005, questionnaire at Appendix V. Where we were unable to find a home-market sale with the same grade as the U.S. sale, we attempted to find matches among the three most similar grades as identified by the respondent. Where we were unable to find a home-

market sale with one of the three most similar grades, we based normal value on CV. See the Memorandum from K. Gziryan and M. Burke to the File Regarding the Calculations for the Preliminary Results dated October 2, 2006, at Attachment 2. No party has suggested that we change this methodology. In its case brief, the respondent proposed three additional grades “{i}n the event that the Department concludes that the U.S. sales should instead be matched to home-market sales of other grades of merchandise, and not to constructed value.” See the respondent’s case brief dated November 13, 2006, at footnote 7 on pages 5-6. The respondent argued in its case brief, however, that “the dumping margins for these sales should be calculated based on the constructed value of the merchandise.” *Id.* Thus, the respondent identified additional similar grades in case we determined to change our methodology. In this case, however, the respondent and the petitioners have argued that the methodology we used in the Preliminary Results is the methodology we should use for the final results of review. Furthermore, we are aware of no evidence or circumstances that have come to light during the course of this review that would warrant a change in our methodology. Therefore, we have not changed our methodology except to correct the ministerial error identified above.

### 3. *Inland-Freight Expenses*

Comment 3: The petitioners argue that the Department should not accept the respondent’s home-market inland-freight expenses as reported because they are based on charges paid to an affiliated transport company. The petitioners contend that these charges are not at arm’s length because they are higher than the amounts paid to an unaffiliated supplier. The petitioners also contend that the charges for home-market sales are higher than the reported freight amounts for shipments from the factories to the port of exportation for U.S. sales. The petitioners suggest that the Department limit the reported inland freight to the lowest reported per-unit inland-freight amount.

The respondent contends that the prices it paid to the affiliated company for transport services were equal to the amounts the affiliated company was charged by unaffiliated subcontractors it hired for transport services. Because of this, the respondent argues, the prices it paid to the affiliated company were necessarily at arm’s length. Furthermore, the respondent claims, although the prices it paid to the affiliated company were slightly higher than the amounts it paid to an unaffiliated company, the petitioners’ assertion that this is evidence that the prices paid to the affiliate were not at arm’s length is based on the incorrect assumption that all unaffiliated suppliers must charge the same amounts for the same services. The respondent contends that, had the affiliated company charged the respondent less for the transport services it provided, it would have lost money on each delivery that it subcontracted to an unaffiliated supplier. Finally, the respondent argues that the petitioners’ comparison of home-market inland freight and freight to the port of exportation for U.S. sales is flawed because the factories are close to the port of exportation whereas it ships to home-market customers throughout Korea. Accordingly, the respondent concludes, because the distances of shipments to home-market customers is greater than the distance of shipments to the port of exportation, it is logical that the freight charges would also be higher.

Department’s Position: We have not recalculated the respondent’s reported home-market

inland freight. Section 773(f)(2) of the Act provides that a price between affiliated persons may be disregarded if it “does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.” In this case, the sale in question is the sale of a service (*i.e.*, freight).

The information on the record indicates that the freight amounts the respondent was charged by the affiliated transportation company were the same as that which the affiliated transportation company was charged by its unaffiliated subcontractors. See Dongbang’s December 15, 2005, submission at page 25 and Changwon’s March 20, 2006, submission at page 30. Moreover, there is no evidence on the record to suggest that the prices charged by the unaffiliated subcontractors was aberrant or unrepresentative of “the amount usually reflected in sales of merchandise under consideration in the market under consideration.” Therefore, because the prices charged by the affiliated transport company and the prices charged by its unaffiliated subcontractors for freight were the same and because the prices charged by the unaffiliated subcontractors “reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration,” we conclude that the prices charged by the affiliated transport company were at arm’s length.

We find that the fact that the respondent paid lower prices to a second unaffiliated transport company does not demonstrate that the affiliated transportation company’s freight charges were not at arm’s length given the facts on the record in this review. Where there are multiple unaffiliated-party prices, the affiliated-party price does not need to be the same or lower than all of the unaffiliated-party prices for us to consider the affiliated-party price to be at arm’s length because different unaffiliated parties may charge different prices for the same service. Unless there is some evidence or reason to suggest that the prices charged by one of the unaffiliated parties is somehow suspect, an affiliated-party price that matches one of the unaffiliated-party prices is enough to demonstrate that the affiliated-party price is at arm’s length. In this case, the prices charged by the affiliated party were the same as the prices charged by one of the unaffiliated parties. Accordingly, given that there is no evidence on the record suggesting that the prices charged by the unaffiliated subcontractors were somehow aberrant or unrepresentative of market prices, we conclude that the prices charged by the affiliated party were at arm’s length.

We also find that the comparison to inland-freight charges to the port for U.S. sales is unavailing. The respondent’s manufacturing facilities are relatively close to the port of exit whereas shipments to home-market customers can be over considerably longer distances. See the respondent’s case brief dated November 20, 2006, at footnote 5 on page 3, which cites to record evidence in detail to demonstrate this point. Thus, we do not find it surprising or unusual that the freight expenses the respondent reported for home-market sales are generally higher than the expenses the respondent reported for U.S. sales for freight from the factory to the port of exit.

For the reasons discussed above, we have used the home-market inland-freight amounts the respondent reported.

#### 4. *Affiliated-Party Inputs*

Comment 4: The petitioners argue that the Department should increase the respondent’s

reported costs to reflect the Department's major-input rule reflecting section 773(f)(2) of the Act. The petitioners assert that the reported transfer price for a certain input is lower than the market price for the input. The petitioners contend that the market price for the input is the price paid by the respondent to another affiliated party. Therefore, the petitioners conclude, the Department should use the price paid by the respondent to the second affiliate to value all of that input.

The respondent contends that sections 773(f)(2) and (3) of the Act define the market price as being the price between persons who are not affiliated. Because both prices in question were prices it paid to affiliates, the respondent asserts that these are both transfer prices and are not market prices. The respondent contends that, while these statutory provisions permit the Department to use the price between unaffiliated parties or the supplier's actual cost in lieu of the transfer price, neither provision permits the Department to use the transfer price for purchases from one affiliate in lieu of the transfer price for purchases from another affiliate.

Department's Position: We have not adjusted the respondent's costs to value the input in question at the higher of the prices the respondent paid to the two affiliates. In Changwon's December 16, 2005, section D response at page 7, the respondent reported this input as a major input. Pursuant to sections 773(f)(2) and (3) of the Act, we valued this input at the transfer prices because the transfer prices were greater than either the market price (the price paid to unaffiliated suppliers) or the affiliates' COP. See Changwon's June 20, 2006, supplemental response at exhibit SD-2. Because the respondent reported its costs by valuing this input on the basis of the transfer prices it paid to its affiliates, we did not have to make any adjustments to the respondent's reported costs consistent with sections 773(f)(2) and (3) of the Act.

The petitioners argue that we should value the input purchased from one affiliate at the transfer price the respondent paid to a different affiliate. Section 773(f)(2) of the Act provides that a price between affiliated persons may be disregarded if it "does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration." In other words, the affiliated-party price may be disregarded if it is not reflective of the market price. Further, section 773(f)(2) of the Act indicates that the market price is "what the amount would have been if the transaction had occurred between persons who are not affiliated." Thus, we apply section 773(f)(2) of the Act by comparing prices between affiliated persons to prices between unaffiliated persons. There is nothing in the language of section 773(f)(2) of the Act to suggest that we compare the price charged by one affiliated person and the price charged by another affiliated person in determining market value. Accordingly, we valued the input at the transfer prices the respondent reported because they fairly reflect the amount usually reflected in sales of the inputs in Korea.

## 5. *General and Administrative Expenses*

Comment 5: The petitioners assert that the respondent did not include the loss on inventory obsolescence in its reported G&A expenses. Citing Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Taiwan, 67 FR 31255, 31258 (May 9, 2002), the petitioners argue that such

losses should be included in the respondent's G&A expenses and that the Department should revise them accordingly.

The respondent asserts that the losses in question do not relate to the production or sale of subject merchandise because they relate to the loss during storage on inventories of spare parts and indirect materials and other supplies but not raw materials or production inventories. The respondent contends that it is appropriate not to include that the losses in question in its reported G&A expenses.

Department's Position: We have recalculated the respondent's G&A expenses to include the loss on inventory obsolescence. The Department's practice is that "G&A expenses, including miscellaneous items of income and expense, are not considered to be directly related to the acquisition or production of merchandise. In fact, in most cases, G&A expenses are so indirectly related to a particular production process that the most reasonable allocation basis is the company's total COM." See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005), and the accompanying Issues and Decision Memorandum at Comment 2. Furthermore, "G&A expenses (i.e., the numerator of the G&A expense ratio), by definition, are period costs that relate to the company as a whole. Accordingly, the G&A category includes a diverse range of items, among which we include items associated with miscellaneous income and expenses." Id. Finally, "{w}here the income (or expense) relates to the general production operations of the company, the Department includes this item in the calculation of the G&A expense." Id.

In this case, the loss on inventory obsolescence "relates to the loss during storage on inventories of spare parts, indirect materials and other supplies." See Changwon's April 3, 2006, submission at page 38. The respondent claimed that it excluded this loss because it relates to Changwon's "storage activities" rather than its production activities. Although the respondent characterizes the loss as relating to "storage activities," the respondent originally purchased the spare parts, etc., for use in production activities (e.g., for repairing and maintaining the manufacturing machinery). Furthermore, the respondent would not have purchased these spare parts, indirect materials, etc., were it not for the fact it was manufacturing products. Thus, even though the respondent ultimately did not have to use these parts and materials, it nevertheless actually incurred the expenses associated with purchasing them as a result of the general operations of the company. Therefore, it is appropriate to include this item in the calculation of the respondent's G&A expenses because they relate to the general operations of the respondent.



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 the reviews and the final dumping margins for all of the reviewed firms in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date