

**Final Results of Redetermination Pursuant to Second Court Remand
Certain Hot-Rolled Carbon Steel Flat Products from India
U.S. Steel Corp. et al. v. United States
Court No. 08-00216; Slip Op. 12-48 (CIT 2012)**

SUMMARY

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the second remand order of the U.S. Court of International Trade (“Court”) issued on April 11, 2012, in *U.S. Steel Corp. et al. v. United States*, Court No. 08-00216, Slip Op. 12-48 (Ct. Int’l Trade Apr. 11, 2012) (“*Remand Order*”). The Court issued its opinion and remand order following Plaintiffs’ U.S. Steel Corp. (“U.S. Steel”) and Nucor Corp. (“Nucor”) (together, “Petitioners”) challenge to the Department’s first remand redetermination on the final results of the 2005-2006 administrative review of the antidumping duty order on Certain Hot-Rolled Carbon Steel Flat Products from India. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 31,961 (June 5, 2008) (“*Final Results*”), and accompanying Issues and Decision Memorandum (“*Decision Memorandum*”); *see also* Final Results of Redetermination Pursuant to Court Remand, Court No. 08-00216, CMECF No. 96 (Oct. 3, 2011) (“*First Remand Results*”). The Court remanded the proceeding to the Department for a second time (1) to correct a ministerial error in computer programming and (2) to adjust normal value by adding exempted duties to Essar’s cost of production or to explain why the Department must depart from its recently-affirmed practice of allowing for such adjustments to the cost of production. *Remand Order* at 11.

In accordance with the Court’s remand order and in reconsideration of the record evidence, the Department has determined that Essar adequately demonstrated through

documentary evidence that any contingent liability on the duty-free importation of raw materials was removed by the Government of India (“GOI”) upon export. Therefore, we are continuing to grant Essar its duty-drawback adjustment. In accordance with this remand, the Department is correcting a computer programming error and revising Essar’s margin calculation to deny duty drawback for a specific invoice. Moreover, in accordance with its established practice, the Department is adjusting normal value by adding exempted duties to Essar’s cost of production.

REMAND PROCEEDING

The Court remanded this matter to the Department on April 11, 2012. *Remand Order* at 16. The Court instructed the Department to file its remand results by May 25, 2012. *Id.*

COMMENTS RECEIVED BY PARTIES

The Department received no comments from the interested parties.

Issue 1: Ministerial Error Correction

In the *First Remand Results*, the Department allowed Essar’s duty drawback adjustment to U.S. price for certain invoices supported by export documentation linking the particular invoices to duty drawback under Essar’s licenses. *First Remand Results* at 5. However, the Department disallowed the duty drawback adjustment to one particular invoice because Essar failed to provide supporting documentation to warrant a drawback. *Id.* at 6. The Court subsequently upheld both of these determinations. *Remand Order* at 5.

After it submitted the *First Remand Results* to the Court, the Department recognized that it had erred in the programming language used to disallow the duty drawback adjustment for one invoice and unintentionally applied it to all invoices, stating that “Commerce inadvertently left off certain punctuation marks in the programming language which denied Essar duty drawback treatment for all invoices.” Defendant’s Response to Comments Upon the Remand

Determination, Court No. 08-00216, CMECF No. 119 at 12-13 (Jan. 18, 2012). Because this error disallowed the duty drawback adjustment for all sales, as opposed to the lone invoice without supporting documentation for duty drawback, the Department sought a remand on this ministerial error. *Id.* at 13. Thus, for these remand results, we modified the programming language to disallow the duty drawback adjustment only to the invoice at issue.

Issue 2: Whether to adjust Essar’s Cost of Manufacture To Account For Duty Drawback Adjustments

In the *First Remand Results*, the Department maintained that Nucor and U.S. Steel failed to exhaust their claim for an adjustment to Essar’s normal value (*i.e.*, in this case, Essar’s cost of manufacture) to account for duty drawback adjustments during the administrative proceeding, that they failed to raise the issue in their complaints, and that the Court did not address the issue in its first opinion in the case, *U.S. Steel Corp. v. United States*, No. 08-00216, 2011 WL 2421154 (Ct. Int’l Trade June 14, 2011). *First Remand Results* at 7-8. The Court rejected this position and directed the Department to grant the adjustment to Essar’s normal value or to explain why it cannot make such an adjustment. *Remand Order* at 11.

The Department finds that it is the agency’s practice to make an adjustment to the cost of manufacture to account for duty drawback when a duty drawback adjustment is made to U.S. price. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Administrative and Changed Circumstances Review*, 76 FR 52,937 (Aug. 24, 2011), and accompanying Issues and Decision Memorandum at Comment 8 (“When a respondent claims a duty-drawback adjustment to U.S. price for exempted duties as opposed to a duty-drawback adjustment to U.S. price for rebated duties, it is the Department's practice to also add that duty cost to the cost of production and constructed value as well as any duties which were actually paid.”); *Polyethylene Retail Carrier Bags from Thailand: Final Results of*

Antidumping Duty Administrative Review, 76 FR 12,700 (March 8, 2011), and accompanying Issues and Decision Memorandum at Comment 5 (same); *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 75 FR 64,696 (Oct. 20, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (same). As previously explained, the Department properly granted Essar's claim for a duty drawback adjustment as to certain invoices and, accordingly, adjusted U.S. price. See *Final Remand Results* at 5-6; *accord Remand Order* at 5. Thus, for these remand results and in accordance with the Department's practice, we adjusted Essar's cost of manufacture to account for duty drawback adjustments to U.S. price. In doing so, we allocated the total exempted duties over the total extended direct material costs reported in Essar's cost database (ESTLCOP02) and applied this exempted duty rate to the direct material costs of each control number reported in Essar's cost database. See Memorandum from Christopher Hargett, Senior International Trade Compliance Analyst to the File, entitled "Remand of the 2005-2006 Antidumping Duty Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from India: Calculation Memorandum for Essar Steel Limited for Second Remand," dated concurrent with this redetermination.

FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's *Remand Order*, we have reviewed the record evidence and corrected the ministerial error with respect to Essar's duty drawback adjustment. We also allocated the total reported exempted duty drawback duties over the total extended direct material costs reported in Essar's cost database, consistent with the Department's regulatory presumption and past practice.

With these changes, we have recalculated Essar's dumping margin. As a result of these final remand results, the dumping margin for Essar for this period of review is 9.01 percent.



Paul Piquado
Assistant Secretary
for Import Administration

22 May 2012
Date