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The Honorable James J. Jochum
Assistant Secretary for Import Administration
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
Pennsylvania Avenue and 14th Street, NW
Washington, DC 20230

Attn: Becky Erkul, Office of Policy
Import Administration

Re: **Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties: Rebuttal Comments in Response to Request for Comments**

Dear Assistant Secretary Jochum:

These comments are filed on behalf of Carpenter Technology Corporation; Crucible Specialty Metals Division, Crucible Materials Corp.; Electralloy Corp.; Slater Steels Corp., Fort Wayne Specialty Alloys Division. Carpenter, Crucible, Electralloy and Slater are U.S. producers engaged in the production of stainless steel bar ("SSB") and Carpenter is engaged in the production of stainless steel wire rod ("SSWR"), products that are currently subject to Section 201 duties and also subject to antidumping duties. These comments are submitted in rebuttal to the comments received by the U.S. Department of Commerce's (the "Department") in response to the request for public comments regarding the treatment of Section 201 duties and

countervailing duties in antidumping proceedings pursuant to Section 772(c)(2)(A) of the Tariff Act of 1930. 19 U.S.C. § 1677a(c)(2)(A). Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties, 68 Fed. Reg. 53,104 (Sept. 9, 2003).

For the foregoing reasons and for the reasons identified in the comments filed on October 9, 2003, the stainless steel bar and wire rod domestic industry respectfully requests that in its calculation of dumping margins for U.S. sales in investigations and administrative reviews, the Department adjust U.S. price by deducting the amount of any section 201 duties imposed in accordance with 19 U.S.C. § 1677a(c)(2)(A).

I. THE STATUTE REQUIRES THE DEDUCTION OF IMPORT DUTIES; 201 DUTIES ARE IMPORT DUTIES AND THEREFORE THEY SHOULD BE DEDUCTED FROM U.S. PRICE

In objecting to the deduction of 201 duties from antidumping cases, the opposition parties have claimed among other things that the deduction is either not allowed or not required by statute. See, e.g., Submission by Akin Gump Strauss & Feld Oct. 9, 2003 Submission on behalf of Hyundai HYSCO ("Akin Gump Submission") at 2.[1] Further, the opposition parties have claimed the Department should continue its "longstanding policy" by not deducting 201 duties. See, e.g., Akin Gump Submission at 2. As shown below, these arguments are without merit.

A. The Statute Requires the Deduction of Import Duties

Claims that a deduction of 201 duties is not allowed by the statute are wrong. The statute explicitly provides that import duties should be deducted. The statute states that U.S. price is to be "reduced by . . . the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties. . . . " 19 U.S.C.

[1] The many comments filed in opposition to the deduction of 201 duties are generally similar and thus, for ease of reference, we have referred to one submission where the relevant argument has been raised.

§ 1677a(c)(2) (emphasis added). As many parties have noted, the statute does not define import duties. Some parties have then jumped to an illogical conclusion that 201 duties are not import duties. Yet, contrary to these assertions, in the absence of an express definition, such a narrow construction violates the plain meaning of the statute, of the statutory objective, and the Department's past practice in similar cases.

First, in the absence of a statutory definition of "import duties," the statute should not be narrowly construed. The dictionary definition of "import" is "to bring in from a foreign country." Webster's New Collegiate Dictionary (2001). Thus, any duty that is associated with bringing in goods from a foreign country should be covered by this provision and this would of course include 201 duties.

Furthermore, this construction is completely consistent with the statutory scheme for calculating dumping margins. Indeed, deduction of import duties is essential to ensure a fair comparison between U.S. price and home market price (or normal value), a fact that the opposition parties have scrupulously avoided discussing. Through various adjustments to prices, the "overarching purpose" of the dumping law is to bring U.S. prices into parity with home market prices.[2] See Micron Tech. Inc., v. United States, 243 F.3d 1301, 1313 (Fed. Cir. 2001) ("the overarching purpose is to permit a "fair, 'apples-to-apples' comparison between foreign market value and United States price.") (citing Torrington Co. v. United States, 68 F.3d 1347, 1352)); see also S. Rep. 249, 96th Cong., 1st Sess. at 94 (1979). Thus, to the extent that expenses such as ocean freight or other charges such as import duties are incurred with respect to imported

[2] Notably, duties are not imposed in a section 201 case for the same objective of achieving parity between home market and U.S. prices. Section 201 duties are imposed to allow the industry time to adjust to import competition. This distinction between the two statutes further supports a finding that the two remedies are separate and distinct.

goods, the statute explicitly provides that these expenses should be deducted from U.S. price. Through these deductions, the statute is seeking to arrive at a U.S. price that represents the price at the factory door. Similar deductions are then required on the normal value side that are incurred to ship the goods "to the place of delivery to the purchaser." 19 U.S.C. § 1677b(a)(6). Like the adjustments to U.S. price, these adjustments are made to arrive at a normal value that represents the price at the factory door. Since import duties, including section 201 duties, are not incurred by foreign producers in their home markets, to bring the U.S. price into parity with home market price, this deduction must be made.

B. The Department's Longstanding Policy Is To Account for Import Duties When Calculating the Dumping Margins

The past practice by the Department also supports the view that import duties, such as 201 duties, should be deducted.[3] First, Commerce has decided not to adjust for "import duties" in the very limited situation involving antidumping and countervailing duties. The reasons for this restriction have been aptly laid out in decisions by the courts. See AK Steel. Corp. v. U.S., 988 F. Supp. 594, 607 (Ct. Int'l Trade 1997). For example, as the Court has explained, these special duties, are deposited but are not final when the goods enter the U.S. customs territory. 988 F. Supp. at 608. The nature of these special duties contrasts with 201 duties which are known and certain at the time of entry. See Collier Shannon Oct. 9 Submission at 9.

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[3] Many of those in opposition to the deduction of duties state that the Department has a longstanding practice of not deducting 201 duties. Such assertions are misleading. The issue of whether to deduct 201 duties apparently never arose before the Department initially addressed it in the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago case. While the Department issued an initial memorandum on this topic, ultimately, the Department did not make a decision on this issue, deciding only that the adjustment was insignificant. Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 Fed. Reg. 55,788 (Aug. 30, 2002) (Decision Memorandum dated Aug. 23, 2002 at Comment 2).

As noted in our October 9, 2003 submission, however, in all other analogous situations, the Department has taken an expansive reading of this statutory provision, consistent with the objectives of the statute. See Collier Shannon Oct. 9 Submission at 4 (discussing Softwood Lumber from Canada; Fuel Ethanol from Brazil). Parties have argued that these cases are distinguishable from the case at hand because those cases did not involve 201 duties.[4] Yet, this feature of these past decisions is precisely the point and further buttresses our argument. In interpreting this provision, the Department has consistently taken an expansive view of this requirement that all charges, such as import duties, are to be deducted from U.S. price to ensure that U.S. prices are brought into parity with normal value. In Softwood Lumber and Fuel Ethanol, the deductions were made to bring the U.S. price back to the factory-door level so that the price would be comparable to home market price. Since 201 duties are not incurred on home market sales, if no deduction is made to U.S. price, there is no apples-to-apples comparison.

II. DEDUCTION OF SECTION 201 DUTIES WOULD NOT DOUBLE COUNT BOTH SECTION 201 AND ANTIDUMPING DUTIES

Opposition parties have claimed that 201 duties should not be deducted because it would result in double counting. See, e.g., Akin Gump Submission at 8;. The theory of double-counting reveals a misunderstanding of both the 201 remedy and the dumping laws and ignores the Commission's findings during the section 201 proceeding on this precise issue.

First, as a policy matter, deduction of 201 duties does not result in a double-counting of the remedies because they are two separate remedies. As many parties have noted, the statute

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[4] To argue that these other cases are not on point because they do not involve 201 duties misses the point. Prior to the Department's decision in the Trinidad and Tobago case, the Department had never addressed the deduction of 201 duties and so the precise issue had not been addressed. As in any case of first impression, the goal is then to evaluate how the Department has interpreted the overall statutory provision of 19 U.S.C. § 1677a(c)(2) in similar instances.

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and the Statement of Administrative Action itself recognize that the 201 remedy and the dumping laws are two separate remedies with two different purposes. The remedy issued in a 201 case is designed to allow U.S. producers to adjust to import competition. The remedy in a dumping case is designed to remedy price discrimination. The Statement of Administrative Action further notes:

> In determining whether to provide relief and, if so, in what amount, the President will continue the practice of taking into account relief provided under other provisions of law, such as the antidumping and countervailing duty laws, which may alter the amount of relief necessary under section 203. The ITC similarly will continue to take such other relief into account in determining what action to recommend to the President under section 202, and when such other relief has been identified, will describe in its report to the President how it has taken such other relief into account.

Statement of Administrative Action, H.R. Doc. No. 103-316 (I) (19994) at 964.

In its decision, the Commission also explicitly noted:

> As a basic matter, Title VII and section 201 remedy different problems facing an industry. Title VII remedies the injury caused by unfairly-traded imports by applying a tariff to those imports from a specific country (or company) to either nullify a subsidy bestowed on those products or to raise the price of the imports if they are sold at less than fair value. Section 201 remedies the injury caused by increased imports that are presumed to be fairly-traded. It does so on a global scale to give the domestic industry time to adjust to import competition by either becoming more efficient or by shifting productive resources to other pursuits.

Steel Volume I; Resolutions and View of Commissioners, USITC Pub. 3479 at 437 n.44, Inv. No. TA-201-73 (Dec. 2001).

As these two passages make clear, the dumping remedy and the section 201 remedy are two different types of relief. Providing both types of relief does not double-count the same relief, the intent is to provide two remedies. Indeed, the Commission has taken into account the

fact that dumping orders were in place and granted other separate relief. Eviscerating one form of the relief would certainly not be double-counting but would be undermining the remedies available to the industry that has properly sought and obtained both forms of relief.

Second, as a practical matter, a deduction of 201 duties does not double-count any duties. As noted in our October 9 submission, foreign producers and their affiliated importers can choose to absorb the section 201 duties and effectively lower their prices to the first unaffiliated U.S. customer. In that instance, the section 201 duties would not be counted at all if they were not deducted from EP/CEP. Under such circumstances, the price discrimination between the two markets would be undervalued and there would be no increase in price, no penalty on the importer/foreign producer, and, most important, no beneficial effect to the domestic industry as intended by the section 201 relief. See Collier Shannon Oct. 9 Submission at 10-11.

III. A CLAIM THAT DEDUCTION OF SECTION 201 DUTIES "CREATES" DUMPING MARGINS REFLECTS A MISUNDERSTANDING OF THE PURPOSE AND APPLICATION OF THE DUMPING LAWS

Similar to the claim that a deduction for 201 duties constitutes double-counting, many parties in opposition to the deduction claim that deduction of 201 duties would "create" dumping margins. See Kaye Scholer Oct. 9, 2003 Submission at 5. This claim reveals the same fundamental misunderstanding of the dumping laws. As noted earlier, the theory behind the dumping law is to bring U.S. prices into parity with home market prices to ensure an apples-to-apples comparison. For this reason, the law requires a deduction for all expenses associated with bringing the merchandise into the United States. The deduction is required so that U.S. price properly reflects the price at the factory door.

Notably, the same flawed theoretical argument that margins are "created" (or, on the other hand, minimized) through a deduction could be said of any adjustment made both to U.S.

price or normal value. Any adjustment that reduces U.S. price or increases normal value can "create" a dumping margin; any adjustment that increases U.S. price or reduces normal value can "eliminate" dumping margins. Yet, the series of adjustments to U.S. price and normal value constitute the whole process of calculating the dumping margin. For example, suppose that the U.S. price before making a deduction for ocean freight was $1.00/pound while the comparable home market price was an FOB price (that did not include delivery charges) at $1.00/pound. If the ocean freight is $0.10/pound, making the deduction for ocean freight (as required by the statute) "creates" a dumping margin, because U.S. price becomes $0.90/pound as compared to the home market price of $1.00/pound.

Just as making the appropriate adjustments will properly allow the Department to determine whether dumping exists, as shown in the example above, adjustments to normal value can "eliminate" margins. For example, suppose the U.S. price of $1.00/pound was an FOB price, and thus did not include any delivery charges. If the home market delivered price was $1.05/pound, but included the cost of $0.10/pound for delivery, making the adjustment for the delivery cost would "eliminate" the dumping margin. Yet, certainly the opposition parties would not claim that the delivery charges should not be deducted because this deduction "eliminates" the dumping margin.

In sum, it is fallacious to argue that making proper adjustments to U.S. price, including a deduction for 201 duties, would "create" dumping margins. Again, the goal of these deductions is to ensure parity between U.S. price and normal value; making adjustments to U.S. price and normal value is part of this process. Without making the deductions, the goal of the statute is thwarted.

IV. AS A POLICY MATTER, DEDUCTION OF 201 DUTIES IS IMPORTANT TO ENSURE THAT BOTH STATUTES ARE FULLY ENFORCED AND THAT THE REMEDIES ARE FULLY ENFORCED

Many opposition parties have objected to the deduction of 201 duties from the dumping calculations claiming that such a deduction would cause harm to consumers and certain U.S. industries. See, e.g., MiTek Industries, Inc. Oct. 7, 2003 Submission at 2. Significantly, speculative harm to U.S consumer or other industries is not a component of the dumping law. As noted earlier, the purpose of the dumping law is remedial and is intended to bring prices into equilibrium and parity with home market prices.

More importantly, however, while these parties allege that injury would occur to these other industries, there can be no speculation that injury has occurred to the U.S. industries that have been the subject of both the antidumping duty investigations and the 201 investigations. The Commission has affirmatively and separately determined that the U.S. industries are being materially injured by unfairly traded imports and the Commission affirmatively and separately determined that the U.S. industries were being seriously injured by the flood of imports, presumed to be fairly traded. Furthermore, as noted earlier, the Commission took into account the dumping remedy that was already in place and nevertheless decided that 201 relief was necessary. Thus, both remedies are in place and both must be enforced in accordance with the relative statutory provisions.

V. CONCLUSION

In the end, there are important differences in the purpose and operation of section 201 duties and antidumping duties that the Department must not overlook. Adjustments are required to be made in dumping cases to ensure an apples-to-apples comparison so that price discrimination can be properly measured. Ignoring a critical element of a respondent's pricing

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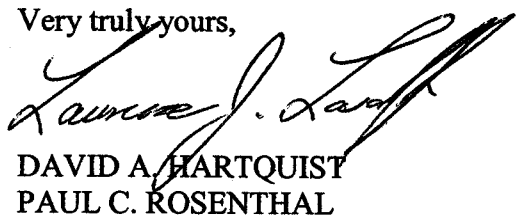
practices, which includes the payment of 201 duties, would distort the calculation and disrupt the overarching purpose of the dumping law. For these reasons, and consistent with the plain language of the statute, Commerce should deduct section 201 duties from U.S. price in antidumping investigations and reviews. Any other approach would be without support in law and contrary to the policies that underlie both the antidumping statutes and section 201.

We appreciate the opportunity to submit these comments. Please contact the undersigned if you have any questions concerning this submission.

Very truly yours,



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