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Section 201
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The Honorable James J. Jochum
Assistant Secretary for Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th and Constitution Ave., N.W.
Washington, DC 20230

Attention: Section 201 Duties

**Re: Section 201 Duties: Rebuttal Comments of Long Products Producers
Coalition, Nucor Corporation, and the Rebar Trade Action Coalition**

Dear Assistant Secretary Jochum:

On behalf of the Long Products Producers Coalition,¹ Nucor Corporation, and the Rebar Trade Action Coalition,² we submit the following rebuttal comments in response to the comments submitted by other parties regarding the Department's notice on the treatment of section 201 duties and countervailing duties.³ Section 201 duties are U.S. import duties, and the

¹ The Long Products Producers Coalition is an ad hoc trade association, the members of which are domestic producers of carbon and alloy steel products including hot-rolled bars and light shapes, steel concrete reinforcing bars, and cold-finished bars.

² The Rebar Trade Action Coalition is an ad hoc trade association, the members of which are domestic producers of steel concrete reinforcing bars.

³ Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties, 68 Fed. Reg. 53,104 (Sept. 9, 2003).

deduction of these duties does not constitute double-counting. Respondents' "double-counting" myth supposes that section 201 duties are being absorbed rather than passed on to the purchaser, which is contrary to the purpose of the relief itself. As long as the full amount of section 201 duties are passed along to the first unaffiliated purchasers, the deduction of section 201 duties does not increase the dumping margin.

I. DEDUCTING SECTION 201 DUTIES DOES NOT CONSTITUTE DOUBLE-COUNTING

Reading the comments submitted by representatives of respondents' interests, one is struck by the way in which respondents regard antidumping and section 201 duties as inconveniences that need to be gotten around, rather than actions that, as intended, would actually have an impact on prices in the U.S. market. Respondents, in arguing that the deduction of section 201 duties would constitute double counting, consistently and repeatedly provide examples in which the imposition of section 201 duties had no effect whatsoever on the price to the U.S. customer.⁴ One respondent is actually upfront about this, complaining that previous examples provided by petitioners erroneously assumed that the price to customers would be the gross unit price plus the cost of antidumping and section 201 duties, and noting that "these

⁴ See, e.g., Letter from Willkie Farr & Gallagher to U.S. Department of Commerce, Comments of Japan Iron & Steel Federation On the Appropriateness of Deducting Section 201 Duties from the Export Price in Antidumping Marging Calculations at 9 (Oct. 9, 2003); Letter from Hogan & Hartson to U.S. Department of Commerce, Antidumping Proceedings: Treatment of Sec. 201 Duties and Countervailing Duties, Comments on behalf of the Consuming Industries Trade Action Coalition (CITAC) at 6 (Oct. 9, 2003); Letter from Baker & Hostetler to U.S. Department of Commerce Comments by on Behalf of Various Parties at 15-18; Letter from O'Melveny & Myers to U.S. Department of Commerce at 18-19 (Oct. 9, 2003). O'Melveny has a slightly different twist, in which it posits a U.S. price decline from \$115 (when there was no dumping) down to \$100, which it posits triggering a safeguards action and a 15 percent section 201 duty. Safeguard actions are of course based not on price declines (unfairly traded imports); they are based on unforeseen surges of fairly traded imports. Thus, the decline to \$100 is actually dumping by \$15, if the home market price is \$115. The imposition of section 201 duties is intended to reduce import volumes by raising the U.S. price for a limited period of time, to allow the domestic industry to adjust to import competition.

scenarios assume that exporters can easily pass along Section 201 duties to customers in the form of higher U.S. prices when, in fact, the market usually determines U.S. prices.”⁵

Petitioner interests do not assume that section 201 duties can be passed along “easily.” The whole purpose of section 201 duties is that the price increase necessitated by the duties makes it harder for exporters to sell. U.S. customers are supposed to turn to U.S. producers when the price from exporters increases. Foreign producers may not like the purpose of safeguards (section 201) duties when countries other than their own apply them, but that is the purpose. When the “market price” has been driven down by dumped imports or by import surges, the purpose of both the antidumping and section 201 duties is to nudge the market price back up. A foreign producer that cannot meet the “market price” in the United States without dumping is a part of the problem.

Representatives of respondents’ interests do not seem to recognize this. They assume that section 201 duties should *not* be reflected in the price to the customer. A clear example of this viewpoint can be seen in the table provided by Willkie Farr & Gallagher on behalf of the Japan Iron & Steel Federation (at 9).⁶ In their example, the “invoice price” in both markets is \$110. The home market “adjusted” price is \$100, and the U.S. “f.o.b.” price is \$100. They posit a small antidumping duty of 4.2%, in part because of \$2 of U.S. customs duties, so they accept that dumping margins should be found to the extent that the price to the customer does not reflect customs duties paid by the importer. But, they also posit a 30 percent 201 duty, which means

⁵ Letter from Akin Gump Strauss Hauer & Feld to U.S. Department of Commerce, Comments by on Behalf of Hyundai HYSCO 12 fn.17 (Oct. 9, 2003).

⁶ Letter from Willkie Farr & Gallagher to U.S. Department of Commerce, Comments of Instituto Brasileiro de Siderurgica On the Appropriateness of Deducting Section 201 Duties from the Export Price in Antidumping Marging Calculations (Oct. 9, 2003). Willkie Farr included a table with similar, but not identical numbers on page 11 of its comments on behalf of the Instituto Brasileiro de Siderurgica.

that the importer had to pay \$30 on the \$100 f.o.b. price. Thus, the importer must pay \$2 in customs duty, incurs U.S. selling expenses and distribution costs exceeding \$10, plus incurs \$30 in section 201 duties, and yet it turns around and sells the merchandise to the U.S. customer for only \$110! Willkie Farr evidently sees nothing wrong with that scenario. We wonder—as would any economist—what happened to that \$30.

What happened, of course, in that scenario, was that the importer (apparently affiliated with the foreign producer in Willkie Farr's example) absorbed the section 201 duty. Respondents would prefer that there is no consequence for that course of action, so they argue that deducting section 201 duties when they have not been reflected in the price to the customer is “double-counting.” This is nonsense.

We cannot emphasize strongly enough: **if the importer passes along the section 201 duty to the U.S. purchaser, deducting the section 201 duty from the price to the customer does not increase the dumping margin.** The margin, in other words, would be no higher than it would be had there been no section 201 duties. Deducting the amount of the duties simply assures that the importer passes the amount of section 201 duties through to the purchaser.

Respondents in effect are complaining that failing to pass along the section 201 duties should have no consequences for the dumping margin. This is tantamount to complaining that failure to pass along U.S. selling expenses should have no consequences. For example, in Willkie Farr's table discussed above, the importer incurred \$14 in U.S. distribution costs, U.S. selling expenses, and U.S. customs duties, but charged only a \$10 markup over its f.o.b. cost. Willkie Farr accepts that when the importer fails to pass along the full extent of those costs, there is a consequence of a 4.2 percent dumping duty. Likewise, when the importer fails to pass along

the full extent of section 201 duties, there is a consequence of additional dumping duties, the amount depending on the normal value.

There is, in short, no “double counting” when section 201 duties are deducted from the price (to the extent that such duties are included in the price).⁷ All of the respondents’ interests commenting on this issue either simply asserted that double-counting would take place, or provided examples that demonstrated that they believed that affiliated importers should be allowed to fully absorb section 201 duties without any consequences. The Department should rule that section 201 duties are to be deducted from the starting price in the calculation of EP and CEP.

II. SECTION 201 DUTIES ARE U.S. IMPORT DUTIES

Those parties in support of the deduction of section 201 duties showed that section 201 duties were “U.S. import duties” within the meaning of section 772(c)(2)(A) of the Act.⁸ The parties opposing the deduction were reduced to arguing that the fact that section 201 duties are classified in Chapter 99 of the HTSUS, rather than in Chapters 1 – 98, means that section 201 duties are somehow not “U.S. import duties.” There is not a shred of support for the notion that Chapter 99 duties are any different than duties imposed under Chapters 1 – 98. Indeed, the headnotes for Chapter 99 state:

⁷ Obviously, in an EP situation in which the unaffiliated purchaser is the importer and pays the duties itself, there would be no deduction of section 201 duties.

⁸ *E.g.*, Letter from Wiley, Rein & Fielding to U.S. Department of Commerce, Section 201 Duties: Comments of the Long Products Producers Coalition, Nucor Corporation, and the Rebar Trade Action Coalition at 4-5 (Oct. 9, 2003); Letter from Collier Shannon Scott to U.S. Department of Commerce, Antidumping Proceedings: Treatment of Sec. 201 Duties and Countervailing Duties: Initial Comments in Response to Request for Public Documents at 3-7 (Oct. 9, 2003); Letter from Stewart & Stewart to U.S. Department of Commerce, Antidumping Proceedings: Treatment of Sec. 201 Duties: Comments of International Steel Group Inc. and the United Steelworkers of America at 4-7 (Oct. 9, 2003); Letter from Skadden, Arps, Slate, Meagher & Flom to U.S. Department of Commerce, Antidumping Proceedings: Treatment of Sec. 201 Duties and Countervailing Duties at 2-7 (Oct. 9, 2003).

U.S. Notes

1. The provisions of this chapter relate to legislation and to executive and administrative actions pursuant to duly constituted authority, under which:

(a) One or more of the provisions in chapters 1 through 98 are temporarily amended or modified; or

(b) Additional duties or other import restrictions are imposed by, or pursuant to, collateral legislation.

2. Unless the context requires otherwise, the general notes and rules of interpretation, the section notes, and the notes in chapters 1 through 98 apply to the provisions of this chapter.

Because section 201 duties are U.S. import duties in the same way in which duties under the other 98 chapters are import duties, under section 772(c)(2)(A), the Department does not have the discretion not to deduct section 201 duties from the starting price. We respectfully urge the Department to make clear that its policy will be to deduct any applicable section 201 duties from the starting price for EP and CEP.

If you have any questions concerning this submission, please do not hesitate to contact us.

Respectfully submitted,

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