

September 12, 2002

202-508-8190

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Total Pages : 3  
Rebuttal Comments on Proposal  
Concerning Test for Determining  
whether Affiliated Party Sales  
Were Made in the Ordinary  
Course of Trade  
Public Document

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BY HAND

Honorable Faryar Shirzad  
Assistant Secretary for Import Administration  
United States Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Ave & 14th St., N.W.  
Washington, DC 20230

Re: Affiliated Party Sales

Dear Assistant Secretary Shirzad:

We are writing, on behalf of the Arcelor Group, in response to comments on the Department's recent proposal to modify its practice for determining whether sales to affiliated customers in the comparison market should be included in the calculation of normal value.

The Department has received a number of proposals from law firms that have traditionally represented petitioners in antidumping cases.<sup>1</sup> Not surprisingly, petitioners' counsel have suggested proposals that are transparently designed to increase the burdens on respondents and increase the likelihood that high dumping margins will be found when respondents are unable to meet the extreme burdens petitioners would impose. Petitioners' counsel apparently believe that the Department's procedures should ensure that respondents cannot respond, so that antidumping duties will be imposed whether or not there has been any real "dumping."

Of course, it is not surprising that petitioners' counsel seek, once more, to stack the deck so that their clients will receive relief in all cases. Such efforts cannot, however, be reconciled with the requirements of the statute — which requires the Department to "avoid imposing an unreasonable burden" on responding parties.<sup>2</sup> Any methodology adopted by the Department must reflect that statutory requirement.

Further, the proposals offered by petitioners' counsel suffer from an even more fundamental flaw: They bear absolutely no relationship to the statutory standard that the arm's length analysis is designed to implement. Under U.S. law, as well as international agreements, sales to affiliated customers may be excluded from the Department's analysis

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<sup>1</sup> See Comments submitted by Wiley, Rein & Fielding, Collier Shannon Scott, Skadden, Arps, Meagher & Flom, Stewart and Stewart, and Dewey Ballantine.

<sup>2</sup> See Tariff Act of 1930, as amended, §782(c); 19 U.S.C. § 1677m(c).

only if they are outside the “ordinary course of trade.”<sup>3</sup> Petitioners’ counsel have offered no explanation as to how the tests they propose would distinguish sales to affiliates that are in the “ordinary course of trade” from those that are not. Consequently, there is no rational nexus between the tests they propose and the statutory standards. In these circumstances, the proposals offered by petitioners’ counsel are arbitrary and impermissible and should be summarily rejected.

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Please do not hesitate to contact us if you have any questions.

Respectfully submitted,

Jeffrey Winton  
Quentin Baird  
Christopher Ryan

Counsel for Arcelor and Its Affiliates

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<sup>3</sup> The statute provides that normal value should, in the first instance, be based on the price at which the merchandise is “sold (or, in the absence of a sale, offered for sale)” in the comparison market “in the usual commercial quantities and in the ordinary course of trade.” See Tariff Act of 1930, as amended, § 773(a)(1); 19 U.S.C. § 1677b(a)(1). The “ordinary course of trade” standard is repeated in the Article 2.1 of the *Antidumping Agreement* and was referenced in the Appellate Body Report on *United States – Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R dated July 24, 2001, para. 139.