72 FR 26591, May 10, 2007

A-122-840
Third Administrative Review
POR: 10/01/04 - 9/30/05
Public Document
O1: DJF

DATE: May 3, 2007

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 Final Results of the Third Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada

Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the third administrative review of carbon and certain alloy steel wire rod from Canada. As a result of our analysis, we have made revisions to our margin calculations. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this review for which we have received comments from the parties:

Level of Trade

Comment 1: Statutory Requirements for a Level of Trade Adjustment

Comment 2: Pattern of Price Differences Analysis

Comment 3: Pattern of Price Differences Methodology

Comment 4: Post-Sale Price Adjustments

Programming

Comment 5: Level of Trade Adjustment in the Programing Language

Background

On November 6, 2006, the Department of Commerce ("the Department") published the preliminary results of the third administrative review of carbon and certain alloy steel wire rod

("wire rod") from Canada.[1] The period of review ("POR") is October 1, 2004, through September 30, 2005. We invited parties to comment on the preliminary results. The petitioners[2] submitted a case brief and the respondent, Ivaco Rolling Mills 2004 L.P. ("IRM"), and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., ("Sivaco") (collectively, both IRM and Sivaco are referred to as "Ivaco")[3] submitted a case brief and a rebuttal brief. A public hearing was not requested.

Discussion of the Issues

Comment 1: Statutory Requirements for a Level of Trade Adjustment

Petitioners' Argument: The petitioners state that the Department will make an adjustment when sales in the two markets were not made at the same level of trade ("LOT"), and that the difference has an effect on the comparability of the prices.[4] The petitioners note that there are two requirements that must be met before a LOT adjustment will be granted.[5] The petitioners contend that the Department made conclusory statements that a pattern of consistent price differences existed between sales in the home market at the different LOTs without providing any analysis. The petitioners argue that the Department should make no LOT adjustment because a pattern of consistent price differences between the LOT during the POR does not exist.

The petitioners allege that Ivaco has not met its burden of placing information on the record to demonstrate a consistent pattern of price differences between LOTs. The petitioners argue that the Department must specifically identify the quantitative and qualitative analysis of the evidence that supports the conclusion that a pattern of consistent price differences exists between the alleged LOT.

Respondent's Rebuttal: Ivaco contends that record evidence supports the Department's conclusion that a pattern of consistent price differences exists. Ivaco notes that every price of Ivaco's sales at both LOTs are on the record. Ivaco argues that the prices themselves are the only evidence that is necessary for the Department to conduct its pattern of price difference analysis.

---

[1] See Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Initiation of Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 64921 (November 6, 2006) ("Preliminary Results").

[2] The petitioners in this proceeding are Gerdau Ameristeel US, Inc., ISG Georgetown, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[3] On March 30, 2007, the Department published the final results of the changed circumstances review for the respondent in this review. The Department determined that Ivaco Rolling Mills 2004 L.P. was the successor-in-interest to Ivaco Rolling Mills L.P.; and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., was the successor-in-interest to Ivaco Inc. See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 72 FR 15102 (March 30, 2007).

[4] See Petitioners' Case Brief, at 3 (December 12, 2006) ("Petitioners' Case Brief"), citing 19 CFR 351.412(a).

[5] See id. citing 19 CFR 351.412(d).

Ivaco notes that the Department identified the basis for its analysis on page 1 of the Analysis Memorandum, and fully disclosed to the petitioners its analysis calculations at pages 42-46 of Attachment 1 to the Analysis Memorandum, and the results of its pattern of price differences analysis at page 94 of Attachment 1. Therefore, Ivaco argues that the Department has used Ivaco's home market sales database to conclude that a pattern of consistent price differences exists. Ivaco contends that the Department's analysis demonstrates a pattern of consistent price differences. Consequently, Ivaco argues that the Department should apply a LOT adjustment to Ivaco's sales made at different LOTs.

Ivaco notes that "any adjustment under section 773(a)(7)(A) of the Tariff Act 1930, as amended ("the Act") will be calculated as the percentage by which the weighted-average prices at each of the two LOTs differ in the market used to establish normal value."[6] Therefore, Ivaco argues that the law does not allow the Department to ignore the price differences, as the petitioners have requested, and refuse to apply a LOT adjustment.

The Department's Position: The conditions required to apply a LOT adjustment according to section 773(a)(7)(A) of the Act are present in this administrative review. As stated in the Preliminary Results,[7] section 773(a)(7)(A) of the Act provides that in order to grant a LOT adjustment, we must find that the export price ("EP") or constructed export price sale (as appropriate) was made at a different level than that of the normal value ("NV") sale and that this difference: (1) involved different selling activities, and (2) affected price comparability based on a pattern of consistent price differences between sales at different LOTs in the country in which normal value is determined. There is no causation requirement independent of the "effect on price comparability" requirement noted above.

As explained in the Preliminary Results,[8] we determined that Ivaco sells at two levels of trade in its home market and in the United States. These two levels of trade correspond to the two channels of distribution in these markets: direct sales by IRM and direct sales by Sivaco Ontario. We further determined that the direct sales by IRM in its home market and the U.S. market were at the same level of trade, and that the direct sales by Sivaco Ontario in its home market and the United States were at the same level of trade. We confirm these findings for the final results. Therefore, a level of trade adjustment is warranted if the conditions described above are met.

---

[6] See Ivaco's Rebuttal Brief, at 6 (December 19, 2006) ("Ivaco's Rebuttal Brief") citing the Statement of Administrative Action Accompanying the Uruguay Round Agreement Act, H.R. Doc. No. 103-316, pt.1at 830 (1994) ("SAA").

[7] See Preliminary Results, 71 FR at 64924.

[8] See Preliminary Results, 71 FR at 64925.

As the petitioners note in their case brief,[9] the Department provided a detailed analysis demonstrating that sales were made at different LOTs due to different marketing stages as specified by 19 CFR 351.412(c)(2). We further explained the different selling activities associated with the two levels of trade. For example, sales made by Sivaco have different, more complex, distribution patterns, involving substantially greater selling activities. Sivaco maintains a significant general inventory, which results in a significantly longer inventory turnover rate than that experienced by IRM. IRM does not provide these additional services. Next, Sivaco ships more often than IRM and also offers its customers just-in-time delivery services. In contrast, IRM produces and ships rod based on a quarterly rolling schedule. In addition, Sivaco provides more handling and freight services than IRM in that it offers smaller, more frequent shipments with more varied freight services. Furthermore, Sivaco offers the following services to its customers, which IRM does not: (1) bid assistance, (2) assistance with product specification and material processing review, and (3) a wider range of technical assistance, including helping customers solve usage problems and choose the best type of rod for their applications and machinery.

Therefore, based upon our analysis of the marketing process for these sales, we continue to find that sales by Sivaco are at a more advanced stage than sales by IRM and, thus, meet the first requirement for granting a LOT adjustment. In addition, as further explained in response to comment 2, the record evidence supports the conclusion that a pattern of consistent price differences exists, as specified by 19 CFR 351.412(d), thus meeting the second requirement for granting a LOT adjustment.

We disagree with the petitioners that the Department made only conclusory statements that a pattern of consistent price differences existed without providing evidence of any analysis. As we further explain in comment 2, we performed a pattern of price differences analysis for the preliminary results consistent with Department practice.[10] The data we relied on to perform our analysis was based on the actual selling price of each sale of identical products made by IRM and Sivaco as contained in Ivaco's questionnaire responses.[11] We specifically identified the analysis and the evidence that supports our conclusion that a pattern of consistent price differences exists in the Analysis Memorandum.[12] Based on our analysis of sales made at the two LOTs in the home market, we found that a pattern of consistent price differences exists between models sold at different LOTs.

Finally, Ivaco has met its burden of placing information on the record to demonstrate that a pattern of consistent price differences exists between LOTs. The Department only needs Ivaco's sales information at both LOTs to conduct the pattern of price differences analysis between the two LOTs, which Ivaco has provided.

---

[9] See Petitioners' Case Brief, at 1.

[10] See Memorandum to the File, "Preliminary Results for Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Canada," at pages 42-46 of Attachment 1 and at page 94 of Attachment 1 (October 31, 2006) ("Analysis Memorandum").

[11] See Ivaco's Supplemental Section B Home Market Sales Database (July 6, 2006).

[12] See Analysis Memorandum, at pages 42-46 of Attachment 1 and at page 94 of Attachment 1.

Comment 2: Pattern of Price Differences Analysis

Petitioners' Argument: The petitioners claim that a comparison of sales prices for identical merchandise sold by IRM and Sivaco in the comparison market (i.e., LOT 1 compared to LOT 2) demonstrates that a pattern of consistent price differences does not exist, as required by the Department's regulations. The petitioners argue that while a significant portion of the sales of identical merchandise sold by both IRM and Sivaco during the POR point to a price difference, some sales do not follow the pattern.[13]

In addition, the petitioners cite to specific instances where the price of identical products sold by Sivaco was less than IRM's price.[14] In one instance, IRM's weighted average selling price was higher than Sivaco's. The petitioners contend that of all the products sold by both IRM and Sivaco, this one product is the most representative because it is the only product where the number and quantity of sales made by Sivaco and IRM were comparable. This one example shows that Sivaco's price was lower than IRM's.[15] The petitioners argue that their analysis of the sole representative product sold during the POR reveals that Sivaco did not sell identical products at a more advanced stage because a pattern of consistent price differences does not exist and, therefore, a LOT adjustment is not warranted.

Petitioners note that for a certain control number, the net unit price charged by Sivaco is higher than the average unit price charged by IRM for the identical product. However, this single sale made by Sivaco is, in fact, priced lower than the net unit price for several of the individual sales of the same product made by IRM. In addition, petitioners note that for another control number, a single sale of insignificant volume made by Sivaco was compared to a significant number of sales sold by IRM. Petitioners argue that a comparison of this one sale of an insignificant volume by Sivaco to a significant number of sales by IRM should not form the basis for finding that there are consistent price differences. Therefore, petitioners conclude that Ivaco's home market sales during the POR do not meet the *prima facie* requirements for the Department to grant Ivaco a LOT adjustment because a pattern of consistent price differences does not exist.

Respondent's Rebuttal: Ivaco disagrees with the petitioners' position. Ivaco notes that the petitioners' own case brief acknowledges that Sivaco's selling price was higher than IRM's selling price for a majority of products and quantity sold[16] and, therefore, demonstrates that a pattern of consistent price differences exists between LOTs.

Ivaco notes that the SAA states that "{w}hile the pattern of pricing at the two LOTs under section 773(a)(7)(A) must be different, the prices at the levels need not be mutually exclusive, there may be some overlap between prices at different LOTs."[17] Ivaco argues that it is not necessary that all of Sivaco's sales be priced higher than all of IRM's comparable sales. Ivaco

---

[13] See Petitioners' Case Brief, at 5 (the data identified by the petitioners is business proprietary in nature).

[14] See id.

[15] See Petitioners' Case Brief, at 7, and Attachment 17.

[16] See Ivaco's Rebuttal Brief, at 2, citing Petitioner's Case Brief, at 6.

[17] See id., at 6, citing SAA, at 830.

argues that the law requires only that the difference in selling price be "wholly or partly due to a difference in level of trade."[18] Consequently, the Department "shall" make a LOT adjustment.[19]

Ivaco contends that if the Department were to use the petitioners' flawed interpretation of the law and focus the Department's analysis on a single product, there is a more representative product than the one selected by the petitioners. Ivaco identifies a product that both Sivaco and IRM sold in larger quantities than the alleged sole representative product used in the petitioners' analysis. Ivaco contends that the petitioners did not use this product to support their argument because the data show that Sivaco's weighted average selling price is substantially higher than that of IRM.[20]

Ivaco further contends that it is not necessary to determine which single product is most representative for purposes of determining a pattern of price differences. Ivaco states that the Department averages the prices over the total quantity of identical products sold at the two LOTs. Ivaco argues that this is because some individual comparisons may be above or below the price of identical merchandise sold in the other LOT. Therefore, Ivaco argues that all identical products sold by IRM and Sivaco have been properly included in the Department's pattern of price differences analysis.

The Department's Position: As explained in response to Comment 1, we are applying a LOT adjustment in this case because both requirements of section 773(a)(7)(A) of the Act are met. A comparison of sales prices for identical merchandise sold by IRM and Sivaco in the comparison market demonstrates that a pattern of consistent price differences exists. The petitioners cite limited instances where the price of identical products sold by Sivaco was less than IRM's prices. Further, the petitioners argue that the Department should rely on specific products that they deem to be more representative of number and quantity of sales made by Sivaco and IRM to determine if Sivaco sells identical products at a more advanced stage than IRM.

For the Preliminary Results, the Department performed its standard analysis to determine whether a pattern of price differences existed for Ivaco's submitted home market sales. Specifically, the Department compared, for each identical model sold at both levels, the average net price of sales made in the ordinary course of trade at the two LOTs.[21] If the average prices were higher at one of the LOTs for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. In making this determination, we also considered whether the average prices were higher at one of the LOTs for a preponderance of sales, based on the quantities of each model sold. Consistent with the Department's established practice, we did not determine which single product was most representative for purposes of determining a pattern of price differences analysis. Instead, all identical products sold by IRM and Sivaco were included in our pattern of price differences analysis.

---

[18] See id.

[19] See id., at 3, citing section 773(a)(7)(A) of the Act.

[20] See id., at 13, and Exhibit 4.

[21] See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2106 (January 15, 1997) ("Antifriction Bearings").

It is not necessary that all of Sivaco's sales be priced higher than all of IRM's comparable sales to determine that a pattern of consistent price differences exists. As explained in the SAA "{w}hile the pattern of pricing at the two levels of trade under section 773(a)(7)(A) must be different, the prices at the levels need not be mutually exclusive, there may be some overlap between prices at different LOTs."[22] Thus, our analysis does not have to demonstrate that 100 percent of the prices at the more advanced LOT (Sivaco's sales) are higher when compared to the prices at the less advanced LOT (IRM's sales) to determine that a pattern of consistent price differences exists. Given the fact that Sivaco's selling prices are higher than those of IRM for a preponderance of the quantities and products sold during the POR, the use of a LOT adjustment pursuant to section 773(a)(7) of the Act is warranted in this review.

Our analysis in the Preliminary Results[23] as well as the final results[24] reveals that for a preponderance of models and quantities sold at different LOTs by Sivaco and IRM, a pattern of consistent price differences existed.[25] Therefore, we made a LOT adjustment for EP sales for which we were not able to find sales of the foreign-like product in the home market at the same LOT as the U.S. sales.

Comment 3: Pattern of Price Differences Methodology

Petitioner's Argument: The petitioners argue that the methodology used by the Department to determine that a pattern of consistent price differences exists is flawed because this analysis is based on an extremely small number of sales. The petitioners contend that the quantity for each sale by Sivaco was also generally small and insignificant compared to the volume of sales made by IRM. In addition, the petitioners claim that Sivaco's sales of green rod in the home market are inconsequential, whether measured in terms of the number of sales, or in terms of quantity. Petitioners argue that if the Department were to accept Ivaco's LOT adjustment claim, the Department would rely on a *de minimis* number of sales to calculate a LOT adjustment factor.

The petitioners claim that when there were sales of identical products by Sivaco and IRM, the price differences in these comparison sales were often caused by unique circumstances, but not by the more "advanced" selling functions Ivaco claims are provided by Sivaco. The petitioners claim that any price disparity between IRM and Sivaco is a direct a result of differences in the number of sales and the quantity sold, and does not demonstrate that Sivaco's sales were at a more advanced LOT. The petitioners note that the SAA explains that a LOT adjustment cannot be based on differences in quantities.[26] Therefore, the petitioners argue that Ivaco should seek an adjustment based on differences in quantity pursuant to 19 CFR 351.409, instead of an

[22] See SAA, at 830.

[23] See id. (the analysis contains proprietary information).

[24] See Memorandum to the File entitled, "Analysis Memorandum for Ivaco," re: Final Results for Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Canada, at 2 (May 3, 2007) ("Final Analysis Memorandum").

[25] See id. (the analysis contains proprietary information).

[26] See Petitioners' Case Brief, at 9, citing SAA, at 830.

adjustment based on a difference in the LOT.[27]

Respondent's Rebuttal: Ivaco notes that the Department should keep in mind that the statute requires that price differences be "wholly or partly due" to differences in LOTs. It does not require a determination of the exact price effect caused by LOT differences and it would not be possible to do so, given the variety of market forces that affect the sales price of each transaction.[28] Ivaco contends that the significantly higher prices charged by Sivaco, as compared with IRM, are due to the additional selling services offered by Sivaco. Therefore, the respondent argues that the additional factors that petitioners speculate may also have affected price comparability are, as they were in Pipe and Tube from India, irrelevant to the Department's decision whether to grant the LOT adjustment.

Ivaco disagrees with the petitioners' argument that the differences in selling prices between LOTs are caused by differences in the quantity sold. Ivaco notes that the petitioners have not identified any record evidence that indicates the higher selling prices that Sivaco charged on sales of identical control numbers are solely based or linked to the quantity sold. Ivaco contends that the petitioners' analysis ignores the fact that Sivaco is a separate selling entity that sells in a separate LOT, as already determined by the Department in the preliminary results of this review and past segments of prior proceedings. Ivaco argues that higher selling prices charged by Sivaco are the result of Sivaco's more complex selling activities.[29]

Ivaco disagrees with the petitioners' argument that because Sivaco made limited sales of green rod there is no evidence to support of a pattern of consistent price differences. Ivaco concedes that Sivaco did sell substantially more processed rod than green rod as the petitioners point out in their case brief. However, Ivaco contends the Department's pattern of price differences analysis only involves sales of identical control numbers in each LOT in the home market. Ivaco argues the Department uses identical merchandise in order to eliminate other factors that may be influencing price other than the level of trade.

Ivaco notes that the petitioners did not cite any provision of the law or precedent to support their argument that the Department should not make a LOT adjustment unless the quantity of sales of identical merchandise at each LOT is sufficient to satisfy the petitioners. Ivaco contends that Sivaco's green rod sales could only be removed from the LOT adjustment calculation if they were outside the ordinary course of trade. Ivaco notes that the Department has previously determined that a limited number of sales is not, by itself, sufficient to find that sales are outside the ordinary course of trade.[30] Moreover, a conclusion that Sivaco's green rod sales were outside the ordinary course of trade would result in their removal from all other aspects of the dumping margin calculation, which the petitioners are not proposing. Ivaco argues the fact that Sivaco's

---

[27] See id.

[28] See Ivaco's Rebuttal Brief, at 15, citing Certain Carbon Steel Welded Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review, 63 FR 32825, 32828 (June 16, 1998) ("Pipe and Tube from India").

[29] See Ivaco's Rebuttal Brief, at 16, citing Preliminary Results, 71 FR at 64924-25.

[30] See Ivaco's Rebuttal Brief, at 17, citing Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams from Korea, 65 FR 6984, 6986 (February 11, 2000) ("Steel Beams from Korea").

green rod sales are used in the antidumping duty calculation is precisely the reason why it is necessary for the Department to make a LOT adjustment.

The Department's Position: We disagree with petitioners that our analysis of price differences is flawed because it is based on a small number of sales. Green rod sales should only be removed from the analysis if they were outside the ordinary course of trade. However, there is no record evidence that suggests that Sivaco's sales of green rod were outside the ordinary course of trade. The Department has previously determined that a limited number of sales alone is not enough to find that sales are outside the ordinary course of trade. In Steel Beams from Korea, the Department did not find that a "relatively small number of sales of ASTM structural beams in the home market (as a percentage, in comparison to respondent's total volume of structural beams in the home market) alone suggests that the circumstances surrounding respondent's sales of ASTM structural means in the home market are outside the ordinary course of trade."[31] Therefore, limited sales by Sivaco of green rod is not, by itself, a sufficient basis to establish them as being outside the ordinary course of trade and, therefore, remove them from the pattern of price differences analysis.

We acknowledge that some factors, in addition to a difference in LOTs may have some influence on the price differences between IRM and Sivaco. However, pursuant to section 773(a)(7)(A) of the Act, the difference in selling price may be "wholly or partly due to a difference in level of trade." Therefore, as the Department explained in Carbon Steel Pipes and Tubes from India, section 773(a)(7)(A) of the Act does not require a determination of the exact price effect caused by LOT differences and it would not be possible to do so, given the variety of market forces that affect the sales price of each transaction we review.[32]

Finally, while the petitioners are correct that the SAA directs the Department to ensure that the differences in prices are not more appropriately attributed to differences in quantities, we find no basis in the record of this proceeding to indicate that the price differences arose because of quantity differences. The Department's regulations address the relationship between quantity adjustments and LOT adjustments and state that adjustments for differences in quantity will not be made in addition to LOT adjustments unless the effects of differing quantities can be separately identified and established.[33] In this review, there is no claim for a quantity adjustment and there is no evidence that there were savings attributable to the production of different quantities.[34]

Comment 4: Post-Sale Price Adjustments

Petitioners' Argument: The petitioners note that Ivaco reported post-sale credit and debit adjustments for a segment of its home market sales. The petitioners argue that a portion of these adjustments severely affects the degree of the price differences for the identical products sold by IRM and Sivaco. The petitioners cite to debit and credit adjustments for two specific control

[31] See Steel Beams from Korea, 65 FR 6984, 6986.

[32] See Pipe and Tube from India, 63 FR 32825, 32828.

[33] 19 CFR 351.409(e).

[34] 19 CFR 351.409(b)(2).

numbers. For the first, the petitioners note that Ivaco reported a post-sale credit reduction to the gross unit price for the sale, thereby further reducing the average price reported for IRM's sales. The petitioners claim this post-sale adjustment further enhances the price difference between Sivaco and IRM for the sales of the same product.

For the second example, the petitioners note that Sivaco issued debit price adjustments for a product. The petitioners claim that when both IRM and Sivaco made multiple sales, the average price charged by Sivaco is lower than the average price charged by IRM.[35] Petitioners argue that Ivaco reported post-sale reductions to the prices for IRM's sales and post-sale increases for selected sales by Sivaco in order to reduce the opposite price differences that negate Ivaco's LOT claim. The petitioners claim that post-sale additions made to the Sivaco prices were not for sales with the lowest gross unit price and the post-sale reductions made to the prices for the IRM sales were not for sales with the highest gross unit price. The petitioners conclude that it is doubtful that the post-sale price adjustments were meant to correct "billing errors" in the original sales invoices.[36]

Respondent's Rebuttal: Ivaco disagrees with the petitioners' argument that Ivaco manipulated the LOT adjustment through post-sale adjustments. Ivaco notes that the Department has already clarified, through a supplemental questionnaire, that these debit notes were legitimately issued for the sole purpose of correcting an invoicing error. Regarding the petitioners' first example, Ivaco notes that it submitted the customer's purchase order in response to the Department's supplemental questionnaire, which showed that the agreed upon price plus freight was not charged to the customer on the invoice. Therefore, Sivaco later issued a debit note to correct the price that was agreed upon by the parties at the time of the order.[37]

Regarding the petitioners' second example, Ivaco notes that the credit adjustment's impact on the overall price difference for this product is not only insignificant, but barely measurable.[38] Ivaco contends that with respect to the overall pattern of price difference analysis, which includes all identical products sold by both companies, the effect of this credit adjustment indeed might not be even measurable.

The Department's Position: 19 CFR 351.401(b)(1) states that in calculating adjustments to the NV under section 773 of the Act, the party that is in possession of the relevant information has the burden of establishing, to the satisfaction of the Department, the amount and nature of a particular adjustment. 19 CFR 351.401(c) states that the Department will use a price that is net of any price adjustment that is reasonably attributable to the foreign like product.

During the course of this administrative review, Ivaco fully responded to the Department's original questionnaire. In addition, Ivaco further clarified and explained the purpose of its post-

[35] See Petitioners' Case Brief, at 14, and Attachments 2 and 17.

[36] See id., at 15.

[37] See Ivaco's Supplemental Section A-C Response, at 14 and 16, and Exhibit B-Supp-10 (July 6, 2006).

[38] See Ivaco's Rebuttal Brief, at 19-20.

sale adjustments in response to the Department's supplemental questionnaire.[39] We have found no reason to suspect that Ivaco manipulated sales that occurred over the course of the POR, or that its submitted post-sale adjustments were erroneous. Therefore, Ivaco has met the burden of establishing, to the Department's satisfaction, the validity of such post-sale price adjustments. Consequently, we accept these adjustments and do not find that Ivaco manipulated the LOT adjustment through post-sale adjustments.

Comment 5: Level of Trade Adjustment in the Programing Language

Respondent's Argument: Ivaco contends that the Department should correct a programming error in order to apply a LOT adjustment to Ivaco's sales as was intended in the Preliminary Results. Ivaco states that the Department intended to apply a LOT adjustment when matching sales at different LOTs. However, a programming error in the margin program resulted in no LOT adjustment being applied to any sales during the period of review. Therefore, Ivaco argues that the Department should correct this programming error in order to apply a LOT adjustment when matching across LOTs, as was intended in the Preliminary Results.

Petitoners' Rebuttal: The petitioners did not rebut Ivaco's argument.

The Department's Position: We agree with Ivaco that due to an error in the programing language no LOT adjustments were applied to any of Ivaco's sales. Consequently, we have corrected the programming language for Ivaco for purposes of the final results.[40]

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the Federal Register.

Agree_____ Disagree_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date

[39] See id.

[40] See Final Analysis Memorandum, at 2.