71 FR 42802, July 28, 2006

A-428-830
3rd Administrative Review
03/01/2004-02/28/2005
Public Document
1/1:N. Kempkey x1698

MEMORANDUM

DATE: July 17, 2006

TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the 2004-2005 Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from Germany

SUMMARY

We have analyzed the case briefs and rebuttal briefs filed by interested parties in the third administrative review of stainless steel bar from Germany. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is a complete list of the issues in this review for which we received comments:

Comment 1: Whether Or Not To Assign Total Adverse Facts Available ("AFA") to BGH's Sales Information
Comment 2: Whether Or Not To Assign Total Adverse Facts Available to BGH's Cost Information
Comment 3: Whether Or Not BGH Misled the Department Regarding Its Home Market Sales to BGH SL-Stahl GmbH
Comment 4: Whether Or Not BGH Withheld Information Regarding Its Claimed Levels of Trade
Comment 5: Whether Or Not BGH Incorrectly Claimed Home Market Commissions for Certain Sales
Comment 6: Whether Or Not BGH Incorrectly Claimed Home Market Rebates on Certain Sales
Comment 7: Whether Or Not The Department Should Reject BGH's Claim for Home Market Inland Freight Because BGH's Claim is for Non-Qualifying Expenses

Comment 8: Whether Or Not BGH has Improperly Reported Its Home Market Warranty Expenses
Comment 9: Whether Or Not BGH Improperly Classified Certain U.S. Sales as Export Price ("EP") Sales, When Those Sales are Constructed Export Price ("CEP") Sales
Comment 10: BGH has Understated Its U.S. Credit Expenses
Comment 11: Affiliated Purchases of Scrap and Alloy Inputs
Comment 12: BOB's Common G&A Expenses
Comment 13: Company-Specific G&A Expense Ratios
Comment 14: The Department Erred in Rejecting Certain Portions of BGH's Case Brief

BACKGROUND

On February 3, 2006, the Department of Commerce ("the Department") published the preliminary results of this administrative review. See Stainless Steel Bar from Germany: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 5811 ("Preliminary Results"). We invited parties to comment on the Preliminary Results. On March 6, 2006, the respondent BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, "BGH") filed a case brief. On March 7, 2006, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL-CIO/CLC) (collectively, "Petitioners") filed a case brief. At the Department's request, BGH removed certain information from its case brief and submitted a redacted case brief on April 6, 2006. BGH also filed its rebuttal brief on April 6, 2006. Petitioners filed their rebuttal brief on April 7, 2006.

We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Discussion of Issues" section, below, which also contains the Department's responses to the issues raised in the briefs.

DISCUSSION OF ISSUES

Comment 1: The Department Should Assign Total Adverse Facts Available ("AFA") to BGH Because of Errors in the Reported Sales Data

Petitioners argue that BGH has not reported all the sales it made to unaffiliated customers in the United States during the period of review ("POR") and this, in turn, has led to numerous flaws in the reported database. (These alleged flaws are described more fully below and in the "Proprietary Analysis Memorandum for the Final Results in the Third Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from Germany," to Susan Kuhbach from Natalie Kempkey, dated July 17, 2006 ("Proprietary Analysis Memo").) According to

Petitioners, BGH has misled the Department about the company's sales process. Also, according to Petitioners, the Department has provided BGH numerous opportunities to submit the correct information and the fact that BGH has not done so should result in the application of adverse facts available ("AFA") as permitted by section 776(b) of the Tariff Act of 1930, as amended ("the Act"). In particular, Petitioners argue that accurate reporting of POR sales to unaffiliated customers is at the heart of the dumping analysis and BGH's failure to do so renders BGH's responses so incomplete as to be unuseable.[1] Moreover, Petitioners claim, BGH is an experienced respondent and should know how to prepare a proper response.[2] Because BGH did not do so, BGH failed to act to the best of its ability and, Petitioners contend, adverse inferences should be drawn.[3]

BGH urges the Department to reject Petitioners' call for AFA. According to BGH, its sales process in the United States has not changed since the first administrative review where this issue was analyzed thoroughly and verified. Moreover, in the current review, BGH claims that it has followed precisely the same procedure in reporting its U.S. sales as it used in every previous review. Thus, BGH does not understand Petitioners' allegation that BGH hid information from the Department and BGH questions why Petitioners waited more that seven months after the filing of BGH's information to voice their concerns.

BGH Has Not Reported the Appropriate U.S. Invoice

Petitioners' Argument: Petitioners argue that sections 772(a) and (b) of the Act require BGH to report all sales to the first unaffiliated customer in the United States during the POR. Specifically, because BGH has claimed invoice date as its date of sale, Petitioners contend that BGH must report all invoices to the first unaffiliated customer that are dated in the POR. According to Petitioners, BGH has not done so. Instead, Petitioners claim, BGH's U.S. sales listing reports the "inter-company" invoices issued from BGH to its U.S. affiliate, BGH Specialty

---

[1] In support of this position, Petitioners cite to Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 64 FR 43650, 43655 (August 11, 1999); Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 76, 82-3 (January 4, 1999); Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand, 63 FR 43661, 43664 (August 14, 1998); and Certain Cut-to-Length Carbon Steel Plate from Sweden: Final Results of Antidumping Duty Administrative Review, 62 FR 18396, 18401 (April 15, 1997).

[2] In support of this position, Petitioners cite to Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany, 67 FR 10382 (March 7, 2002); and Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review, 70 FR 19419 (April 13, 2005).

[3] In support of this position, Petitioners cite to Nippon Steel Corp. V. United States, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

Steel, Inc. ("BGH Houston").

Petitioners argue that under no circumstances will the Department accept U.S. sales between affiliated parties, as reported by BGH. Petitioners believe that BGH should instead have reported U.S. sales based on the invoices sent by BGH Houston to unaffiliated customers for the sales of subject merchandise. Petitioners claim that the "inter-company" invoices are used to value the subject merchandise and to calculate the commission paid to BGH Houston for the services it performs on the U.S. sales. By basing its response on the invoices issued *to* BGH Houston, rather than the invoices issued *by* BGH Houston, BGH has reported the wrong universe of U.S. sales, according to Petitioners.

Respondent's Rebuttal: BGH questions why Petitioners seem to have just now discovered that BGH Houston issues an invoice to the unaffiliated U.S. customer. According to BGH, the Department thoroughly analyzed and verified BGH's sales process during the first administrative review, and BGH reported in this review that there were no changes in its sales process.

BGH maintains that the fact that BGH Houston issues an invoice to the unaffiliated U.S. customer does not invalidate BGH's U.S. sales reporting. BGH claims that the issuance of this invoice is purely an administrative function not even performed by BGH Houston personnel but rather by a third-party service provider. Further, BGH claims that the recording of the invoice in BGH Houston's accounting system is done only to assist in the calculation of commission payments and the tracking of customer payments. BGH notes that BGH Houston does not take physical possession of the subject merchandise shipped from Germany.

BGH rejects Petitioners' claim that it has reported the wrong universe of sales. BGH points to the Department's questionnaire, which directs respondents to report, "each U.S. sale of merchandise entered for consumption during the POR." Thus, according to BGH, the universe of sales to be reported is defined by entries, not invoices, and BGH has correctly reported all U.S. sales entered for consumption during the POR. Moreover, BGH points out that because BGH Houston issues its invoice to the unaffiliated customer at the time the merchandise enters the United States, reporting sales based on the BGH Houston invoice would not materially alter the universe of reportable U.S. transactions.

Date of Sale

Petitioners' Argument: Petitioners argue that BGH has reported an incorrect date of sale because it wrongly reported the date of the "inter-company" sale between BGH and BGH Houston. Petitioners claim that the correct date of sale is that of the invoice from BGH Houston to the first unaffiliated U.S. customer.

Respondent's Rebuttal: BGH claims that it has reported the U.S. date of sale in this administrative review as it has in prior segments, using the date of the invoice issued by the German mill producing and exporting the merchandise. BGH argues that this is consistent with the Department's regulations at 19 C.F.R 351.401(i) because BGH is the producer and exporter, and it records the sale in its ordinary business records as of the date it sends the invoice to BGH Houston. Further, BGH emphasizes that it ships the subject merchandise from Germany directly to the unrelated customer in the United States and sends the invoice to BGH Houston at the time

of the shipment. BGH states that after the subject merchandise is shipped from Germany and the German mill issues its invoice to BGH Houston, there are no changes in the terms of sale. As such, BGH argues that the date of the German mill invoice "reflects the date on which the exporter or producer establishes the material terms of sale" and, hence, comports with 19 C.F.R 351.401(i).

U.S. Sale Price

Petitioners' Argument: Petitioners argue that because BGH reported "inter-company" invoices instead of invoices sent to BGH's first unaffiliated U.S. customer, BGH reported the incorrect U.S. price. Petitioners contend that there are discrepancies in the prices listed in "inter-company" invoice and BGH Houston's invoice. Petitioners claim that this difference, while small, demonstrates that BGH has reported the wrong U.S. price to the Department.

Respondent's Rebuttal: BGH claims that, as in previous segments, it has reported the gross unit price listed on the invoice issued by the German mill. BGH asserts that its reporting methodology was verified during the first administrative review, and that the Department found no significant difference in the price listed on the German mill invoice and the price listed on the BGH Houston invoice.

BGH points out that Petitioners acknowledge that the difference in prices between the German mill invoice and the BGH Houston invoice is small. As such, BGH contends that the difference should be viewed as an insignificant adjustment pursuant to 19 C.F.R 351.413.

Date of Payment

Petitioners' Argument: Petitioners argue that by relying on "inter-company" invoices, BGH reported an inaccurate date of payment. Petitioners argue that BGH reported the payment date as the date BGH Houston paid BGH, instead of the date the U.S. customer paid BGH Houston.

Respondent's Rebuttal: BGH claims that, as in previous segments, it has reported the date of payment for its U.S. sales as the date on which the payment is booked to the accounts receivable ledger of the German mill. BGH notes that by reporting the date which the payment was booked by the German mill rather than the earlier date the payment was booked by BGH Houston, BGH has increased its imputed credit expenses, thereby lowering its U.S. price and consequently increasing any existing dumping margins.

Other Issues

Petitioners' Argument: Petitioners identify several additional problems stemming from the alleged misreporting of U.S. sales by BGH. First, they claim that although BGH presented a sales reconciliation, it wrongly reconciled the German mills' sales to BGH Houston. Because BGH provided no reconciliation for its sales to the first unaffiliated customers, Petitioners state that the Department cannot confirm that BGH reported the full universe of U.S. sales of subject

merchandise.

Second, because BGH has not reported the full universe of its U.S. sales, Petitioners contend that the Department cannot accept BGH's home market sales database. Without an accurate reporting of U.S. sales, Petitioners state that the Department does not know the products actually sold in the United States and, hence, does not know if additional home market sales during the 90/60 day window periods should also have been reported. Third, for the same reasons, Petitioners allege that the Department cannot accept BGH's constructed value database because the Department doesn't know if additional constructed values are needed.

Additional arguments and rebuttals not capable of public summary are presented in the Proprietary Analysis Memo at Comment 1 - A.

The Department's Position: The crux of Petitioners' argument for applying AFA to BGH is that BGH has reported the wrong universe of U.S. sales. We disagree. Moreover, although we find that BGH's method of reporting its U.S. sales resulted in some errors, these errors do not warrant the application of AFA to BGH.

The starting point for identifying the transactions to be examined in an administrative review is to look at entries during the POR when possible.[4] As BGH noted, the Department's questionnaire asks respondents to report sales of merchandise entered during the POR. This preference is also reflected in Department practice. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 70 FR 13458 (March 21, 2005) and accompanying Issues and Decision Memorandum at Comment 5.

After identifying entries during the POR, the next step is to determine the sales associated with those entries. BGH takes the position that the sale occurred when the German mill issued its invoice to BGH Houston because that is when the producer/exporter recorded the sale and because all terms of the sale were fixed at that point in time. Petitioners, in contrast, argue that the sale occurred when BGH Houston issued its invoice to the unaffiliated U.S. customer because an invoice to an affiliated party cannot be considered a sale. Our regulations at 351.401(i), direct that the Department will normally use invoice date as the date of sale. However, under Department practice, we will not use a date that falls after the date of shipment as the date of sale. See, e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13172-73 (March 18, 1998). In this case, the invoice to the unaffiliated customer is issued after the merchandise is shipped directly from Germany to the customer. Moreover, the merchandise is shipped from Germany to the unaffiliated customer on the same day the German mill issues its invoice to BGH Houston. Therefore, using shipment date as date of sale, the Department arrives at the same place as BGH and we determine that BGH has reported the correct universe of sales in the U.S. market.

We acknowledge that BGH's reliance on its invoices to BGH Houston as the basis for its U.S.

---

[4] As explained further in response to Comment 9, the Department is treating BGH's sales as EP sales.

sales response gives rise to misreported data.[5] First, as Petitioners pointed out, there are discrepancies between the amount reflected on the invoice from the German mill to BGH Houston and the amount on the invoice from BGH Houston to the unaffiliated U.S. customer. We have examined the record evidence on this point carefully and determine that the difference is due to rounding. Moreover, we determine that the difference is very small. See Proprietary Analysis Memo at Comment 1 - B.

We further acknowledge that the date of payment is misreported because BGH has reported the date that the German mill was paid by BGH Houston rather than the date that the unaffiliated customer paid BGH Houston. Again, we have examined the record evidence on this point carefully. Based on our review, we agree with BGH that the misreported payment date works to the detriment of BGH because it creates a longer U.S. credit period than actually exists. See Proprietary Analysis Memo at Comment 1 - C.

As noted at the outset, the crux of Petitioners' argument for assigning AFA to BGH is the allegation that BGH did not report the correct universe of sales. For the reasons cited above, we disagree with Petitioners' basic premise. Instead, we have determined that BGH reported the correct sales, but that its methodology for reporting its sales led to certain errors. Also, as explained above, these errors were small or worked to BGH's detriment.

In addition, we note that BGH reported its sales in this review using the same methodology it used in prior segments of this proceeding. In those earlier segments, neither Petitioners nor the Department raised any concerns about the methodology.

We further disagree with Petitioners that BGH misled the Department about the company's sales process in the United States, or that BGH's responses in this review were inadequate, unverifiable, incomplete, and unreliable. To the contrary, BGH provided adequate responses to our questionnaire and supplemental questionnaires, and provided clarification as requested by the Department. Therefore, there is no basis to apply facts available to BGH or to draw an inference that is adverse to BGH, and we have continued to use BGH's response to calculate the antidumping margin in the review.

Comment 2: Total Adverse Facts Available for Cost Information

Post-Preliminary Information Submitted by BGH

Petitioners' Argument: Petitioners argue that BGH has made numerous and untimely changes to its reported scrap and alloy purchase information throughout the course of this review, and that such changes constitute a lack of cooperation on the part of BGH. Accordingly, Petitioners contend that the Department should apply total adverse facts available to BGH's reported cost information pursuant to sections 776(a) and (b) of the Act.

Petitioners cite to Fresh Garlic from the People's Republic of China: Final Results of

[5] In any future administrative reviews of BGH, the Department intends to seek pricing and payment information based on payments by BGH's unaffiliated customers in the United States.

Antidumping Administrative Review, 70 FR 64082-64085 (June 13, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products form Taiwan, 66 FR 49618-49621 (September 28, 2001); and to Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic 65 FR 39363, (June 26, 2000) and accompanying Issues and Decision Memorandum, at Comment 2, to support their position that the Department must analyze whether BGH's responses have been accurate, reliable and verifiable before relying on that information for the margin calculations.

Petitioners reference BGH's submissions to argue that BGH has not fully complied to the best of its ability with the Department's regulations or requests for information. Petitioners point out that BGH has changed its Section D submission on affiliated purchases of scrap and alloys on four occasions throughout the course of this review. Petitioners claim that such a large number of revisions to the same data raises questions about the accuracy and reliability of the submitted data and destroys confidence in the data. Petitioners also note that the later two submissions containing changes were made subsequent to the Preliminary Results, and claim that they were made after the record was officially closed to the submission of new factual information. Petitioners further argue that all of the new information submitted by BGH after the Preliminary Results was limited to information which was beneficial to BGH.

Petitioners point out that in its initial Section D response, BGH provided initial details of its scrap and alloy purchases.[6] Petitioners note that in a supplemental questionnaire, the Department then instructed BGH to reorganize, revise, and provide certain support for the reported information. BGH submitted a revised major input chart based on the Department's instructions in BGH's November SQR at Appendix S-19.

Petitioners note that BGH stated in BGH's November SQR that it had wrongly reported certain purchases as being from an unaffiliated party, when in fact they were not. Petitioners also note that BGH made additional changes to its affiliate input chart which were not specifically noted in the narrative, and were not requested by the Department. Petitioners argue that BGH's response to the Department's supplemental questionnaire and its independent notification of a data error shows evidence that BGH carefully examined its scrap and alloy purchase information at the time of BGH's November SQR.

In BGH's January SQR, BGH again revised the chart of scrap and alloy purchases. Petitioners point out that BGH independently notified the Department of certain changes to the scrap and alloy chart, including the reclassification of certain affiliated purchases of Mo-Oxide, which previously had been identified as unaffiliated. Petitioners claim that these changes contained in BGH's January SQR are further evidence that BGH had carefully examined its reported alloy and scrap purchase information at that time. Petitioners note that within days of this submission, the Department issued its Preliminary Results in which it found that "BGH received affiliated party inputs at less than market value prices."

Petitioners note that despite the previous opportunities for revisions, BGH submitted a

[6] See BGH's DQR at D-7, D-8, and Appendix D-4.

ministerial error letter to the Department on February 6, 2006, which further revised BGH's reported scrap and alloy purchase information. Petitioners argue that for the first time and without supporting evidence, BGH stated in the February 6, 2006 letter that it had inadvertently reported purchases of Mo-Oxide when it in fact had none. Petitioners argue that the information revised in the February 6, 2006 letter represents post-hoc changes which only serve to benefit BGH. Petitioners contend that this attempt to submit new information is untimely and highly questionable.

Petitioners finally note that BGH made a fourth change to the reported scrap and alloy purchase information in its case brief and again argue that these changes only disclose certain errors which are beneficial to BGH.[7] Specifically, Petitioners assert that BGH wrongly introduced new, questionable information in the BGH case brief regarding aluminum, Mo-Oxide, and Mo-Oxide briquettes inputs. Petitioners point out that BGH revised the total quantity and value of aluminum purchases.[8] Also, Petitioners observe that BGH stated in the BGH case brief that it wrongly reported purchases of Mo-Oxide briquettes, now claiming that there were no purchases of Mo-Oxide briquettes.[9] Petitioners assert that this new information in the BGH case brief contradicts information BGH placed on the record in the February 6, 2006, submission, and in BGH's Section DQR, BGH's November SQR, and BGH's January SQR.[10] Petitioners contend that BGH offers no explanation for these discrepancies. Additionally, with respect to the Mo-Oxide information in the case brief, Petitioners assert that BGH initially raised the issue at the time it filed the February 6, 2006, ministerial error comments, but chose to withhold details until the BGH case brief. Petitioners argue that BGH's decision to withhold the information until its case brief raises questions about BGH's credibility and cooperativeness.

Because of the numerous changes and alleged untimely submissions of new information, Petitioners contend that the Department should not have confidence in BGH's reported scrap and alloy purchases. As such, Petitioners claim that the Department should find that BGH has not cooperated to the best of its ability in providing the Department with timely, accurate, and reliable cost data.

Respondent's Position: BGH argues that it has provided the Department with extensive information on affiliated party inputs. BGH also argues that the Department failed to respond to BGH's February 6, 2006 offer to provide any necessary additional information. In addition, BGH notes that it has reported its purchases of scrap and alloy inputs in a manner consistent with its reporting in the original investigation and previous reviews, and that the Department successfully verified that information during the previous proceedings.

---

[7] See BGH case brief at 2-9.

[8] See BGH case brief at 4, BGH March 10th letter at 2.

[9] See BGH case brief at 5.

[10] See BGH Section DQR at Appendix D-4, BGH November SQR at 2, Appendix S-19, BGH's January SQR at Appendix S-80.

The Department's Position: The Department disagrees with Petitioners that reliance on facts available under sections 776(a)(1) or (2) is warranted. BGH has not withheld requested information, failed to provide information in the form or manner requested, significantly impeded this proceeding, or provided information which could not be verified. We also disagree with Petitioners that the information on the record is so incomplete that it cannot serve as a reliable basis for reaching a determination. Petitioners also argue that the Department should apply adverse inferences under section 776(b) of the Act. We disagree with Petitioners that BGH has failed to cooperate by not acting to the best of its ability.

In making their argument, Petitioners cite to the fact that BGH has revised certain data concerning its purchases of alloy inputs from affiliated parties on several occasions during the course of this administrative review, including on two occasions subsequent to the Preliminary Results. We disagree with Petitioners that the number of revisions to the data causes the submitted data to be suspect in accuracy or reliability such that facts available are warranted. During the course of an antidumping proceeding, it is not uncommon for respondents to revise or correct information previously submitted to the Department. In this case, BGH submitted detailed purchase data concerning the quantities and values of dozens of scrap and alloy inputs in its initial Section D response at Exhibit D-4. The data was reorganized per the Department's instructions in BGH's November SQR at Exhibit S-21. Subsequent to that submission, BGH revised the data for only a small number of the scrap and alloy inputs. Furthermore, Petitioners' argument that BGH made multiple revisions to the same data is inaccurate. Rather, BGH made single revisions to the purchase data of several alloy inputs. BGH did not continually revise the same data on multiple occasions. For purposes of these Final Results, we find that BGH's submissions in this review provided the Department sufficient information regarding BGH's purchases of scrap and alloy inputs to make a determination.

The Department also disagrees with Petitioners that BGH failed to cooperate by not acting to the best of its ability to comply with our requests for information. As previously stated, BGH has provided responses to our questionnaire, and our supplemental questionnaires, and has attempted to clarify incomplete or inaccurate information put on the record.[11] Therefore, we do not find that, under sections 776(a)(1) and (2) of the Act, BGH has withheld information requested by the Department, failed to provide information within the deadlines established in the form or manner requested by the Department, significantly impeded this proceeding, or provided unverifiable information.

Comment 3: BGH Misled the Department Regarding Its Home Market Sales to BGH SL-Stahl GmbH

Petitioners' Argument: Petitioners claim that BGH misled the Department regarding the volume of sales BGH made to its affiliated customer, BGH SL-Stahl GmbH ("SL"). Specifically, according to Petitioners, BGH reported that its volume of sales to SL was less than five percent, and on this basis, the Department excused BGH from reporting sales by SL.

[11] See id.

Petitioners contend that using the Department's standard programming language and BGH's home market sales database, BGH should not have been excused from reporting sales by SL. Petitioners add that this is another example of BGH's uncooperative behavior.

Respondent's Rebuttal: BGH rebuts Petitioners' assertion stating that BGH tested the value and volume of its sales to affiliated resellers using the same programming language it has used in previous reviews. Under this test, BGH claims that the percentages for BGH's sales to SL were less than the Department's five percent threshold. BGH contends that Petitioners have not explained or provided the SAS code showing how Petitioners calculated a percentage over five percent.

The Department's Position: According to 19 C.F.R 351.403(d), the Department "normally will not calculate normal value based on {affiliated party downstream sales} if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question...."

On May 9, 2005, BGH requested that the Department make such an exemption in this administrative review.[12] The Department agreed with BGH's request and excused BGH from reporting SL's sales.[13]

We disagree with Petitioners that BGH misled the Department on this point. BGH's home market sales to SL during the POR were less than five percent measured by value and volume. Only by including home market sales during the "window" periods outside the POR, can one measure of sales to SL rise above five percent. BGH was not asked to include these window periods in it analysis, and we do not agree that this single measure above five percent is a sufficient basis to require BGH to report SL's sales.

Comment 4: BGH Withheld Information Regarding Its Claimed Levels of Trade ("LOT")

Petitioners' Argument: Petitioners argue that the Department should reject BGH's claimed levels of trade and channels of distribution. Petitioners note that in the Department's supplemental questionnaire, it asked BGH to provide an accurate accounting of services provided for each claimed channel of distribution, including services provided by BGH Werke (a holding company for BGH). Petitioners claim that BGH's refusal to respond to the Department's request is another example of BGH's uncooperative behavior.

Respondent' Rebuttal: BGH responds that its LOT claims were subject to significant analysis during previous administrative reviews. See Issues and Decision Memorandum for the 2003-2004 Administrative Review of Stainless Steel Bar from Germany at 3-5, April 6, 2005. Additionally, BGH argues that it has reported its LOT in accordance with the Department's

---

[12] See BGH's letter to the Department requesting a downstream affiliated sales exclusion, dated May 9, 2005.

[13] See Memorandum to Susan H. Kuhbach, Office Director, from Julie Santoboni, Acting Program Manager (May 25, 2005).

previous rulings.

The Department's Position: We disagree with Petitioners' claim that BGH provided an inadequate response to the Department's supplemental questionnaire regarding the functions performed by BGH Werke.[14] BGH has provided detailed information regarding its LOT and channels of distribution, including information about functions of BGH Werke. Based on these responses, the Department was able to conduct a detailed and thorough analysis of BGH's reported LOT and channels of distribution for the Preliminary Results. Petitioners have not objected to the analysis nor pointed to any evidence contrary to the Department's findings regarding BGH's LOT and channels of distribution. Therefore, we have not changed our analysis for these Final Results.

Comment 5: BGH Incorrectly Claimed Home Market Commissions for Certain Sales

Petitioners' Argument: Petitioners contend that BGH wrongly claimed certain home market commissions. For sales by Agent A, Petitioners argue that the Department's practice is to not allow a deduction to normal value for this type of commission. See Proprietary Analysis Memo at Comment 5. For sales by Agent B, Petitioners allege that this commission has also been incorrectly included by BGH. See Proprietary Analysis Memo at Comment 5.

Respondent's Rebuttal: BGH responds that it has reported its commissions in this review in the same manner as in prior reviews. BGH contends that the commissions it paid to Agent A are a direct selling expense related to Agent A's sales in the home market and are properly deducted in the calculation of normal value. BGH argues that similarly, commissions paid to Agent B represent actual commissions paid on sales in the home market. Moreover, BGH contends the impact of these commissions paid to Agent B on the dumping margin is insignificant. See Proprietary Analysis Memo at Comment 5.

The Department's Position: We agree with Petitioners that the Department does not normally treat the type of payment made to Agent A as a commission. Instead, we are treating these payments to Agent A as indirect selling expenses and have modified the indirect selling expense ratio used in our calculations to include this amount for the Final Results. See Proprietary Analysis Memo at Comment 5.

However, for commissions BGH paid to Agent B, we disagree with Petitioners and, for the Final Results, we are continuing to allow these commissions as a deduction to normal value. See Proprietary Analysis Memo at Comment 5.

Comment 6: BGH Incorrectly Claimed Home Market Rebates on Certain Sales

Petitioners' Argument: Petitioners ask the Department to find that BGH's downward adjustment to normal value for home market rebates is misreported. See Proprietary Analysis Memo at Comment 6. Petitioners further claim that BGH's misreporting is an example of BGH's

[14] See BGH August SQR at 5, December SQR at 2.

uncooperative behavior.

Respondent's Rebuttal: BGH argues that it properly calculated its rebate amount by dividing the actual total annual rebate amount by BGH's actual sales to this customer. BGH claims that its reporting methodology is reasonable, and has been accepted by the Department in all previous segments of this proceeding. BGH argues that it would be impractical and unduly burdensome to report rebates on a progressive basis as recommended by Petitioners because the sales giving rise to the rebate can include both subject and non-subject merchandise, and because the rebate period does not precisely match the POR.

The Department's Position: We agree with BGH that is would be unduly burdensome to report these rebates in a progressive manner because the sales qualifying for the rebates include subject and non-subject merchandise and sales outside the POR. Moreover, we have accepted this method for reporting the progressive rebates in prior segments of this proceeding. Therefore, we have continued to deduct these amounts from normal value.

Comment 7: The Department Should Reject BGH's Claim for Home Market Inland Freight Because BGH's Claim is for Non-Qualifying Expenses

Petitioners' Argument: Petitioners argue that the Department should reject BGH's home market inland freight expenses reported in field INLFTWH. Petitioners note that the Department limits expenses reported in this field to those incurred in moving the merchandise from the factory to a distribution warehouse. Additionally, Petitioners state that the Department has defined "distribution warehouse" as a facility not located at the factory that produced the merchandise. Petitioners point out that BGH admitted that it improperly reported inland freight in INLFTWH and that BGH stated that it does not have a distribution warehouse in a separate location from its manufacturing facilities. Therefore, Petitioners argue that the Department should reject BGH's claim for a downward adjustment to normal value for these expenses. In addition, Petitioners argue that BGH misled the Department by reporting this expense.

Respondent's Rebuttal: BGH cites from its December SQR, at page 7, where BGH stated that it did not report inland freight for transportation from the plant to warehouse because its warehouse is located at BGH's plant, and therefore, does not qualify as a distribution warehouse. However, BGH continues that it included those expenses as directed by the Department. Thus, BGH asserts that Petitioners' allegation that BGH misled the Department in its reporting of inland freight is without merit.

The Department's Position: In supplemental questionnaires, the Department asked BGH why it reported inventory carrying costs in its home market sales database yet did not report any corresponding warehousing expenses, when normally inventory carrying costs are normally associated with warehousing costs.

BGH clarified that it does not have a warehouse facility which is located outside of its factory. Based on this response, BGH correctly did not report any warehousing expenses. However, BGH then reported inland transportation costs for sales by BGH Werke incurred in shipping subject merchandise from one of BGH's plants to another plant (in field INLFTWH). BGH reported in another field its inland freight costs from its plant to its home market customer.

Because BGH incurred expenses in shipping the subject merchandise from one plant to another plant, presumably because this plant was closer to its home market customer for this product, we have continued to treat these expenses as inland transportation expenses to the customer and continued to deduct these expenses from normal value.

Comment 8: BGH has Improperly Reported Its Home Market Warranty Expenses

Petitioners' Argument: Petitioners argue that the Department should find that BGH's home market warranty expenses (WARRH) are incorrectly reported. In particular, Petitioners claim that the expenses were drawn from inappropriate accounts. See Proprietary Analysis Memo at Comment 8 for a more detailed discussion of these account numbers. Petitioners believe that this is another example of BGH's uncooperative behavior.

Respondent's Rebuttal: BGH rebuts Petitioners' allegation by responding that any warranty expenses reported by BGH were the subject of specific credit notes tied to individual sales transactions. BGH further argues that the warranty accounts referred to by Petitioners were for informational purposes only. BGH states that it did not use these warranty expense figures to calculate U.S. price adjustments. As such, BGH claims that Petitioners' allegation that BGH overstated its warranty expenses is incorrect.

The Department's Position: First, we note that BGH did not report any adjustments to normal value due to home market warranty expenses in the WARRH field. Second, we agree with BGH that it has not relied on the figures contested by Petitioners to calculate its warranty expenses.[15] Instead, based on how BGH maintains its sales records, BGH reported credit notes associated with individual sales. Any warranty expenses are reflected in these credit notes and are reported in the billing adjustments (BILLADJH) field. Finally, BGH's manner of reporting its warranty expenses is consistent with its reporting in prior reviews. Therefore, we have made no change to the reported warranty expenses.

Comment 9: BGH Improperly Classified Certain U.S. Sales as Export Price ("EP") Sales, when Those Sales are Constructed Export Price ("CEP") Sales

Petitioners' Argument: Petitioners claim that BGH improperly classified sales through BGH Houston as EP sales, rather than CEP sales. Petitioners argue that BGH's claim that BGH Houston "acts only as a processor of sales-related documentation and a communication link with BGH's customers in the United States" is unsupported by record evidence. Petitioners argue that the Department should find that BGH mislead the Department in regard to the role of BGH Houston and the classification of BGH's sales through BGH Houston.

In supporting their position that the activities undertaken by BGH Houston warrant classifying these sales as CEP transactions, Petitioners cite to AK Steel v. United States, 226 F.3d 1361, 1374 (Fed. Cir. 2000) ("AK Steel"). In that case, the CAFC found that if the contract for sale is between a U.S. affiliate and a foreign producer/exporter, then the sale must be classified as a

[15] See BGH's Section B response at Appendix B-13.

CEP sale. Petitioners further claim that BGH's U.S. sales process is similar to that of a Korean respondent in Stainless Steel Wire Rod from Korea,[16] where the Department found that the sales by the respondent, Changwon, were CEP sales. In that case, the Department reclassified Changwon's U.S. sales from EP to CEP because the sales were made with the assistance of Changwon's U.S. affiliate. The affiliate served as a point of contact for Changwon's U.S. customers, and also relayed price inquiries and purchase orders from Changwon's U.S. customers to and from its Korean parent company. Additionally, Petitioners note that the U.S. affiliate helped arrange transportation to the U.S. customers, took title to the merchandise, invoiced the U.S customers and received payment from them. Based upon the requirements of AK Steel, the Department found that respondent Changwon's sales through its U.S. affiliate were, in fact, CEP sales, according to Petitioners, and the Department should make the same finding for BGH's sales through BGH Houston.

Respondent's Rebuttal: BGH responds by stating that in this review, and in all the previous segments of this proceeding, the Department has found BGH's U.S. sales to be EP transactions. BGH claims that Petitioners have not indicated any changes in the activities of BGH Houston that warrant a departure from the Department's previous practice in these proceedings. Moreover, BGH argues that the evidence on the record proves that the merchandise was sold to the first unaffiliated customer in the United States prior to importation by the exporter or producer outside the United States and that BGH Houston acted only in an administrative capacity with respect to BGH's U.S. sales.

BGH argues that the record shows that the order confirmation establishing the terms of sale is issued by the German mill and sent to the U.S. customer prior to importation of the merchandise in the United States. Further, BGH states that in the first administrative review, the Department verified that order confirmations were sent by BGH in Germany. BGH argues that Petitioners list certain post-sale administrative activities performed by BGH Houston but that these activities do not alter the fact that the terms of sale between BGH and the first unaffiliated purchaser in the United States were established outside the United States, prior to importation.

BGH argues that in its shipping documentation, it is clear that: 1) the merchandise sold to U.S. customers is shipped directly from the German mill to the U.S. customer, and that the German mill makes the delivery arrangements; 2) the merchandise is packed into individual containers indicating the name and location of the U.S. customer receiving the merchandise; and 3) these customers are listed as "Notify Parties" on the document. BGH explains that the fact that BGH Houston is listed as "Consignee" means only that BGH Houston has the formal right to receive the shipment. BGH notes that in an earlier segment of this proceeding, the Department verified that BGH Houston does not take physical possession of the merchandise shipped to the United States.

BGH claims that even though BGH Houston collects payment from the U.S. customer and transfers the money to BGH in Germany, receipt of payment by a U.S. affiliate (in the instant

---

[16] See AL Tech Specialty Steel Corp v. United States, Court No. 98-10-03054, Final Results of Redetermination to Court Remand, dated February 9, 2001.

case, BGH Houston) does not warrant the application of CEP to BGH's U.S. sales.[17] In support of this position, BGH cites to Certain Hot-Rolled Steel Flat Products from the Netherlands. Therefore, BGH claims that the Department should not deviate from its treatment of BGH's U.S. sales as EP transactions.

Department's Position: According to section 772(a) of the Act, if the terms of sale are established between the producer/exporter and the unaffiliated purchaser in the United States prior to importation of subject merchandise into the United States, the sale shall be classified as an EP sale. AK Steel addresses the issue of whether a sale should be treated as an EP or CEP transaction by looking at the "locus of the transaction" and whether it is made by an affiliate. See AK Steel at 1369. Specifically, in AK Steel the Court held the following:

> {If} the contract for sale was between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale. Stated in terms of the EP definition: if the sales contract is between two entities in the United States and executed in the United States and title will pass in the United States, it cannot be said to have been a sale "outside the United States"; therefore the sale cannot be an EP sale. Similarly, a sale made by a U.S. affiliate or another party other than the producer or exporter cannot be an EP sale. See AK Steel at 1371.

Thus, if the contracts identify the exporter/producer as the seller, the contracts are executed outside the United States, and title transfers from the exporter/producer to the unaffiliated U.S. customer, then the sale will be treated as an EP transaction. See AK Steel at 1375. Also, see Certain Hot-Rolled Flat Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review, 70 FR 17406, 17409 (April 6, 2005), where the Department noted that the Court of Appeals stated that "the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it was made by an affiliate."

While it is undisputed that BGH Houston is affiliated with BGH, this fact alone does not require a finding that the sales in question are CEP transactions. The central issue is which party made the U.S. sale (i.e., the producer/exporter or the U.S. affiliate). In the instant case, the sales terms (e.g., price and quantity) are negotiated by BHG (i.e., the producer/exporter) with the unaffiliated U.S. customer. BGH Houston did not participate in negotiating the sales.[18] Further, BGH Houston did not take possession of or title to the subject merchandise.[19] The subject merchandise

---

[17] See Corus Staal BV v. United States, 259 F. Supp. 2d 1253, 1259 (CIT 2003), *Aff'd*, 395 F.3d 1343 (Fed. Cir. 2005).

[18] See BGH Section A Response, at A-20, Appendix A-11; and BGH November SQR, at S-17.

[19] We verified in the first administrative review the BGH Houston did not take possession of the merchandise and BGH has stated that the same is true in this administrative review. See POR 1 Verification Report, at 9.

was shipped directly from Germany to the first unaffiliated U.S. customer and, contrary to Petitioners' claim, there is no evidence that title passed in the United States.[20] Also, we agree with BGH that although BGH Houston collects payment from the U.S. customer and transfers the money to BGH in Germany, receipt of payment by a U.S. affiliate (in the instant case, BGH Houston) does not warrant treating the sales as CEP transactions.

Finally, BGH changed its invoicing practice at the beginning of the POR so that invoices would be issued by BGH Germany and sent to BGH Houston, and it was planned that BGH Houston would then forward these invoices to the unaffiliated U.S. customer.[21] While BGH Houston continued its past practice of issuing a second invoice, the second invoice reflects the terms of sale set by BGH Germany.[22] Thus, the second invoice does not provide a base for concluding that the sale occurred in the United States. Consequently, we disagree with Petitioners' argument and consistent with the Court's ruling in AK Steel, we have continued to treat the sales made in question as EP transactions.

Comment 10: BGH Has Understated its U.S. Credit Expenses

Petitioners' Argument: Petitioners note that BGH did not have any short-term borrowings in U.S. dollars during the POR, and that, in such instances, according to the Department's Policy Bulletin No. 98.2 dated February 23, 1998, the respondent should rely on the prime interest rate.[23]

Instead, Petitioners point out that BGH used an interest rate from a small subset of loans that comprise the prime interest rate. Petitioners note that BGH selected interest rates for "low" risk companies for loans between 20 and 365 days despite the fact that the Department's policy does not allow a respondent to parse the prime lending rate. This, according to Petitioners, resulted in a lower interest rate and lower imputed credit costs. Petitioners urge the Department to follow its stated practice and base BGH's U.S. credit expenses on the U.S. short-term prime interest rate during the POR of 4.47 percent.

Respondent's Rebuttal: BGH argues that Petitioners' claim that Policy Bulletin No. 98.2 directs the respondent to rely on the prime interest rate in reporting all U.S. credit expenses is incorrect. Instead, BGH claims that the Department's Policy Bulletin rejects the use of the U.S. prime rate.

---

[20] See BGH Section A Response at A-20 and Appendix 11; and BGH August SQR at 8.

[21] See BGH August SQR at 8 and Appendix S-17.

[22] See BGH's Rebuttal Brief at 8.

[23] See, Certain Oil Country Tubular Goods from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission, 70 FR 24517 (May 10, 2005) 24518.

Based on this Bulletin, BGH argues that the Department instead selects the average short-term lending rate calculated by the Federal Reserve as a surrogate interest rate.

BGH further argues that the rate described by Petitioners as the "U.S. short-term prime interest rate" is neither a short-term rate, nor the prime lending rate. Rather, BGH claims that the rate calculated by Petitioners is a composite of loans of various terms, including terms of more than 365 days, and is based on the lending bank's own prime rate, any other lender's prime rate, a combination of prime rates, or a publicly reported prime rate.

The Department's Position: We disagree with both BGH and Petitioners. The Department's practice is to "generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses."[24] The Department will normally use the weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made, thus we have not adopted Petitioners' proposed rate because the prime rate may include long-term loans (loans with a maturity of greater than one year).

However, the Department also disagrees with the rate submitted by BGH. We note that BGH has submitted a weighted-average short-term rate based upon commercial and industrial loans for *large domestic banks*. Instead, Department practice is to use a short-term interest rate from all commercial banks. See Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 7016 (February 10, 2006) and accompanying Issues and Decision Memorandum at Comment 4, using ("the Federal Reserves data on commercial and industrial loans by *all commercial banks* with a maturity of 31 to 365 days"(emphasis added)). Therefore, for these Final Results, the Department has recalculated BGH's imputed credit expenses using the U.S. short-term weighted-average rate for loans of all-risk-levels made by all commercial banks for the time period which most closely corresponds to the POR.[25]

Comment 11: Affiliated Purchases of Scrap and Alloy Inputs

Respondent's Argument: BGH claims that it reported its purchases of alloy and scrap from affiliated companies in exactly the same manner as in previous administrative reviews and as in the investigation. BGH further claims that it has made no changes in the manner or procedure by which it purchases these inputs. BGH states that it purchased almost all of its alloy and scrap from three affiliated companies which are RPS Rohstoff-Press-und Schneidbetrieb Siegen GmbH ("RPS"), Freitaler Lagergesellschaft mbH ("FLG") and SRG Schrott und Recycling GmbH ("SRG"), with the vast majority of these input materials coming from RPS.[26] BGH argues that these affiliated companies do not produce the alloy or scrap themselves, but only purchase the inputs from third parties on the open market, and then resell the material at a markup to the BGH

---

[24] See The Department's Policy Bulletin No. 98.2 dated February 23, 1998.

[25] See http://www.federalreserve.gov/releases/e2/

[26] See BGH June 22, 2005, Section D questionnaire response ("BGH DQR"), at D-6

production companies.[27] BGH points out that the Department has always accepted BGH's transfer prices as the appropriate means of valuing affiliated party inputs, as the transfer price exceeds both the market value paid for the materials at the time of transfer and the cost of manufacture to the affiliated company. BGH notes that in the original investigation, the Department found no discrepancies in BGH's reported information, and determined that all costs were included in the inputs' cost of production.[28]

BGH cites to Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany, 67 FR 3159 (January 23, 2002) and accompanying Issues and Decision Memorandum to argue that the Department previously determined, based on previously verified information, that BGH's reporting methodology was "reasonable" and did not make "any adjustments to BGH's reported costs."

BGH states that at verification in the original investigation, BGH again presented the Department with information proving that BGH's affiliates purchased alloy and scrap from third parties on the open market and resold this material at a markup to BGH's production companies. BGH argues that in this current POR, it again has provided the Department with extensive information on affiliated inputs. BGH has provided information concerning its aluminum purchases from RPS, including copies of the invoices for each of RPS' aluminum purchases during 2004 and every invoice for RPS' resale of this material to the BGH production companies.[29] BGH notes that this information is summarized with respect to its aluminum purchases in Appendix 1 of its case brief. BGH claims that this table demonstrates that RPS purchased various types of aluminum alloys from third parties and resold them to the BGH production companies at a markup. BGH points out that these resales were almost always made on the same date as RPS's purchase from the third party supplier and in the same lot size.

BGH claims that it made an error in its fifth supplemental questionnaire response (BGH January SQR) when it included aluminum purchases from FLG in the amount listed for RPS.[30] See Proprietary Analysis Memo at Comment 11-A. A revision to the reported aluminum purchases in BGH's list of major inputs from affiliated parties was included in Appendix 1 of BGH's case brief. BGH cites to Timken to argue that a respondent is permitted to submit information correcting errors identified after the issuance of the preliminary results but before the issuance of the Final Results.

BGH asserts that the cost increase made by the Department in its Preliminary Results was based principally on three alloy materials, ferro-chromium ("Fe-Cr"), ferro-molybdenum ("Fe-Mo"),

---

[27] See BGH November 29, 2005, supplemental questionnaire response ("BGH November SQR") at 1-2.

[28] See Memorandum dated October 26, 2001, from Lavonne Jackson, Accountant, to Neal Halper, Director, Office of Accounting, at 18-19.

[29] See BGH November SQR at 1-2 and at Appendix S-20.

[30] See BGH case brief at In footnote number 1, page 4.

and molybdenum-oxide ("Mo-Oxide"). In its ministerial error comments ("Ministerial Error Comments") filed on February 6, 2006, BGH stated that it did not have purchases of Fe-Mo or Mo-Oxide from unaffiliated suppliers and, as such, the Department should revise its calculations to reflect this fact. BGH claims that in its supplemental questionnaire response, it inadvertently listed several FLG sales of Fe-Mo and Mo-Oxide to BGH Frietal as unaffiliated purchases, when in fact they were affiliated purchases.[31] BGH notes that this error was corrected and that a revised table of affiliated party inputs was provided to the Department.[32] BGH points out that the sale of Mo-Oxide was erroneously listed twice. A copy of the correct FLG invoice for this sale, as well as the invoice for the related purchase of this material from an unaffiliated supplier by FLG, is provided in Appendix 2 to BGH's case brief. See Proprietary Analysis Memo at Comment 11-B. BGH contends that this correction was submitted to the Department according to the ruling in Timken.

With respect to Fe-Cr, BGH claims that there is a discrepancy between affiliated and unaffiliated prices of Fe-Cr in the Department's calculations in its Preliminary Results. BGH argues that this discrepancy exists because the Department failed to consider product mix in its calculations. See Proprietary Analysis Memo at Comment 11-C. Therefore, BGH contends that the amount purchased from unaffiliated parties represents only 0.03 percent of the total purchases of Fe-Cr. BGH further argues that because Fe-Cr prices vary depending on carbon levels, and also fluctuate significantly throughout the year based on the price of chromium, its one purchase from an unaffiliated supplier cannot be used as the benchmark for the market value of purchases made during the year.[33]

Additionally, BGH argues that it demonstrated in its submissions that each individual scrap and alloy input identified on the record actually represents an aggregation of different sub-inputs. As an example, BGH notes that the reported average transfer price for aluminum is actually comprised of purchases of aluminum bar, aluminum billets, aluminum wire, aluminum shreddings, and other sub-inputs. Because the Department did not disaggregate the reported scrap and alloy inputs into sub-inputs, BGH claims that the Department failed to appropriately consider the product mix of inputs, and that this failure was a departure from its normal practice.[34]

---

[31] See BGH January SQR at 3.

[32] See id. at Appendix S-80; see also Ministerial Error Comments at 3, Appendix-1.

[33] See id.

[34] In support of its argument, BGH cites to Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 28, ("Shrimp from Equador") and Final Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from the Republic of Korea, 66 FR 64107 (December 11, 2001) at Comment 10 ("SSPC from Korea").

BGH argues that the Department routinely accepts new information concerning the product mix of affiliated inputs at verification, after the deadline for submitting new information has expired.[35] BGH aslo argues that the Department bases its analysis on information presented at verification.[36]

BGH points out that the Department has verified BGH's affiliated input information in previous reviews, but has not chosen to do so for this review. Further, BGH notes that the Department has only requested product-specific pricing information for BGH's aluminum purchases. BGH claims that the Department failed to respond to BGH's February 6, 2006, offer to submit any additional affiliated party input information required by the Department.[37] Lastly, BGH argues that no adjustment to the costs of affiliated inputs is warranted, but that the Department should base the cost of affiliated inputs on BGH's reported transfer price as it has done in previous reviews.

Petitioners' Argument: Petitioners point out that BGH's arguments that the volume of Fe-Cr unaffiliated purchases from RPS was too small and that Fe-Cr prices vary depending upon carbon levels were not raised until the Ministerial Error Letter, and that BGH did not provide any information or evidence to support these arguments. Petitioners also argue that BGH did not support changes to the reported affiliated purchases of Mo-Oxide, Mo-Oxide briquettes, or aluminum, which were reported subsequent to the Preliminary Results. As such, the Department should not have confidence in BGH's new information.

Department's Position: We agree with BGH that the evidence on the record of this review suggests that BGH's purchase prices of scrap and alloy inputs from affiliated parties reflected market prices during the POR, but not for the reasons BGH argues. In accordance with section 773(f)(2) of the Act, the Department may disregard a transaction directly or indirectly between affiliated persons if the transfer price does not fairly reflect that element of value. As demonstrated by the calculations in Memorandum from Joseph Welton, Accountant, to Neal Halper, Director, Cost of Production and Constructed Value Calculation Adjustments for the Final Results- BGH Group, dated July 17, 2006, ("Final Cost Calculation Memo") at Attachment 2, we compared the affiliated-party transfer prices to BGH's reported third-party purchase prices of scrap and alloys, using the most recent information submitted by BGH on the record of this review. We found that transfer prices of affiliated purchases from RPS and FLG were equivalent to the market prices reported by BGH. As such, for the Final Results, we discontinued the preliminary adjustment to BGH's cost of manufacturing.

In making our comparisons, we considered information submitted on the record of this review in BGH's January SQR and in BGH's Ministerial Error Letter. Specifically, in BGH's January

---

[35] Citing Shrimp from Ecuador.

[36] Citing to Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea, 67 FR 3149 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 3 ("SSB from Korea") and SSPC from Korea.

[37] See Ministerial Error Comments at 2 n.1.

SQR, BGH stated that it had inadvertently identified purchases of Fe-Mo as unaffiliated purchases, when in fact they were affiliated purchases. Because this information was submitted immediately prior to the Preliminary Results, the Department inadvertently failed to consider it for the Preliminary Results. Subsequent to the Preliminary Results, in the Ministerial Error Letter, BGH similarly stated that it had inadvertently identified purchases of Mo-Ox as unaffiliated purchases, when in fact they were affiliated purchases. BGH provided supporting evidence of the Mo-Ox error in BGH's case brief. In the March 31, 2006, letter to interested parties, the Department explained that the information submitted subsequent to the Preliminary Results with respect to Mo-Ox was accepted as a correction to information already on the record. Accordingly, the record now shows that BGH had no unaffiliated purchases of Fe-Mo or Mo-Ox during the POR for comparison purposes under the Transactions Disregarded Rule. In addition to these changes reported by BGH, we corrected an inadvertent error in our preliminary calculations in which we had incorrectly treated certain affiliated purchases of Stamping Die - Deep Drawn as being unaffiliated. We revised our calculations accordingly and for these Final Results found that the transfer prices of affiliated purchases were equivalent to the market prices reported by BGH. See Final Cost Calculation Memo.

With respect to Petitioners' argument that BGH did not support the information it provided regarding certain alloy inputs in the Ministerial Error Letter or in BGH's case brief, we disagree. BGH provided updated data with respect to its purchases of aluminum and Mo-Ox in these submissions, as well as updated information with respect to its purchases of Fe-Mo in BGH's January SQR. With respect to the Fe-Cr purchase volumes, which Petitioners also claim are unsupported, BGH argues that the total volumes of affiliated and unaffiliated purchases are uncomparable because of the relative quantities. These total volumes were first reported in the initial BGH DQR and subsequently in BGH's November SQR and BGH's January SQR. While the relative purchase quantities of Fe-Cr from affiliates and non-affiliates are dissimilar, neither of the quantities is small enough to put into question whether or not the sales were of commercial quantities. Moreover, BGH has provided no evidence that these sales were distortive in anyway.

As noted in BGH's case brief, BGH submitted details of invoices for aluminum purchases from affiliated parties during the course of this review. The Department requested the information specific to aluminum to allow BGH to demonstrate how it calculated the reported average transfer price. See BGH's November SQR at 1. As BGH argued in its case brief, the sample calculations for aluminum purchases demonstrate that the affiliated companies marked-up the prices they charged to BGH above their own aluminum purchase prices during the POR. However, we are not satisfied that the aluminum invoices are sufficient evidence to demonstrate that BGH's purchases of scrap and alloy inputs from affiliated parties were made at arms-length prices. Rather, to demonstrate that BGH purchased scrap and alloy inputs from affiliated parties at arms-length prices, we tested the affiliated party transfer prices by comparing them to BGH's reported third-party purchase prices of scrap and alloys. See Final Cost Calculation Memo at Attachment 2.

As noted by BGH, we verified BGH's cost information in the original investigation. However, the verification findings of that segment are not on the record of this review, and therefore we cannot consider such information in our current determinations. BGH cited SSB from Korea and

SSPC from Korea, in which the Department made determinations based on the results of verifications. Unlike those cases, we did not conduct verification in the current administrative review and, therefore, we do not have any verification findings on which to base our determinations for purposes of this review. We only have the information submitted by the parties. For the current review, to determine whether BGH's affiliated transfer prices were equivalent to market prices, we compared the affiliated-party transfer prices to BGH's reported third-party purchase prices of scrap and alloys. See Final Cost Calculation Memo at Attachment 2.

We disagree with BGH's analysis of Shrimp from Equador, SSPC from Korea, and SSB from Korea. In Shrimp from Equador, we agreed with the respondent that the transfer prices of affiliated purchases of shrimp were not comparable to the unaffiliated purchase prices of shrimp due to factual differences in the product mix of the input and timing of affiliated versus unaffiliated purchases. See 69 FR 76913 and Issues and Decision Memorandum at comment 28. In SSPC from Korea, we analyzed the timing and pricing of affiliated input purchases and comparable market prices and agreed with the respondent that the timing of purchases and market prices affected the weighted-average prices used for comparison in that case. See 66 FR 64107 and Issues and Decision Memorandum at comment 10. Likewise, in SSB from Korea, we agreed with the respondent that differences in product grades demonstratively affected the comparability of affiliated versus unaffiliated purchases. See 67 FR 3149 and Issues and Decision Memorandum at comment 3. Accordingly, we compared affiliated and unaffiliated purchases of raw materials on a grade-specific basis.

In the current case, we disagree with BGH that the transfer prices of Fe-Cr or any other scrap or alloy inputs purchased from affiliated suppliers cannot reasonably be compared to BGH's unaffiliated purchase prices in the current review due to differences in volumes, carbon levels, and the timing of purchases. With respect to volumes, BGH merely points out that the total amount of unaffiliated purchases is less than the total amount of affiliated purchases. However, the Department compares average per-unit affiliated and average per-unit unaffiliated purchase prices, not total amounts. Differences in total volumes of purchases do not preclude the comparability of average per-unit prices. With respect to the carbon levels and timing of purchases, the claimed differences are unsubstantiated with respect to the record of the current review. While we recognize the possibility that these variables could in theory affect the price of an individual purchase transaction of Fe-Cr and other scrap and alloy inputs, there is no basis to support the finding of any real differences between the carbon levels or timing of BGH's affiliated and unaffiliated purchases. Furthermore, BGH does not point to any real differences in product mix or timing that actually exist between its affiliated and unaffiliated purchases. Lacking such systematic differences, we have no basis to agree with BGH that the average transfer prices are uncomparable to the average market prices.

As such, for the Final Results, we continued to compare the average transfer price of BGH's affiliated purchases to the average unaffiliated purchase prices for Fe-Cr and other scrap and alloy inputs. See Final Cost Calculation Memo. However, contrary to the Preliminary Results, the information on the record of this review now supports the finding that BGH's purchase prices of scrap and alloy inputs from affiliated parties were at arms-length prices during the POR. As such,

no adjustment is necessary to BGH's reported cost of manufacturing with respect to affiliated scrap and alloy purchases for the Final Results.

Comment 12: BOB's Common G&A Expenses

Respondent's Argument: BGH argues that the Department erred in its calculation of BGH's general & administrative ("G&A") expense ratio. BGH notes that the Department allocated the common G&A expenses of BGH's parent company, Boschgotthardshutte O. Breyer GmbH ("BOB"), to BGH's G&A expenses for the Preliminary Results. According to BGH, the Department incorrectly included certain lease depreciation expenses in BOB's allocable common G&A expenses, because the lease charges were already reported in BGH's cost of production. See Proprietary Analysis Memo at Comment 12-A. As a result, BGH contends that the Department double-counted these lease depreciation expenses. BGH argues that the Department should correct its preliminary G&A expense ratio calculation by excluding the BOB depreciation expenses.

In addition, BGH notes that the Department also included certain "out-of-period" expenses in BOB's allocable G&A expenses. Finally, BGH argues that the Department failed to offset the allocable BOB G&A expenses for certain compensation payments which BGH reimbursed BOB in relation to an insurance policy. See Proprietary Analysis Memo at Comment 12-B. BGH argues that the compensation relates to the general operations of BGH and is, therefore, a legitimate offset to the G&A expense ratio, citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Taiwan, 67 FR 62104 (October 3, 2002) and accompanying Issues and Decision Memorandum (dated September 23, 2002) at Comment 6.

Petitioners' Argument: Petitioners argue that the Department should continue to rely on its preliminary methodology of calculating BOB's allocable G&A expenses. Specifically, Petitioners refer to the Memorandum to Neal Halper, Director, Office of Accounting, from Joseph Welton, Accountant, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - BGH Group, dated January 30, 2006 ("Prelim Cost Calculation Memo") at Attachment 2, which Petitioners claim demonstrates that the Department did offset BOB's G&A expenses by the amount of the insurance reimbursement, contrary to BGH's claim. See Proprietary Analysis Memo at Comment 12-C. In addition, Petitioners note that the Prelim Cost Calculation Memo also shows at Attachment 2 that the Department removed the proper amount of lease-related G&A expenses from BOB's total allocable G&A expenses by deducting the total lease G&A, as reported in Appendix S-81 of the January SQR. See Proprietary Analysis Memo at Comment 12-D. As a result, Petitioners argue that no lease expenses were double-counted in the Preliminary Results.

Petitioners also object to BGH's claim that the "out-of-period" expenses should not be included in BOB's allocable common G&A expenses. See Proprietary Analysis Memo Comment 12-E. Petitioners argue that the "out-of-period" expenses are recognized in BOB's normal books and records, and that section 773(f)(1)(A) of the Act provides the Department a statutory obligation to calculate costs on the basis of a company's normal books and records. Because these expenses

appear in BOB's normal books and records, Petitioners assert that they should be included in BOB's allocable common G&A expenses. Also, Petitioners assert that the Department's policy is to include prior-period expenses in the G&A expense ratio when such expenses are recognized during the accounting period used to calculate the G&A expense ratio, citing Notice of Final Determination of Sales at Less Than Fair Value; Silicomanganese from Venezuela, 67 FR 15533 (April 2, 2002) and accompanying Issues and Decision Memorandum at Comment 2 ("Silicomanganese from Venezuela"); Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Canada, 63 FR 9182 (February 24, 1998) ("Steel Wire Rod from Canada"); and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 62 FR 18404 (April 15, 1997) ("CORE from Korea").

Department's Position: We agree with BGH in part and with Petitioners in part. We agree with BGH that the Department incorrectly included certain lease depreciation expenses in our preliminary calculation of BOB's allocable common G&A expenses. BGH initially reported BOB's cost of leases in a schedule provided in Exhibit S-21 of the November 29, 2005, supplemental response. This schedule identifies certain components of BOB's cost of leases, including lease depreciation expenses and lease G&A expenses incurred by BOB. In Exhibit S-81 of the January 25, 2006, supplemental response, BGH provided a reconciliation of BOB's total expenses from BOB's 2004 financial statement to the reported lease G&A expenses in Exhibit S-21.

In their rebuttal brief, Petitioners point only to the reconciliation in Exhibit S-81 of BGH's January SQR. In that schedule, the lease G&A expenses are explicitly identified, as noted by Petitioners. However, Exhibit S-81 of BGH's January SQR also separately identifies certain depreciation expenses, without explicitly indicating that the depreciation expenses correspond to the lease depreciation expenses. An examination of Exhibit S-21 of BGH's November SQR reveals that the depreciation expenses in Exhibit S-81 correspond to the lease depreciation expenses which were included in the reported cost of leases in Exhibit S-21.

At the Preliminary Results, the Department calculated BOB's allocable common G&A by removing the lease G&A expenses identified in Exhibit S-81 from BOB's total expenses, but did not remove the lease depreciation expenses from BOB's total expenses. Because the lease depreciation expenses are attributable to the cost of leases, the lease depreciation expenses were, therefore, double-counted at the Preliminary Results. For the Final Results, we recalculated BOB's allocable common G&A expenses by removing both the lease G&A expenses and the lease depreciation expenses from BOB's total expenses.

With respect to the "out-of-period" expenses, we disagree with BGH that these expenses should be excluded from BOB's allocable common G&A expenses. Section 773(f)(1)(A)states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." We note that BGH did not directly argue as to why it believes such expenses should be excluded. The implication seems to be that the underlying transaction was from another accounting period. However, the

record does not support this notion. On the contrary, as Petitioners noted in their rebuttal brief, these expenses were in fact recognized in BOB's 2004 fiscal year financial statements. Further, BOB's 2004 financial statements were audited, and the auditors did not report any departures from German Generally Accepted Accounting Principles (GAAP). See BOB's fiscal year 2004 annual report in Exhibit S-1 of the August 1, 2005, Section A response.

Because BGH has not presented any reasoning as to why we should depart from BGH's normal books and records in accordance with home-country GAAP for purposes of calculating BOB's allocable common G&A expenses, we continued to include the expenses in question in our calculation of BOB's allocable common G&A expenses for the Final Results.

With respect to the insurance reimbursement, we agree with Petitioners. As noted by BGH, the Department generally treats gains and revenues earned in relation to the general operations of a respondent company as an offset to a respondent's G&A expenses. See, e.g., Cold Rolled from Taiwan, 67 FR 62104 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 6. While we agree with BGH that the reimbursement for the insurance policy is a legitimate offset to BOB's allocable common G&A expenses, we disagree with BGH that the Department failed to include that offset in the Preliminary Results. In fact, as noted in Petitioners case brief at 15-16, the amount of the insurance reimbursement referred to in the BGH case brief was indeed an offset to BOB's allocable common G&A expenses at the Preliminary Results. See Prelim Cost Calculation Memo at Attachment 2. For the Final Results, we continued to offset BOB's allocable common G&A expenses by the amount of the insurance policy reimbursement.

Comment 13: Company-Specific G&A Expense Ratios

Respondent's Argument: BGH notes that the Department calculated company-specific G&A expense ratios for each BGH company, rather than a single weighted-average G&A ratio for the entire BGH group. BGH contends that the Department's methodology is a departure from prior segments of this proceeding, in which the Department relied on a single weighted-average ratio. Further, BGH notes that it provided the single-weighted average ratio in the November 29, 2005, supplemental response at Exhibit S-42.

BGH observes that the Department's normal practice is to calculate company-specific G&A expense ratios where subject merchandise is produced at more than one plant, and apply the company-specific G&A ratios to company-specific costs of manufacturing for each plant. However, in the current review, BGH contends that the unique facts of the case cause the Department's normal practice to lead to a distortion. Specifically, BGH argues that the direct materials cost, which BGH claims represent the majority of the reported costs of manufacturing, were not reported on a company-specific basis, but rather represent a weighted-average of the three BGH companies. Furthermore, BGH argues that the treatment of weighted-average manufacturing costs is consistent with the Department's decision to collapse the BGH companies in the current review. BGH concludes that the Department should revert to using a single weighted-average G&A expense ratio for the entire BGH group, rather than company-specific G&A expense ratios. Alternatively, BGH reasons that the Department could apply a single

weighted-average G&A expense ratio to BGH's direct material costs, while applying company-specific G&A ratios to the respective companies' conversion costs.

Petitioners' Argument: Petitioners contend that the single weighted-average methodology and the third alternative methodology proposed by BGH should both be rejected. Petitioners argue that the Department's practice is to calculate G&A expenses based on company-specific unconsolidated financial statements of the producing entity.[38] Furthermore, Petitioners assert that the Department clearly articulated its policy regarding the company-specific G&A ratios, and properly instructed BGH to follow the standard practice, both in the standard Section D questionnaire, and in the November 2, 2005, supplemental questionnaire at p. 7, in which the Department directed BGH to apply company-specific G&A ratios "to company-specific COMs in each of the three separate production databases."

Petitioners further argue that BGH's claim that the Department must use a consolidated G&A ratio because the reported Section D material costs represent the actual cost (not transfer price) of billets obtained from an affiliated party, while the cost of goods sold in the financial statements includes transfer prices of the billets, is not supported by the record.[39] Petitioners contend that this argument does not apply to BGH Siegen and BGH Freital because they produce their own steel billets and blooms.[40]

Petitioners claim that BGH Lugau only finishes billets.[41] See Proprietary Analysis Memo at Comment 13-A. Therefore, the Department should reject BGH's arguments regarding the Department's preliminary G&A calculation.

Department's Position: We disagree with BGH that the Department's methodology of calculating and applying company-specific G&A expense ratios, rather than calculating a single weighted-average BGH G&A expense ratio for all CONNUMs, results in a distortion of costs. Normally, we calculate separate G&A ratios for each producer within a collapsed entity, and then apply the ratios to each company's respective CONNUM-specific costs of manufacturing. See, e.g., Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 11; HR from Thailand, 66 FR 50410 (September 28, 2001), at Comment 7; Notice of Final Determination of Sales At Less Than Fair Value; Carbon and Steel Alloy Wire Rod from Canada,

---

[38] Citing Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 49622 (September 28, 2001) and accompanying Issues and Decision Memorandum at comment 7 ("HR from Thailand"); Stainless Steel Round Wire From Canada; Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 17324 (April 9, 1999) ("Round Wire Rod from Canada").

[39] See BGH case brief at 11.

[40] See BGH DQR at D-15, D-16.

[41] See BGH DQR at D-3.

67 FR 55782 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 26 ("Alloy Wire Rod from Canada"). G&A expenses are period costs related to supporting the general operations of a company. By calculating company-specific G&A ratios, we ensure that each company's G&A expenses are applied to the specific products it produced.

In this case, the Department instructed BGH to report two separate cost databases, one which reports the uncombined company-specific costs for each reporting company (i.e., BGH Freital, BGH Lugau, BGH Siegen) within the BGH group (BGHCO02.SAS), and one which reports the combined costs per CONNUM for the entire BGH group (BGHCP02.SAS). The combined database as submitted by BGH does not properly weight-average the G&A costs of each company according to the Department's standard practice. Rather, it reports a single G&A ratio for all products, regardless of which company produced the product. As a result, the Department relied on the uncombined cost database for the margin calculations in the Preliminary Results to reconstruct a revised combined database with properly calculated G&A ratios.

In BGH's case brief, BGH argued that the direct material costs reported represent the weighted-average costs of the three reporting BGH companies, and that applying company-specific G&A ratios to the average material costs of the whole collapsed respondent would result in a distortion. See BGH case brief at 11. We can only presume that BGH was referring to the material costs reported in the combined database, which logically would represent weighted-average costs for the entire collapsed respondent. However, with respect to the uncombined database upon which the Department has relied, the record shows that company-specific direct material costs are in fact reported. Specifically, BGH reported that it first calculated unique actual material costs for BGH Siegen and BGH Freital by applying "plant-specific" product variances to the standard material costs.[42] In the same response, BGH also reported that BGH Lugau's material costs are calculated as a weighted-average of the cost of materials transferred from BGH Freital and third-party purchase prices.[43] Thus, according to its own responses, BGH calculated unique material costs for each BGH company which reported costs. As Petitioners noted, we instructed BGH to separately report the company-specific costs for each company in the uncombined cost database, and BGH indicated that it complied with our instructions, without referring to any exceptions. See BGH's November SQR at p. 15. Furthermore, a comparison of the direct materials data fields for any CONNUM which is produced at more than one company reveals that unique per-unit direct material costs are in fact reported for each company in the uncombined database. In other words, the uncombined database contains company-specific direct material costs.

Thus, because BGH reported company-specific direct material and conversion costs in the uncombined database, the Department is able to apply the company-specific G&A expense ratios to the company-specific costs of manufacturing, resulting in no such distortion in costs as argued by BGH. On the contrary, when relying on the uncombined cost database, both methodologies proposed by BGH entail applying a respondent-wide G&A ratio to company-specific direct material costs, which would result in a distortion. BGH's proposed methodologies effectively

---

[42] See BGH DQR at page 23.

[43] See BGH DQR at page 24.

shift G&A expenses from those products produced by higher-cost companies to products produced by lower-cost companies.

We also disagree with BGH that its proposed G&A methodologies are consistent with the Department's decision to collapse the four BGH production companies for purposes of this administrative review. The purpose of collapsing affiliated producers into a single entity is to prevent a potential for the manipulation of price and production by calculating a single dumping margin and cash deposit rate for all producers within the collapsed entity. See, e.g., Alloy Wire Rod from Canada at Comment 26; Frozen Concentrated Orange Juice from Brazil: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 60406 (October 11, 2000), and accompanying Issues and Decision Memorandum at Comment 1. In collapsing the BGH production companies into a single respondent entity, we found that the collapsed companies share similar production processes, facilities, and equipment to produce identical or similar products. See Memorandum to Gary Taverman, Acting Deputy Assistant Secretary, from Andrew Smith, Analyst (October 20, 2005). However, those findings do not entail the implication that the actual costs of production incurred by each collapsed entity are also similar or identical, and do not justify ignoring the actual costs incurred by each collapsed company to produce a particular product when determining the weighted-average cost of producing the product.

Because the combined cost database incorrectly reports the G&A expenses, we continued to rely on the uncombined cost database for the Final Results. Consistent with the Department's standard practice, we continued to weight-average the company-specific costs of manufacturing and G&A expenses of each company to calculate the CONNUM-specific costs of production for the collapsed respondent entity for the Final Results.

Comment 14: The Department Erred in Rejecting BGH's New Information

Respondent's Argument: BGH submitted certain information concerning its reported purchases of scrap and alloy inputs in BGH's original March 6, 2006, case brief. In a letter dated March 31, 2006, the Department rejected BGH's invoices which were attached as an exhibit to BGH's original March 6, 2006, case brief as being untimely new information. The Department requested that BGH resubmit its case brief, extracting the Fe-Cr invoices and certain references to those invoices. BGH argues that the Department erred in rejecting the Fe-Cr information, because it did not constitute untimely, new factual information. Rather, BGH argues, it was information that corroborated and supported information which BGH had earlier submitted earlier in its questionnaire responses. BGH contends that such information should have been accepted by the Department under the rationale of Timken U.S. Corp. v. United States, 434 F. 3d 1435 (Fed. Cir. 2006) ("Timken"). Further, BGH claims it is the Department's practice to accept this type of information even after the new information deadline.

Petitioners' Rebuttal: Petitioners argue that BGH takes an unreasonable position in contending that Timken requires the Department to accept any change to the record, regardless of when the change is submitted. Petitioners argue that in Timken the court actually held that even though the respondent presented new information in its case brief in support of reclassifying certain sales, the court found that the Department was correct in rejecting that new information because the

Department's original determination was supported by substantial evidence and was in accordance with the law. Under this interpretation of Timken, Petitioners argue that the Department should reject BGH's affiliated party purchases of alloy because there is sufficient factual information on the record to question the reliability and accuracy of the revised data.

The Department's Position: With respect to Petitioners' claim that the Department should reject information submitted by BGH in the BGH case brief, the Department reviewed BGH's original March 6, 2006, case brief, and in a March 31, 2006, letter, we determined that the original March 6, 2006, case brief contained some new factual information submitted after the deadline for submission of factual information had expired. See 19 C.F.R 351.301(b). Accordingly, the Department removed the original case brief from the official record.[44] See 19 C.F.R 351.302(d). However, the Department does not agree that the removal of this information resulted in information so incomplete that BGH's responses cannot serve as a reliable basis for reaching the applicable determination. The Department finds that the information necessary to calculate an accurate and otherwise reliable margin for BGH is available on the record of this review. With respect to BGH's contention that certain information rejected and removed from the original case brief should not have been rejected, we disagree because such information constituted new factual information. Specifically, the rejected information contained details of Ferro-Chromium ("Fe-Cr") purchases which did not previously exist on the record.

We agree with Petitioners that Timken does not create a requirement that the Department must accept any change to the record, regardless of when the change is submitted. In Timken, the court held that the Department was required to permit the respondent to submit information correcting an inadvertent misclassification of certain home market sales. Accordingly, in the instant case, we allowed BGH to correct certain inadvertent errors in its reported data regarding purchases of scrap and alloy inputs. As previously mentioned, information submitted by BGH which did not correct errors, but was instead new factual information, was rejected by the Department in a letter to BGH dated March 31, 2006. See Proprietary Analysis Memo at comment 14.

In Timken, the court found that the new information submitted by the respondent in that case was insufficient to support the respondent's overall assertion that certain sales had been misclassified, in light of substantial contradictory evidence on the record. See Timken at 1356. In this case, the only evidence that contradicts the information BGH submitted subsequent to the Preliminary Results is the earlier versions of the data which were revised. Because the Department chose not to verify BGH's responses in this administrative review, the earlier versions of this data were not verified to be more accurate than the final version. Furthermore, no information has been submitted to cast doubt on the veracity of BGH's responses. As such, we cannot conclude that the revised data submitted after the Preliminary Results was incorrect or unreliable. We therefore disagree with Petitioners that the Department had sufficient factual information on the record to question the reliability and accuracy of the revised data submitted by BGH subsequent to the Preliminary Results.

---

[44] See Letter from Susan Kuhbach, Senior Office Director, to Marc Montalbine, counsel to BGH, dated March 31, 2006.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE ____ DISAGREE ____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
(Date)