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

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

RE: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago (Period of Review: April 10, 2002 through September 30, 2003)

SUBJECT: Issues and Decisions for the Final Results of the First Administrative Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago

Summary:

We have analyzed the case briefs and rebuttal briefs submitted by interested parties. 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 Interested Party Comments section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the parties:

1. List of Comments:

Comment 1: Use of Home Market GAAP
Comment 2: Matching Hierarchy for Similar Products
Comment 3: Determination of Payment Dates
Comment 4: CEP Offset Adjustment and LOT Analysis
Comment 5: Classification of Expenses Incurred by U.S. Affiliate
Comment 6: Calculation of Imputed Expenses for CEP Sales
Comment 7: Treatment of Major Inputs from Affiliated Suppliers
Comment 8: Ministerial Error in Calculating CEP Profit

2. Background

On November 8, 2004, the Department published the preliminary results of the first administrative review of the antidumping duty order on carbon and alloy steel wire rod from Trinidad and Tobago. See Preliminary Results of the Antidumping Duty Administrative Review of the Antidumping Duty Order: Carbon and Alloy Steel Wire Rod from Trinidad and Tobago, 69 FR 64726 (November 8, 2004) (Preliminary Results). The review covers one manufacturer/exporter, Carribean Ispat Limited (CIL), and its affiliates Ispat North America Inc. (INA) and Walker Wire (Ispat) Inc. (Walker Wire) (collectively CIL). On December 8 and 13, 2004, respectively, we received case and rebuttal briefs from the petitioners (Gerdau Ameristeel US Inc., ISG Georgetown Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) and CIL. On December 22, 2004, we held a public hearing. The merchandise covered by this review is described in the scope section of the Federal Register notice issued the same date as this memorandum. The period of review (POR) is April 10, 2002, through September 30, 2003.

3. Discussion of Interested Party Comments

Comment 1: Use of Home Market GAAP

CIL argues that its home market GAAP (i.e., International Accounting Standards (IAS)) financial statements significantly overstate the depreciation costs as shown in the U.S. GAAP financial statements. CIL explains that in its home market financial statements it revalued its plant, machinery, equipment and buildings. CIL explains that the revaluation is not permitted under U.S. GAAP, but is permitted (not required) under IAS. Further, CIL explains that all subsequent assets have been valued at cost in both sets of financial statements. CIL argues that theoretically, its fixed assets would be overstated using its home market financial statements. According to CIL, the depreciation of its revalued assets under IAS will exceed the acquisition costs. Therefore, the revalued assets do not reflect actual costs and should not be used in the cost of production (COP) and constructed value calculations.

CIL argues that the home market GAAP-based financial statements do not reflect its actual costs of producing wire rod. CIL argues that the Department should use the companies' audited U.S. GAAP financial statements instead. CIL points to section 773(e)(1)(2)(A) of the Tariff Act of 1930, as amended (the Act) which states the constructed value shall be an amount equal to the sum of the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. CIL claims that Congress intended to disregard cost not actually incurred by the respondent.

CIL also points to section 773(f)(1)(A) of the Act which states that the costs must reasonably reflect the costs associated with sale and production of the subject merchandise. In this instance, CIL asserts that its home market financial statements do not reasonably reflect its costs because of the revaluation of assets. CIL cites several Federal Register Notices supporting its claim. See

Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742 (January 6, 2000); Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part, 64 FR 69694 (December 14, 1999); Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 56759 (October 21, 1999).

As a principle, CIL claims that distortions can occur if the home market financial statements reflect costs that were never incurred by the respondent. See Cinsa v. United States, 966 F.Supp. 1230 (CIT 1997). In that review, Cinsa submitted home market GAAP financial statements which reflected revalued depreciation costs. In the review, the Department used the revalued depreciation costs in its calculation. On appeal, Cinsa argued that the revaluation distorted the depreciation costs because the revaluation can be greater than the acquisition cost of the asset. The Court said that Cinsa failed to meet its burden of proof; however, CIL maintains that this case makes clear that one way which a company's financial statement can be distorted is if the total amount of depreciation costs exceed the acquisition costs of the assets.

CIL argues that the Department should use its U.S.-GAAP based financial statements instead. CIL explains that the U.S. GAAP financial statements are audited and provide the only fair basis for calculating cost in this review. More specifically, CIL states that its U.S. GAAP financial statements are based entirely on acquisition costs and depreciation will exactly equal the costs of the assets. Further, only the U.S. GAAP-based financial statements reflect its actual costs.

The petitioners argue that the Department correctly relied on financial statements prepared in accordance with IAS to calculate CIL's COP and constructed value. The petitioners assert that CIL's argument should fail as it did in the original investigation and preliminary results of this review. The petitioners state that the Department's use of home market GAAP (i.e., IAS) is consistent with the statute. The petitioners reference section 773(f)(1)(A) of the Act which states that a respondent is to report its costs based on home market GAAP as long as the standards "reasonably reflect the costs associated with the production and sale of the merchandise."

Moreover, the petitioners argue CIL has provided no information showing that its IAS statements are unreasonable. The petitioners point to the CIL case brief at page 7, where CIL explains that it revalued its plant, machinery equipment, and building based on values placed on those assets by independent appraisers, and the depreciation costs in CIL's IAS financial statements properly reflect the reduction in value of these assets over their remaining useful life.

Finally, the petitioners point to the Department's decision memorandum, at Comment 5, in the Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago, 67 FR 55788 (August 30, 2002) (Investigation), arguing that it is consistent with the Department's practice to rely on the depreciation expenses when reported in the normal books and records of the respondent. In addition, this comment references Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut to Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73153 (December 29,

1999); Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 64 FR 6305, 6321 (February 9, 1999); and Cinsa S.A. de C.V. v. United States, 966 F. Supp 1230, 1234 (CIT 1997).

Department's Position: We agree with the petitioners. The Department will continue to rely on the amounts recorded in CIL's audited financial statements prepared in accordance with CIL's home market GAAP (i.e., IAS) as we did in the Investigation. CIL's questionnaire responses (i.e., trial balances, management accounts, financial statements) support the conclusion that CIL's normal books and records are kept in accordance with IAS, its home market GAAP.

Moreover, the notes to CIL's parent company, Ispat NV's audited financial statements in Attachment A5 of CIL's January 12, 2004, response, state explicitly that the records of each operating subsidiary are maintained using the statutory or generally accepted accounting principles of the country in which the operating subsidiary is located and that for consolidation purposes the financial statements that result from such records have been adjusted to conform to U.S. GAAP. CIL's normal books and records are kept in accordance with home country GAAP (i.e., IAS), but are also adjusted to conform to U.S. GAAP so that its parent company can report its consolidated results on a consistent basis and thereby gain access to foreign equity markets.

Under section 773(f)(1)(A) of the Act, the Department is directed to follow the normal records of a producer if those records are kept in accordance with the producer's home market GAAP and reasonably reflect the costs associated with the production and sale of subject merchandise. Because CIL's depreciation costs, calculated on the basis of its revalued asset amounts, are recorded in its normal books and records and those records are kept in accordance with home market GAAP (i.e., IAS), it remains for the Department to determine whether those records reasonably reflect the costs associated with the production and sale of subject merchandise.

We do not find that CIL's recorded fixed assets distorted its depreciation costs. Depreciation calculated based on the revalued assets represents the current cost associated with holding these assets. Calculating depreciation on the historical values of the assets would distort the depreciation expense and therefore the costs reported because the compounded effects of inflation over the multiple years of the useful lives of the assets would understate costs. In other words, costs would be understated because depreciation would be calculated using the lower historical values of the assets instead of the inflated (i.e., restated) amounts. See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico, 69 FR 53677 (Sept. 2, 2004), and accompanying Issues and Decision Memorandum, at Comment 21. As such, we find that CIL's decision to reassess its fixed assets reasonably reflects the costs associated with the production and sale of subject merchandise. The Department's established practice with respect to depreciation calculated on revalued fixed asset amounts has been to include that depreciation in the respondent's reported costs if it is reported in the respondent's normal books and records. See Investigation, 67 FR 55788, and accompanying Issues and Decision Memorandum at Comment 5; Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 49622 (Sept. 28, 2001), and accompanying Issues and Decision Memorandum at

Comment 1, and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate Products from France, 64 FR 73143, 73153 (Dec. 29, 1999). This practice has been upheld by the CIT in Cinsa S.A. de C.V. v. United States, 966 F. Supp 1230, 1234 (CIT 1997). Therefore, in the final determination the Department is relying on CIL's audited financial statements prepared in accordance with its home market GAAP (i.e., IAS) to calculate CIL's COP and constructed value.

Comment 2: Matching Hierarchy for Similar Products

CIL claims that the Department erred in its methodology for selecting the most similar product in the home market where two equally similar products are available. CIL argues that the Department should not select the matches based on physical characteristics (e.g., lower carbon content), but rather the Department should match based on the lowest difference in variable costs of manufacture. CIL argues that the Department simply selected the product with the lower carbon content in the Preliminary Results which is inconsistent with the Department's practice.

CIL asserts that when several home market products are equally similar in physical characteristics, the Department's practice is to choose the product with the lowest difference in variable cost of manufacturing, provided the difference in merchandise does not exceed 20 percent of the total cost of manufacturing of the U.S. model. See Certain Forged Stainless Steel Flanges from India; Final Results of Antidumping Duty Administrative Review (Flanges from India), 61 FR 51263, 51265 (Oct. 1, 1996). CIL argues that the Department should follow its standard methodology and select as a comparison sale for the U.S. sale the home market product with the smallest difference in variable cost of manufacture.

The petitioners argue that the Department's practice is to match products based on physical characteristics. The petitioners argue that the Department's normal practice is to choose the product with the lowest difference in variable cost of manufacturing, only where "equally similar" home market products exist. See Flanges from India. The petitioners contend that, while the Department's margin analysis program does carry out the smallest difference in merchandise test, this adjustment is based on physical characteristics and is applied after similar merchandise has been selected. See Hussey Cooper v. United States, 895 F. Supp. 311 (CIT 1995).

For example, for one of the physical characteristics (e.g., carbon content) used to match products, the petitioners argue that the Department would apply the smallest difference in merchandise test only if CIL's carbon content codes were equally similar. However, the petitioners assert that the information on the record contradicts CIL's claim that certain carbon content codes are the same. The petitioners argue that the Department assigned a weight value to each of the physical characteristics, such as carbon content, for the preliminary calculation. Thus, because the absolute value of the difference between the weights for the carbon content with the lower range is less, the Department considered the match with the lower carbon content to be more similar.

In order to support their claim, the petitioners compared grades associated with each carbon range to demonstrate that the lower carbon content range is more similar. Further, the petitioners claim the grade is the most important physical characteristic because customers decide what they need to purchase for consumption by grade. They explain that because of these overlaps in grade, the Department uses grade ranges, instead of a specific grade, as the first key in the product matching characteristic.

However, this does not negate the importance of specific grade in product matching. The petitioners assert that the Department assigned a closer weighting value for the lower carbon content code. Therefore, the petitioners claim that the Department did match to the most similar product. The petitioners cite the Investigation and Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada (Wire Rod from Canada), 69 FR 68309 (November 24, 2004). The petitioners also cite the Department's March 26, 2002, memo issued before the preliminary determination in the original investigation which updates the weighting values.

Department's Position: We agree with the petitioners. Congress has delegated to the Department the ability to choose model-matching criteria to identify the "foreign like product" to which domestic sales are compared to calculate the dumping margin. See New World Pasta v. United States, 316 F. Supp. 2d 1338, 1352 (CIT 2004) citing Pesquera Mares Australes, Ltda. v. United States, 266 F. 3d 1372, 1384 (Fed. Cir. 2001); Koyo Seiko Co. v. United States, 66 F. 3d 1204, 1209 (Fed. Cir. 1995). However, section 771(16)(A) of the Act requires the Department to base its model-match criteria on "physical characteristics." In addition, it is the Department's practice to consider only meaningful or significant physical characteristics. See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Mexico, 64 FR 14872, 14875 (March 29, 1999); Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 63 FR 18879, 18881 (Apr. 16, 1998); Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta from Italy, 67 FR 300, 302 (Jan 3, 2002).

We disagree with CIL's claim that there were two equally similar products in the home market available to match to the U.S. product. As explained above, it is our practice to match products based on physical characteristics. The Department will only choose the product with the lowest difference in variable cost of manufacturing when equally similar home market products exist. In this case, there were no equally similar products in the home market, and we did not have to choose the product with the lowest difference in variable cost of manufacturing.

In the Preliminary Results, we followed the same product matching criteria as described below in the Product Comparison section of the preliminary determination of the investigation.

> "We have relied on eight criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or constructed value (CV): grade range, carbon content range, surface quality, deoxidation, maximum total

> residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above."

See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 17379 (April 10, 2002) (Preliminary Determination) and Investigation, 67 FR 55788.

In addition, the weights used in our matching criteria are also provided in Attachment 3 of the Department's November 1, 2004, Preliminary Calculation Memorandum. Therefore, the Department will continue to match products by the most similar product characteristic based on the weight of each product characteristic.

Comment 3: Determination of Payment Dates

CIL argues that the Department should not have used the date of the preliminary results to calculate imputed credit expenses for unpaid sales. CIL wants the Department to use its reported average payment dates for sales which were unpaid as of the last day new information was submitted. Further, CIL explains that the Department has used various methods for choosing payment dates for sales which remained unpaid. CIL agrees that the Department has used the date of the preliminary results, as in this case. See e.g., Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile, 69 FR 47869 (August 6, 2004). However, CIL argues that the Department has used a variety of alternative methods. The Department has also calculated the average number of days between shipment date and payment date for those sales where the information is available. See e.g., Notice of Preliminary Results of Antidumping Duty New Shipper Review: Structural Steel Beams From Japan,66 FR 63365 (December 6, 2001). Under a third approach, the Department has used a customer-specific average payment date. See e.g., Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy, 63 FR 42368 (August 7, 1998). Under a fourth approach, the Department has used the date of the preliminary results, the date of the final questionnaire response, or the last date of verification, as applicable citing e.g., Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 13896 (March 8, 2001).

CIL asserts that the Department must consider what most accurately reflects the true price of the merchandise at the time of sale. See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 66 FR 45279, 45283 (Aug. 28, 2001). CIL explains that it did not expect the customer to not make its payment when the price was set. For that reason, the Department must consider what CIL could have reasonably expected regarding the date of payment. For some cases, there may be knowledge that payments are not expected. See Wire Rod from Canada, 67 FR at 55782, and accompanying Issues and Decision

Memorandum at Comment 13. CIL argues that the Department should take the approach that there is no evidence that CIL expected that its customer would fail to pay its invoices in a timely manner.

In this case, CIL asserts that it is reasonable for the Department to consider that this customer would have made payments in the same manner consistent with other customers with the same payment terms. Thus, for the final results, the Department should use the average actual payment period for all paid sales with the same payment terms. If the submitted method is not used, then as an alternative, CIL suggests using the last date for submission of factual information. Finally, CIL argues that although the Department has used the date of the preliminary results in past cases, it has typically done so in order to apply adverse facts available to a respondent that failed to report payment dates. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2101 (January 15, 1997). CIL argues, in this case, there is no evidence that it has not acted to the best of its ability to provide information.

The petitioners argue that the Department should use the date of the final results. In support, petitioners cite Certain Preserved Mushrooms from India, where the Department changed the surrogate payment date from the preliminary results to the final results for the respondent's unpaid U.S. sales. See Certain Preserved Mushrooms from India; Final Results of Antidumping Duty Administrative Review, 67 FR 46172, 46173 (July 12, 2002). The petitioners argue that this methodology is not punitive and understates the actual credit costs.

The petitioners also cite Wire Rod from Canada, 69 FR at 68309, and accompanying Issues and Decision Memorandum at Comment 7, where the Department stated that it will not apply average payment dates as a surrogate payment date when unpaid sales are not written off by the respondent. The petitioners state that the record evidence shows that the unpaid sales were not written off. Thus, the Department should apply either the last date of verification, the last date of factual submission, or the date of the preliminary (or final) results as the date of payment.

Department's Position: We have determined that it is appropriate to set the proxy payment date as the last day on which CIL had an opportunity to submit new information in this review. This methodology is consistent with Department practice. See Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile, 70 FR 6618, and accompanying Decision Memorandum at Comment 11 (February 2, 2005); and Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel from Germany, 67 FR 55802, and accompanying Decision Memorandum at Comment 4 (August 30, 2002).

As noted by CIL, the Department used weighted-average payment dates in the preliminary results of this proceeding for CIL's unpaid sales. However, the petitioners correctly cite decisions such as Wire Rod from Canada where the Department only applied the weighted-average to sales that were written off. As a practice, the Department will normally include bad debt expenses from written-off sales as part of the respondent's indirect selling expenses. See Wire Rod from Canada, 69 FR at 68309, and accompanying Issues and Decision Memorandum

at Comment 7. In this case, CIL has not presented evidence on the record that the particular unpaid sales in question were written off. The burden is on the respondent to submit documentation for the record supporting its claims. See Reiner Brach GmbH v. United States, 206 F Supp 2d 1323, 1333 (CIT 2002). Therefore, as part of the Department's normal practice, we have applied the last day for submitting new factual information as the date of payment for CIL's unpaid sales.

Comment 4: Constructed Export Price Offset Adjustment and Level of Trade Analysis

The petitioners argue that before a constructed export price (CEP) offset is proper, section 772(a)(7)(B) of the Act requires that home market sales be made at a more advanced stage of marketing than the U.S. sales. The petitioners claim the record of evidence demonstrates that sales made in Trinidad and Tobago were made at either a comparable or a less advanced stage of marketing than the level of trade (LOT) for U.S. CEP sales. Further, the petitioners assert that the Department should carefully scrutinize any LOT adjustments, since they may be susceptible to manipulation. See Statement of Administrative Action, H. Doc. No. 316, 103rd Cong., 2d Sess. at 829. The petitioners state that the Department must use evidence concerning the functions that are performed and must closely scrutinize the claims made by CIL. In addition, the petitioners argue that the Department itself recognized that any analysis must be based not on "nominal references," but rather on verifiable evidence. According to the petitioners, this is why the Department developed a quantitative and qualitative procedure for analyzing the respondent's data. The petitioners cite cases such as Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852, 77855 (Dec. 13, 2000) (Third Review of Pasta from Italy).

The petitioners presented their own quantitative analysis, based on the data submitted by CIL, arguing that there is no difference between CIL's home market sales and its CEP sales. With regard to direct selling expenses, the petitioners assert that there was no significant difference for warranty costs for the U.S. sales and for the home market sales. In addition, the petitioners argue that there was a quantitative difference in the reported credit expenses and movement charges demonstrating that U.S. sales are at a more advanced marketing stage than home market sales. Further, the petitioners noted that six selling functions did not have a corresponding expense and will not support an LOT difference. Thus, the petitioners asserted that the only quantitative differences occur for credit, warranty, and freight and delivery arrangements but support a finding that the U.S. sales were at a more advanced LOT. Finally, the petitioners maintain that CIL reported the identical ratio used to calculate the indirect selling expense for home market sales and U.S. sales.

For a qualitative analysis, the petitioners examine the same selling functions and note that there are two observations that should be made. First, they state that the selling functions for the export price (EP) and CEP sales are identical. Thus, if all of the EP and CEP selling functions are the same, then there is no basis for finding that CEP and home market sales are at different LOTs. Second, the only difference between home market and U.S. selling functions are the development of sales force and freight and delivery arrangements. As for delivery and freight arrangements, they argue that this selling function would support a finding that the U.S. sales were made at a more advanced LOT. With respect to sales force development the petitioners argue that no quantitative data support CIL's assertion that sales force development was greater

in the home market. Further, the petitioners argue that even if sales force development is greater in the home market, the single selling function is not significant enough to establish a distinct LOT.

In addition to providing an analysis of the selling functions, the petitioners analyzed the different levels of activity for seven of CIL's EP, CEP, and home market selling functions. Specifically, the petitioners argue that comments from CIL's response support a finding that CIL's level of soliciting orders was no different with regard to the channel of distribution. With regard to price negotiation, processing purchase orders, and invoicing, the petitioners claim that the shear difference in the number of invoices and customers help to demonstrate that the level of activity is less in the home market. For accounts receivable management, the petitioners note that CIL reported that it received advance payments from its home market customers while payment for some of its U.S. sales have not yet been made. For sales force development, the petitioners assert that CIL's claim alone that it only works with sales force development for home market sales is not sufficient to determine that there is no sales force development for its CEP and EP sales. As for freight and delivery arrangements, since CIL spends more time making freight and delivery arrangements for CEP and EP sales, there is no support CIL's claim for a CEP offset.

Finally, the petitioners argue that the CEP offset is not an automatic adjustment and the respondent must demonstrate an adjustment is warranted. Furthermore, the petitioners argue that section 351.401(b)(1) of the Department's regulations states that it is the respondent's burden to provide the relevant information and establish the amount and nature of such an adjustment.

CIL argues that the Department properly determined that CIL's home market sales were made at a more advanced LOT than its CEP sales. CIL asserts that because there was only one LOT in the home market, the Department made a CEP offset to normal value. CIL notes that the Department's decision is consistent with the original investigation. Furthermore, CIL claims, although the Department is not bound to follow a decision from a prior segment of a proceeding, the Department verified CIL's sales activities during the investigation and the facts are the same in this administrative review.

CIL claims that even though its sales volume in the home market was smaller, its selling activities were relatively greater. CIL notes that it has multiple customers in the home market that take small amounts of wire rod from its factory compared to the larger orders related to U.S. sales. Further, CIL notes that it must then invoice these customers on a monthly basis and monitor payment. In the United States, by contrast, the vast majority of CIL's sales were made through its U.S. affiliated reseller, INA. For these CEP sales, CIL asserts, INA is the more active party and CIL's activities are limited. CIL further explains that it is not involved in soliciting customer orders; it loads large quantities of wire rod on vessels all at one time; it sends one invoice covering an entire shipload of the wire rod to INA; and it spends little time monitoring payment from INA.

CIL claims that when the tables listing its selling activities in its responses are properly analyzed, the tables support CIL's argument that a CEP offset is appropriate. In comparing CIL's EP and CEP selling activities and the degree of activity for each channel of trade in the table, CIL examined solicitation of orders, price negotiation, and accounts receivable

management. CIL explained that INA takes the lead in soliciting CEP sales, while CIL develops EP sales. With regard to price negotiations, INA negotiates prices with CIL's CEP customers and CIL negotiates prices with the EP customers. As for accounts receivable management, CIL is responsible for billing and collecting for EP sales, while INA handles this for CEP sales.

To find that two types of sales are at the same LOT, CIL asserts that the Department must find significant overlap of selling functions and no significant differences among the activities. See Roller Chain, Other Than Bicycle From Japan: Final Results and Partial Recission of Antidumping Duty Administrative Review, 63 FR 63671 (November 16, 1998) (Roller Chain from Japan). CIL argues that the differences are significant here. Furthermore, CIL argues that it performs qualitatively different functions between its CEP and EP sales. See Third Review of Pasta from Italy. CIL asserts that after deciding that EP and CEP sales are at a different LOT, the Department must examine the LOT of a respondent's CEP and home market sales. However, the comparison to home market sales must be made against CIL's sales in the United States to INA, not to INA's unaffiliated customer.

CIL highlighted five areas where its home market selling activities were greater than its U.S. CEP selling activities: sales force development; solicitation of orders; price negotiation; processing purchase orders; and invoicing. For each of these activities, CIL states that INA performs most of the work for the U.S. selling activities in the United States. With regard to invoicing, CIL argues that the petitioners' analysis is particularly flawed. First, CIL's customers are its U.S. affiliates and not the customers of the affiliates. Second, CIL, in fact, did sell a far greater amount of wire rod in the United States and therefore issued more invoices. CIL suggests that a more appropriate analysis is to determine the frequency with which CIL issued its invoices. CIL asserts that the Department will conclude that CIL issued invoices more often for its home market sales than it did for its CEP sales. While CIL's activities for freight and delivery arrangements are greater for CEP sales, it asserts that this fact alone does not undermine the overall conclusion that CIL's home market sales are at a more advanced LOT. With regard to accounts receivable management, the CEP sales require virtually no follow-up, since all of CIL's sales were made to affiliated parties.

CIL maintains that it has explained that both quantitative and qualitative factors exist on the record. Further, CIL claims that the petitioners are incorrect when they state that the Department must find both quantitative and qualitative factors to demonstrate that an LOT difference exists to grant a CEP offset. However, CIL notes that the Department has clearly expressed that both types of factual support need not be shown. See Issues and Decision Memorandum for the Third Review of Pasta from Italy at Comment 5a. In addition, CIL asserts that its distribution chain is similar to that in Roller Chain from Japan where the Department performed quantitative and qualitative analysis of the selling function in the home market and CEP market and found that there were significant differences resulting in different LOTs. However, in this case, CIL asserts that the quantitative analysis performed by the Department in Third Review of Pasta from Italy is not possible.

In addition, CIL argues that the petitioners' quantitative analysis is flawed. For instance, with regard to the ratio used to calculate indirect selling expense, CIL explained that it does not record its selling activities by market. Rather, all costs are recorded in the same cost center.

Therefore, the fact that the same indirect selling expense ratio was reported for both home market and U.S. indirect selling expenses does not mean that CIL incurred identical expenses for sales in each market. It is simply a reflection that this was the most accurate reporting methodology available for CIL. With regard to credit and warranty, INA was the one that bore the expenses. Therefore, CIL notes that the data is not relevant to a quantitative analysis. Finally, CIL argues that the petitioners' suggestion that CIL's narrative description of its sales process is not sufficient to support a CEP offset is incorrect. CIL states that even a "self-serving" statement can be relied on if it is supported by verifiable facts. See AK Steel Corp. v. United States, 34 F.Supp.2d 756, 773 (CIT 1998).

Department's Position: Based on our analysis of information on the record, for these final results, we find that an LOT difference exists between CIL's U.S. CEP sales and its home market sales. In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (NV) based on sales in the comparison market at the same LOT as the EP or the CEP transaction. The NV LOT is that of the starting-price sales in the home market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997) (Carbon Steel Plate). The statute and the SAA support analyzing the LOT of CEP sales at the level of the constructed sale to the U.S. importer -- that is, the level after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has adopted this interpretation in previous cases. See e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order, 63 FR 50867, 50872 (September 23, 1998); see also Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea, 63 FR 8945 (February 23, 1998).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. In this particular case, for the CEP sales, the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability. Therefore, we made an adjustment to NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

We disagree with the petitioners' claim that CIL's factual information in its narrative and sales listing does not support its claim for a CEP offset adjustment. The majority of the petitioners' argument is based on CEP selling expenses. Section 773(a)(7)(A)(i) of the Act states that there is a difference in LOT between the EP or CEP and NV if there are different selling activities.

Therefore, it is necessary for the Department to find that there are different selling activities as it did in the preliminary results. In the preliminary results, we stated that because in our LOT analysis for CEP sales we only consider the selling activities reflected in the price after the deduction of the expenses incurred by the U.S. affiliate, the record indicates that for CIL's CEP sales there are substantially fewer services performed than for the sales in its home market. Therefore, we have determined that CIL's home market sales are made at a different, and more advanced, stage of marketing than the LOT of the CEP sales. See Preliminary Results. Furthermore, the Department's decision is consistent with our decision in the original investigation. See Preliminary Determination; see also Investigation and Stainless Steel Sheet and Strip in Coils from Italy: Final Results of Antidumping Administrative Review, 68 FR 69382 (December 5, 2003), and accompanying Issues and Decision Memorandum at Comment 1.

More specifically, we agree with CIL that EP sales are made at a more advanced LOT than its CEP sales. CIL identified three stages of the sales process which support its claim that EP sales are made at a more advanced LOT than its CEP sales. CIL explains that it expends more effort in soliciting orders, negotiating prices, and managing accounts receivable with its EP sales, since INA is largely responsible for these selling activities for the CEP sales. As for determining that NV and CEP sales are at different LOTs, we disagree with the petitioners' suggestion that a number of activities performed by INA are relevant to the LOT analysis. CIL clearly explained that its home market selling activities were greater than its U.S. CEP selling activities. CIL identified areas such as sales force development, solicitation of orders, price negotiations, processing of purchase orders, invoicing, and accounts receivable management with greater degrees of selling activities and clearly explained that most of the selling activity for CEP sales was the responsibility of INA. Therefore, in the preliminary results, the Department properly focused on CIL's selling activities in the LOT analysis by considering the selling activities reflected in the price after the deduction of the expenses incurred by the U.S. affiliate. The Department is not changing its determination from the preliminary results.

Comment 5: Classification of Expenses Incurred by U.S. Affiliate

The petitioners claim that CIL's field named "other movement expenses" (which were incurred by its U.S. affiliate INA) does not exclusively contain movement expenses. The petitioners argue that the Department requires a respondent to separately report various expenses related to its sales and that the respondent has the burden of establishing to the satisfaction of the Department the amount and nature of a particular adjustment. The petitioners assert that just because CIL claims the Department verified the methodology in the original investigation does not mean that the methodology is not overly broad. The petitioners state that the Department is not required to accept the same methodology in a subsequent segment of the same proceeding, citing Hoogovens Staal BV v. U.S., 4 F. Supp.2d 1213, 1217 (CIT 1998).

Furthermore, the petitioners claim that CIL misreported CEP expenses (e.g., direct selling, re-packing and further manufacturing costs) as movement expenses in the field named "other movement expenses." The petitioners argue that because expenses other than movement expenses are reported in the field named "other movement expenses" the calculation for CEP profit is underreported. In addition, the petitioners suggest that since the per-unit amount

reported for "other movement expenses" for sales by INA are greater than the per-unit amount for sales by Walker Wire for some sales, that is a clear indication that CIL included more than movement expenses. Moreover, the petitioners argue that CIL itself conceded that the expenses in "other movement expenses" for sales to Walker Wire may be considered as part of further manufacturing costs, citing CIL's October 15, 2004, submission at 9.

The petitioners argue that CIL's reporting methodology for "other movement expenses," if accepted by the Department, would distort the Department's analysis. The petitioners assert that since CIL stated that the bundling of expenses "has no effect on the calculation of the dumping margin," it failed to act to the best of its ability. See September 20, 2004, Supplemental Response at S-35. Therefore, the petitioners assert that since CIL failed to establish the nature of the expenses in "other movement expenses," the Department should treat all expenses in "other movement expenses" as CEP expenses in its calculation of CEP profit.

CIL argues that as requested by the Department it reported all transportation expenses for moving the product from Trinidad and Tobago to the final location in the field "other movement expenses." CIL explains that it would be extremely burdensome to report these expenses in the movement categories provided in the Department's questionnaire (e.g., U.S. inland freight and U.S. brokerage and handling) because of the way INA keeps its books and records. Further, CIL explains that it can group these movement charges by a vendor but this grouping varies significantly from sale to sale. For example, INA might receive a single invoice covering all charges, while for another sale, it might cover only certain components of the shipment.

Further, CIL asserts that it reported all of the expenses related to transportation from the mill to the customer. CIL explains that to characterize this expense as a further manufacturing expense would be inappropriate. CIL asserts that it is not adding value with the services included in "other movement expenses." CIL argues that it reported all of these expenses as movement expenses because they are associated with the transportation from the mill to the customer. Further, CIL argues that the re-packing included in "other movement expenses" is not a cost related to further manufacturing as claimed by the petitioners. CIL argues that the U.S. Court of Appeals for the Federal Circuit ruled recently that re-packing was properly classified as a movement expense, since the expenses were incurred to return the product to its original marketable form. See NSK Ltd. V. United States, 390 F. 3d 1352 (Fed. Cir. 2004).

In addition, CIL argues that the same methodology was verified by the Department in the original investigation. CIL explains that it used this methodology because the Department accepted it, without opposition, in the investigation. CIL also maintains that it provided records of its movement expenses in its supplemental response and that it put forth the maximum effort to obtain the information requested by the Department in compliance with instructions given by the Department. See Tianjin Machinery Import & Export Corp. v. United States, (CIT 2004).

Department's Position: We agree with CIL. In accordance with section 351.401(e) of the Department's regulations, we have made an adjustment for movement expenses to establish the CEP. In CIL's original response and supplemental response, it explains that all expenses reported in this field relate to movement expenses incurred by INA. In its September 21, 2004, supplemental response, CIL provided the Department with a worksheet and supporting

documentation to demonstrate how it calculated movement expenses and that the reported expenses are indeed related to movement. In addition, CIL explains that INA keeps track of its movement-related expenses on an order-specific basis, but does not keep a description of individual expense items charged to each order (e.g., barging, stevedoring, and demurrage). In fact, CIL explains that sometimes these expenses are bundled together by the service provider and it is not able to report individual expenses. The record shows that all these movement and related expenses are often combined in one invoice. Thus, it is not possible for CIL to accurately report these items separately. Therefore, because CIL could not report individual expenses, we allowed CIL to report these expenses on an order-specific basis pursuant to section 782(e) of the Act.

Comment 6: Calculation of Imputed Credit Expenses for CEP Sales

The petitioners argue that CIL underreported its U.S. credit expenses. First, the petitioners state that CIL reported opportunity costs in three computer fields, i.e., imputed credit expenses, inventory carrying expenses in the home country, and inventory carrying expenses in the United States. The petitioners assert that CIL's division of opportunity costs does not reflect CIL's actual selling operations. Instead, the petitioners argue that the Department should calculate imputed credit expenses to cover the entire period from the date on which CIL shipped the subject merchandise directly to the unaffiliated U.S. customers to the date on which CIL/INA received payment for such shipment.

The petitioners argue that the Antidumping Questionnaire instructs respondents to calculate and report imputed credit expenses on a transaction-by-transaction basis using the number of days between date of shipment to the customer and date of payment. However, CIL used the difference between the date of invoice and date of payment to calculate imputed credit expenses for CEP sales. For the final results, the petitioners state that the Department should use the shipment date to calculate imputed credit expenses. The petitioners cite Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, at Comment 12 (June 8, 1999).

The petitioners assert that the division of these costs would only be appropriate if INA inventoried the subject merchandise. In this situation, the petitioners reference CIL's response in which it states that INA does not maintain inventory in the United States. Therefore, according to the petitioners, it is logical to assume that CIL and INA did not maintain inventory after shipment. Further, any expenses associated with warehousing were already included as part of other movement expenses. Thus, the petitioners argue that CIL incurred imputed credit expenses from date of shipment until payment. Also, the petitioners request that, at a bare minimum, the Department eliminate the negative amounts CIL included as imputed credit expenses and inventory carrying costs in the United States.

In CIL's rebuttal brief, it argues that it reported imputed credit expenses in accordance with the questionnaire and the Department's practice. Further, it asserts that it appropriately divided the inventory carrying and credit period for CEP sales into three distinct time periods to reflect commercial reality. CIL explains that it calculated inventory carrying costs incurred in Trinidad and Tobago from the time of final production to the time of arrival in the United States. CIL

disagrees with the petitioners' assertion that the division of time used to calculate inventory carrying costs incurred in Trinidad and Tobago would only be proper if INA had inventoried the goods. As for inventory carrying costs incurred in the United States, CIL stated that it believes that the date of invoice in lieu of the date of shipment from warehouse is appropriate because there is no warehouse. Therefore, CIL argues that its calculation of inventory carrying costs incurred in the United States from the date of entry to the date of invoice is correct. With regard to the credit expense calculation, CIL asserts that using the period from the time the goods were invoiced to the time they were paid is correct, since this accounts for the credit expense that INA incurred on the CEP sale. Finally, CIL argues that if the Department concludes that imputed credit expenses begin at time of entry, then the Department must exclude inventory carrying costs incurred in the United States from its calculation.

Department's Position: We agree in part with the petitioners. Credit expense is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. Therefore, it is the Department's intention, in CEP cases, where the merchandise does not enter inventory of a U.S. affiliate in the United States, to calculate the credit period from the time the merchandise leaves the port in Trinidad and Tobago to the date of payment. See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710 (June 8, 1999), at Comment 12 and Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China, 61 FR 53190, 53195 (October 10, 1996).

In CIL's January 12, 2004, response to our section A questionnaire, CIL explained that orders are typically delivered from the mill to the end user and INA does not maintain inventory in the Unites States. Therefore, we conclude that INA did not have any sales of subject merchandise out of inventory during the POR. CIL's sales made through INA were direct shipments. However, CIL did maintain inventory at CIL's factory and did incur domestic inventory carrying costs. Thus, we recalculated domestic inventory carrying costs based on the average time in inventory in Trinidad and Tobago. For the reported inventory carrying costs in the United States, we set the reported amounts equal to zero. Furthermore, we have recalculated credit expenses based on the date of shipment from the mill to the payment date of the U.S. customer.

Comment 7: Treatment of Major Inputs from Affiliated Suppliers

The petitioners argue that iron ore and billets are major inputs for the production of wire rod. The petitioners assert that iron ore is the major component used to produce the direct reduced iron (DRI) that CIL charges directly into its arc furnaces and its production process consists of melting raw material (e.g., DRI, refining, casting billets, and rolling billets into wire rod). See CIL's responses on January 12, 2004, at A-30 and September 20, 2004, at D-5. Therefore, iron ore is the basic raw material used to produce DRI and billets used to produce wire rod.

Furthermore, the petitioners argue that the Department's questionnaire states: "A major input is an essential component of the finished merchandise which accounts for a significant percentage

of the total cost of manufacturing incurred to produce one unit of the merchandise under consideration." The petitioners assert that there is no requirement that the billets purchased from CIL's affiliates constitute a significant portion of the total cost of production. Instead, according to the petitioners, the Department requires that iron ore and billets account for a significant percentage of the cost of one unit of production. Therefore, the petitioners claim that CIL should have reported the average price and COP data for iron ore and billets.

For the final results, the petitioners argue that the Department should adjust the average transfer prices charged by CIL's affiliated iron ore suppliers to reflect the average price CIL paid to its unaffiliated iron ore suppliers. The petitioners assert that the Department should use the same method the Department used in Wire Rod from Canada, 69 FR 68309, and accompanying Issues and Decision Memorandum at Comment 3.

Because CIL failed to submit the cost of purchased billets, the petitioners argue that the Department should not allow CIL to adjust the cost of manufacturing by subtracting the cost of billets purchased from affiliated suppliers or the Department should adjust the cost of manufacturing for billets purchased from affiliates by the same percentage that should be applied to the affiliated iron ore purchases.

In CIL's rebuttal brief, it argues against any adjustment to account for the difference in prices for iron ore purchases from affiliated suppliers and unaffiliated suppliers. CIL asserts that the price fluctuation of iron ore over time had an impact on the weighted-average prices. Regarding the purchases of billets, CIL argues that purchased billets are not a major input in the production of wire rod. CIL argues that "when determining whether an input or process is considered major, the Department considers the percentage of the input or process obtained from affiliated suppliers and the percentage the individual element represents of the products's COM." See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30748 (June 8, 1999).

Department's Position: We agree with the petitioners that CIL's reported costs were understated for affiliated purchases of iron ore. Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the statute, the Department normally compares the transfer price paid by the respondent to affiliated parties for production inputs to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the input in question constitutes a major input under section 773(f)(3) of the Act, the Department compares the transfer price and the market price to the affiliated supplier's COP and adjusts the reported costs to reflect the highest of the three amounts. See e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18448, 18456 (April 15, 1997).

In its September 21, 2004, Supplemental D Questionnaire Response, CIL provided the Department with its iron ore purchases from affiliated and unaffiliated suppliers as well as its affiliated suppliers COP. Based on this information, the prices CIL paid to its affiliated supplier

for iron ore were below the prices paid by CIL to unaffiliated suppliers and below the affiliated suppliers COP. Concerning CIL's assertions that the timing and circumstances surrounding the iron ore purchased from affiliates accounts for the prices differences, we disagree. There is no evidence on the record to support its conclusion. Therefore, we have adjusted the iron ore price of purchases from CIL's affiliate to the average market price reported by CIL in its Section D questionnaire response.

There are two issues with regard to the billets. First, the Department must determine whether the cost of the billets purchased from affiliates should be adjusted by the respondent's billet adjustment. The Department is denying the adjustment because the respondent failed to provide an explanation of the reason for the adjustment or the method used to determine the adjustment. Secondly, the petitioners argue that the costs included in COP for billets should be the higher of market price, transfer price, or producer's COP because billets are a major input, pursuant to section 773(f)(3) of the Act and 351.407(b) of the Department's regulations.

In determining whether an input is considered major, among other factors, the Department looks at the percentage of the input obtained from affiliated suppliers (versus un-affiliated suppliers) and the percentage the individual element represents of the product's COM (i.e., whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise). The determination as to whether an input is considered major is made on a case-by-case basis. See Final Rule, 62 FR at 27362.

In this case, CIL's purchase of a limited amount of billets from the affiliated supplier, combined with the relatively small percentage those billets represent of the product's COM, mitigates the effect purchases of these inputs from affiliates would have on CIL's total COP. Accordingly, we determine that application of the major input rule to billets purchased from affiliated parties is not appropriate. See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30748 (June 8, 1999); also see Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From France, 67 FR 62114 (October 3, 2002), and accompanying Issues and Decisions Memorandum at Comment 26. Furthermore, CIL made all of its other billets used in the production of wire rod and CIL's internal production cost is comparable to the transfer price paid to its affiliated supplier for billets. Thus, we have not made an adjustment to purchased billets.

Comment 8: Ministerial Error in Calculating CEP Profit

The petitioners argue that the Department double-counted imputed credit and warranty expenses in the formula used to calculate the total selling expenses used to calculate the CEP profit ratio. As a result, the double-counting overstated the total selling expenses used to calculate the CEP profit ratio.

Department's Position: We agree with petitioners and have corrected the ministerial error.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date