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May 7, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand

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Summary

We have analyzed the comments and rebuttals from interested parties in the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand. See Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 59562 (November 29, 2001) (Hot-Rolled Steel Order). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Affiliation
Comment 2: Date of Sale
Comment 3: Major Input Rule
Comment 4: Depreciation Expense
Comment 5: Commissions Offset
Comment 6: Clerical Errors

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel from Thailand. See Hot-Rolled Steel Order, 66 FR 59562 (November 29, 2001). On November 1, 2005, the Department published the opportunity to request an administrative review of hot-rolled steel from Thailand. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 70 FR 65883. Pursuant to 19 CFR 351.213(b)(1), United States Steel Corporation (petitioner) and

domestic interested party Nucor Corporation (Nucor) requested, and the Department granted, an administrative review for the period of November 1, 2004, through October 31, 2005. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 76024 (December 22, 2005).

On November 8, 2006, we published the preliminary results of this antidumping duty administrative review. See Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part, 71 FR 65458 (November 8, 2006) (Preliminary Results).

We invited parties to comment on our Preliminary Results. We received case briefs from respondent Nakornthai Strip Mill Public Company Limited (NSM), petitioner and domestic interested party Nucor on January 8, 2007. We received rebuttal briefs from NSM, petitioner and Nucor on January 16, 2007. Additionally, on November 8, and November 13, 2006, the Department issued supplemental questionnaires regarding possible affiliation between NSM and Siam Cement Group (Siam Cement), and requesting certain additional cost information, respectively. NSM provided responses to these supplemental questionnaires on November 17, and November 21, 2006. No public hearing was held.

Because the Department determined that it was not practicable to complete the final results of this review within the original time period, the Department extended the time limit for completion of the final results of this administrative review in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review, 72 FR 9515 (March 2, 2007).

Discussion of the Issues

Comment 1: Affiliation

Nucor argues that NSM is affiliated with Siam Cement through Siam Cement's wholly-owned subsidiary Cementhai Holding's (Cementhai) interest in Millennium Steel Public Company Limited (Millennium Steel) and Millennium's interest in NSM.

NSM argues that Nucor has failed to provide persuasive evidence that NSM and Siam Cement are affiliated. While the Department correctly determined in the preliminary results that NSM and Siam Cement are not directly affiliated, NSM maintains there is no evidence to support a finding by the Department that it is indirectly affiliated with Siam Cement.

Department's Position: We agree with NSM and do not find that NSM and Siam Cement are affiliated within the meaning of section 771(33) of the Act. Due to the proprietary nature of this issue, the case and rebuttal brief summaries as well as the Department's position are contained in the Memorandum: Proprietary Arguments from the Issues and Decision Memorandum (Proprietary Memorandum), dated May 7, 2007.

Comment 2: Date of Sale

NSM argues that the Department should adhere to its long-standing practice and use date of contract as sales date. NSM contends that Department regulations provide that the Department will use a date other than invoice date if evidence shows that a different date better reflects when the exporter or producer establishes the material terms of sale. See 19 C.F.R. § 351.401(i). NSM claims that contract date, which the Department acknowledged in the preliminary results as the reported date of sale, is the date that reflects when the material terms of sale are established. See Preliminary Results Analysis for Nakornthai Strip Mill Public Company Limited dated October 31, 2006, at page 2.

Nucor argues that NSM has failed to meet its burden of proving that a date other than invoice date is appropriate for the Department to use in its analysis. Nucor contends that the Department's preference and general practice is to use the invoice date as the date of sale unless the Department determines that another date better reflects the date on which the material terms are established. See Preliminary Results Analysis for Nakornthai Strip Mill Public Company Limited dated October 31, 2006, at page 2. Nucor maintains that the Department may only choose a date other than invoice date if the material terms of sale are not subject to change between the proposed date and invoice date, or if the agency provides a rational explanation as to the reason why the proposed date better reflects when the material terms are established. See Hornos Electricos de Venezuela, S.A. (Hevensa) v. United States and Eramet Marietta, Inc., 285 F. Supp. 2d 1353 at 1367 (August 29, 2003) (Hornos Electricos).

Department's Position: The Department agrees with petitioner and Nucor and will continue to use invoice date as the U.S. date of sale. Due to the proprietary nature of this issue, the case and rebuttal brief summaries as well as the Department's position are contained in the Proprietary Memorandum, dated May 7, 2007.

Comment 3: Major Input Rule

The petitioner argues that while the Department intended to adjust the reported cost of NSM's scrap purchases pursuant to the major input rule for one of its affiliated suppliers in the preliminary results, it instead adjusted NSM's reported costs based only on the higher of transfer price or affiliate's cost of production (COP), and did not consider the market price. The petitioner contends that the Department should adjust NSM's reported costs for certain types of scrap purchased from its affiliate to reflect the higher of transfer price, market price, or affiliate's COP under the major input rule. The petitioner also argues that for one particular type of scrap purchased from the affiliated supplier, where no market price is available, the Department should not rely on the surrogate market price suggested by NSM. The petitioner contends that NSM suggests using a market price based on a single type of scrap; however, NSM itself co-mingled the purchase price of the suggested surrogate scrap type with the purchase price of a similar type of scrap in its normal books and records. Consequently, petitioner argues, the Department should not use the market price of a single type of scrap as suggested by NSM. Rather, the

petitioner suggests that the average co-mingled market price of the two similar types of scrap is a more appropriate surrogate market price for the scrap in question.

With respect to scrap purchased from the remaining affiliated supplier, the petitioner argues that the Department should also apply the major input rule to these purchases. However, the petitioner asserts that because the affiliate's COP for these purchases was not available on the record, the Department should adjust NSM's reported costs to reflect the higher of the transfer price or market price for these scrap purchases.

NSM argues that the Department should not use the average co-mingled market price of two types of scrap as a surrogate market value for the scrap in question, where no market price is available. NSM asserts that using the average co-mingled market price would result in the surrogate being a mix of dissimilar types of scrap and would distort NSM's reported costs. Thus, NSM asserts that its suggested surrogate scrap market price is the most appropriate because this surrogate scrap has similar chemical properties to the scrap in question.

NSM also argues that the Department was correct in not applying the major input rule to the purchased scrap from one of its affiliated suppliers. NSM asserts that an input is only considered major if it represents a significant portion of the cost of manufacturing.[1] According to NSM, the record evidence in this case demonstrates that the scrap purchases from one of its affiliated suppliers during the POR were not sufficient enough to warrant application of the major input rule.

Department's Position: We disagree with the petitioner that the Department's major input adjustment in the preliminary results was based only on the higher of transfer price or COP. To determine whether the recorded values of inputs obtained from affiliates distort the reported costs, section 773(f)(3) of the Act directs the Department to determine whether the inputs are valued at arm's length prices. In conducting this analysis, the Department normally compares the transfer prices for the inputs charged by the affiliated company to the affiliated company's COP and the market price for that same input. During the POR, NSM purchased several types of scrap from one of its affiliated suppliers and provided the transfer price, market price, and affiliate's COP for the purchased scrap from this affiliated supplier.[2] In our comparison, we properly compared the POR weighted-average transfer price, market price and affiliate's COP based on the total scrap purchased from this affiliated supplier and adjusted NSM's reported costs to reflect the higher of transfer price, market price, or COP. Consequently, the Department

[1] NSM cites Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France, 68 FR 47049, 47053-54 (Aug. 7, 2003)

[2] During the POR, NSM purchased several business proprietary types of scrap from two different affiliated suppliers. For the preliminary results, the Department applied the major input rule (i.e., higher of transfer price, COP, or market price) in determining if certain purchases of scrap from one of its affiliated suppliers were arm's length transactions and analyzed the transactions from the other affiliated supplier pursuant to the transactions disregarded rule (i.e., higher of transfer price or market price).

has made the same major input adjustment for the final results. See Memorandum for Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Nakornthai Strip Mill Public Company dated May 7, 2007, from Ji Young Oh, Accountant, to Neal M. Halper, Director, Office of Accounting.

Regarding the appropriate surrogate market value to use in applying the major input rule for the type of scrap in question, we disagree with both petitioner and NSM. In this case, there is no market price available for one of the many scrap types purchased from an affiliated supplier. For this one scrap type, we constructed a market price using the market price and COP information for the other scrap types purchased from the same affiliated supplier. Specifically, we calculated the ratio of market prices to COP for the other scrap types, and applied the ratio to the COP of the scrap type with no market price.

We agree with the petitioner that the Department should adjust NSM's reported costs to reflect the higher of transfer price or market price for the scrap purchased from the remaining affiliated supplier, but not for the reason argued by the petitioner. The Department reviewed the percentage of the input NSM received from this affiliated company relative to total scrap purchases and the percentage that the cost of scrap represents relative to the total cost of manufacturing. Based on our review of these factors, the Department determined that the scrap purchased by NSM from this affiliated company was not significant in relation to the total costs incurred to produce the merchandise under consideration. See Attachment 2 of the Department's Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Nakornthai Strip Mill Public Company Ltd. from Ji Young Oh, Accountant, Office of Accounting, to Neal A. Halper, Director, Office of Accounting dated May 7, 2007. Therefore, the Department did not apply the major input rule under 773(f)(3) of the Act. However, section 773(f)(2) of the Act (i.e., the transaction disregarded rule) is applicable in this case. Thus, the Department adjusted NSM's reported costs to reflect the higher of transfer price or market price for the scrap purchased from this remaining affiliated supplier.

Comment 4: Depreciation Expense

The petitioner argues that NSM used an unreasonable methodology (i.e., estimated annual production quantity and estimated useful lives of 25 years) to calculate its depreciation expense rate for each fixed asset category of production machinery and equipment (M&E). Thus, the petitioner contends that even if NSM's depreciation expense were calculated in accordance with Thailand Generally Accepted Accounting Principle's (GAAP), its reported depreciation expense did not reasonably reflect the costs associated with the production of merchandise under consideration in accordance with section 773(f)(1) of the Act.

The petitioner argues that NSM's estimated annual production quantity for each category of M&E was significantly different from the actual production quantity and the significant disparity between them underscores the unreasonableness of using the estimated annual production quantity as a variable in the calculation of its depreciation expense. The petitioner also asserts that the unreasonableness of NSM's depreciation expense calculation was further exacerbated by

NSM using estimated useful lives of 25 years for its M&E fixed assets. According to the petitioner, if the estimated annual production quantity was multiplied by the estimated useful lives of 25 years, it would take more than 25 years to fully depreciate each category of M&E considering the current actual production quantity. Thus, the petitioner contends that NSM's estimated useful lives of 25 years was not consistent with reality.

According to the petitioner, the estimated annual production quantity could be described as the practical capacity (i.e., the capacity level that the plant can supply) while the normal capacity is the amount of available capacity that is expected to be produced based on customer demand.[3] The petitioner asserts that the estimated annual production quantity is distinguishable from the normal capacity and under U.S. GAAP, the allocation of fixed production overhead to conversion costs should be based on the normal capacity of the production facilities.[4] The petitioner thus contends that using the estimated annual production quantity (i.e., the capacity level that the plant can supply), rather than the normal capacity (i.e., level of capacity expected to be used), in the calculation of depreciation expense rate is not only inappropriate, but is not accepted by U.S. GAAP. Consequently, the petitioner argues that the Department should use the actual production quantity in the calculation of NSM's depreciation expense rate. The petitioner claims that while U.S. GAAP provides that the allocation of fixed overhead to the conversion costs should be based on the normal capacity, U.S. GAAP also allows the use of the actual production quantity if it approximates the normal capacity.[5] The petitioner asserts that there is evidence on the record that NSM's actual production quantity approximates its normal capacity. Thus, the petitioner maintains that it would be appropriate to recalculate NSM's depreciation expense rate based on the actual production quantity under U.S. GAAP.

The petitioner further argues that using the useful lives of 25 years for all M&E is unreasonable. According to the petitioner, the supporting documents provided by NSM actually illustrate that several U.S. steel producers use a range of years for useful lives when depreciating M&E and did not arbitrarily select a single value. Thus, the petitioner claims that these supporting documents refute NSN's argument relating to the reasonableness of using a blanket 25-year useful life for all M&E. Furthermore, the petitioner contends that these supporting documents also demonstrates that the useful lives of 25 years was the higher end of the standard useful lives for steel producing M&E. According to the petitioner, the U.S. Internal Revenue Service's (IRS) standard average useful lives (AUL) for steel-making equipment is 15 years and the Department

[3] The petitioner cites accounting text book Cost Accounting: A Managerial Emphasis, 1996 12th addition, page 310.

[4] The petitioner cites Financial Accounting Standard Board, Statement of Financial Accounting Standard No. 151 (November 2004) page 5 ("FAS 151").

[5] The petitioner cites Financial Accounting Standard Board, Statement of Financial Accounting Standard No. 151 (November 2004) page 6 ("FAS 151").

applied 15-year AUL's to steel production M&E in a countervailing duty case.[6] Thus, the petitioner argues that the Department should adjust NSM's depreciation expense based on the 15-year AUL.

NSM argues that there is no basis for the Department to recalculate its depreciation expense because the depreciation expense as recorded in its normal books and records is reasonable and in accordance with section 773(f)(1)(A) of the Act, Thailand GAAP, and the International Accounting Standard (IAS). Citing Hynix Semiconductor Inc. v. United States, 424 F. 3d 1363,1369 (Fed. Cir. 2005).

NSM states that Thailand GAAP and IAS allow companies to select the method that most closely reflects the expected patterns of consumption of the future benefit embodied in the asset and that method should be applied consistently from period to period unless there is a change in the expected pattern of consumption of those future economic benefits. NSM also argues that according to these standards, the expected usage of the asset is assessed by reference to the asset's expected capacity or physical output. Furthermore, NSM points out that according to these standards, "{t}he useful life of an asset is defined in terms of the assets expected utility to the entity ... The estimation of the useful life of the asset is a matter of judgment based on the experience of the entity with similar assets."[7] Thus, NSM contends that an average useful life is by definition a hypothetical number regardless of the method of allocation chosen because depreciation is an allocation process as opposed to a valuation process. Therefore, NSM maintains that its depreciation expense calculated in the normal course of business is reasonable and reliable.

NSM further asserts that the useful lives of 25 years for M&E is reasonable because it is the same depreciation period used by the petitioner. NSM argues that while the petitioner tries to discredit NSM's useful lives of M&E by stating that the petitioner uses range of years instead of a blanket value, the petitioner never explained which of its M&E falls within this range. NSM also contends that the petitioner: 1) failed to acknowledge that the useful lives of M&E used by NSM is squarely within the ranges used by the petitioner; and, 2) failed to explain why useful lives that fall within the petitioner's own range is unreasonable. According to NSM, the petitioner failed to provide any convincing argument that the useful lives of M&E used by NSM is either inconsistent with Thailand GAAP or otherwise unreasonable. Thus, NSM maintains that the Department is required to rely on NSM's reported depreciation expense under section 773(f)(1)(A) of the Act.

Department Position: We disagree with the petitioner that NSM used an unreasonable methodology for calculating its depreciation expense. Intermediate Accounting: Ninth Edition,

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[6] The petitioner cites U.S. Internal Revenue Service, 1997 Class Life Asset Depreciation System and Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products from Germany; Final Results of Full Sunset Reviews, 65 FR 47407 (Aug. 2, 200), and accompanying Issues and Decision Memorandum at Comment 7.

[7] NSM cites Thailand GAAP No. 32, clause 43 and IAS No. 16, clause 57.

Donald E. Kieso and Jerry J. Weygandt: John Wiley & Sons, Inc. (1998) at page 546 (Intermediate Accounting) defines depreciation expense as "the accounting process of allocating the cost of tangible assets to expense in a systematic and rational manner to those periods expected to benefit from the use of the asset." Also, according to Wiley GAAP 2005: Interpretation and Application of Generally Accepted Accounting Principles 2005, Barry J. Epstein, Ervin L. Black, Ralph Nach, and Patrick R. Delaney: John Wiley & Sons, Inc. (2004) at page 330 (Wiley GAAP), "the method of depreciation chosen is that which results in a systematic and rational allocation of the cost of the asset (less its residual or salvage value) over the asset's expected useful life." Thus, depreciation expense is an estimated, allocated expense, rather than an "actual," measurable, out-of-pocket expense. Under section 773(f)(1)(A) of the Act, the Department is directed to calculate costs based on the normal records of a producer if those records are kept in accordance with the producer's home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise under consideration.

In the normal course of business, NSM calculates the depreciation expense for its production of M&E based on the units of production method in accordance with both Thailand GAAP and IAS. See page 8 of NSM's March 7, 2006, section D response. The units of production method systematically allocates the cost of the asset based on the actual physical usage of the M&E in a given year. According to Wiley GAAP page 334, to calculate depreciation expense using the units of production method, a depreciation expense rate must first be determined by dividing the cost of the asset by the estimated number of units to be produced by the asset over its estimated useful life. This depreciation expense rate is then multiplied by the number of units actually produced by the asset during the year to calculate the annual depreciation expense.

According to Wiley GAAP page 330, "the estimation of useful life takes a number of factors into consideration, including technological change, normal deterioration, and actual physical usage." With respect to the useful lives of production for M&E, NSM stated that it was determined based on management's judgment and experience with similar types of assets. In support of the reasonableness of its estimated useful life for M&E, NSM provided documentation illustrating that 25 years is within a range for useful lives of M&E for several other U.S. and foreign steel producers. For example, the record evidence shows that one of the U.S. steel producer's expected useful lives was up to 30 years for its production of M&E. Thus, based on record evidence, the useful lives used by NSM in their normal books and records is a reasonable estimate because it is within the range of useful lives for production M&E compared to other steel producing entities. In regard to the petitioner's argument that the Department should use the IRS AUL's, we note that we would first have to determine that NSM's depreciation expense calculated in its normal books and records was not reasonable. In the instant case, we have not made that determination; therefore, we have not used the petitioner's suggested AUL's in the final determination.

To derive the estimated production quantity, NSM started with M&E specification contracts. These contracts list the production specification for each category of production for M&E that represent the production capacity level that category could supply during the year (i.e., practical capacity). To reflect the reality of normal production levels for the plant, NSM made certain

adjustments to the contract's practical capacity for several categories of production of M&E (i.e., tap-to-tap time, slab size, etc). See pages 10-12 of NSM's September 5, 2006, section D supplemental response. Therefore, contrary to the petitioner's claims, NSM did revise its estimated production quantity used in the calculation of its depreciation expense rate to reflect the plant's normal operations (i.e., normal capacity). Further, while we acknowledge there is a difference between NSM's estimated normal capacity and actual production quantity, it is not uncommon in the steel industry that companies' actual production quantities do not meet their factories' practical and normal production capacities during the given period. As such, the Department finds that the estimated production quantity used in NSM's depreciation expense rate calculation is a reasonable estimate and in accordance with IAS, home country, and U.S. GAAP.

For the above reasons, the Department determined that NSM's reported depreciation expense reasonably reflects the costs associated with the production of merchandise under consideration under section 773(f)(1) of the Act. Thus, the Department relied on NSM's reported depreciation expense for the final results.

Comment 5: Whether to Deny the Commissions Offset

Petitioner argues that NSM has failed to substantiate that it paid commissions on its U.S. sales as reported in its U.S. sales database. Petitioner notes that section 773(a)(6)(C)(iii) of the Act provides for an adjustment to normal value to account for differences in circumstances of sale if a respondent incurs commission expenses only for its U.S. sales and not for home market sales. In the present case, petitioner contends that NSM reported commissions for its U.S. sales but not for home market sales. Accordingly, the Department granted an offset to normal value, equal to NSM's reported U.S. commissions. However, petitioner argues that NSM bears the burden of proving that this expense is a commission, which petitioner claims it has failed to prove. See 19 CFR § 351.401(b)(1).

Petitioner admits that NSM incurred an expense on sales through a selling agent to the final U.S. customer. However, petitioner contends that, contrary to NSM's claims, the selling agent in question earned commissions from the U.S. customer, and not from NSM because the selling agent was the U.S. customer's agent, not NSM's selling agent. See page 15 of NSM's February 14, 2006, section A questionnaire response (AQR). Petitioner also maintains that the agreement between NSM and the selling agent on its face does not contain language supporting NSM's claim that the selling agent assisted NSM in locating customers, gathering order information, negotiating contracts or otherwise acting as a selling agent. See NSM's February 21, 2006, section C questionnaire response (CQR) at pages 31 through 32, and Exhibit 4. Finally, petitioner contends that a sales contract between NSM and the U.S. customer is dated 17 days earlier than the date of the agreement between NSM and the selling agent.

NSM argues that the Department should continue to treat NSM's payment to the selling agent as a commission because the selling agent performed all aspects of the U.S. sales process. The services provided by the selling agent are consistent with those of a trading company working on

a commission basis, and therefore, NSM contends that the Department should continue to grant a commission offset in the final results.

NSM contends that the selling agent gathered inquiry and order information (e.g., steel grade, quantity, and price information), and coordinated negotiations for NSM's U.S. sales to the U.S. customer. NSM argues that after receiving a sales quote/offer regarding price and quantity, the selling agent relayed this information to the U.S. customer. NSM explains that after price negotiations, the selling agent sends an order confirmation to NSM, who then draws up a sales contract setting forth the material terms of sale; the sales contract would then go through the selling agent to the U.S. customer. See page 11 of NSM's January 25, 2007, rebuttal brief. For these services, NSM notes that the selling agent received a flat-rate commission on a per-metric ton basis. NSM argues that apart from the agreement between itself and the selling agent, the services provided by the selling agent for NSM are those of a trading company working on a commission basis, and, accordingly, the Department should continue to apply a commission offset for the final results.

Department's Position: We agree with NSM and will continue to treat NSM's payment to its selling agent as a commission with respect to NSM's U.S. sales in question. NSM submitted the sales contract with its selling agent establishing the terms of service and the payment to be received for these services. See Exhibit 4 of NSM's CQR. The selling agent agreed to offer services to NSM for a sale contracted to a particular U.S. customer. See Id. The contract references the original contract number and the contract date. The commission contract and NSM's explanation supports its position and our position in the Preliminary Results that the selling agent provided commission services to NSM that warrant a commission offset.

With regard to Nucor's contention that the commission contract only provided for limited services, the first paragraph of the contract details the services to be provided by the selling agent to NSM. Specifically, the Department interprets the second paragraph of the contract to mean that these services are to be provided as a part of the export sale, and not the universe of services that the selling agent will provide. See Id.

With regard to Nucor's argument regarding the relationship between the selling agent and the U.S. customer, the Department considers it irrelevant whether the selling agent in question also acted as an agent for the U.S. customer. The Department's analysis only involves the relationship between NSM and the selling agent, and whether the selling agent acted as an agent on behalf of NSM. As long as agent services were provided and payment was made, which nothing on the record brings into question, the Department considers the selling agent to have acted on behalf of NSM. Accordingly, the Department will continue to grant a commission offset for these final results.

Comment 6: Clerical Errors

Petitioner argues that the Department inadvertently converted the comparison market net price (CMNETPRI) into U.S. dollars twice in the margin calculation program. Petitioner maintains that at lines 2435 and 2436 of the margin program, the Department converted CMNETPRI into U.S. dollars by multiplying all variables by the U.S. dollars exchange rate, and thus, converting to U.S. dollars all variables used to derive CMNETPRI. Later in the margin program, when calculating foreign unit price in dollars (FUPDOL) at line 2461, petitioner alleges that the Department again multiplied CMNETPRI by the exchange rate, thus converting the CMNETPRI into U.S. dollars twice.

Petitioner also claims that the Department adjusted NSM's cost of production (COP) and constructed value (CV) to account for NSM's scrap purchases and losses on scrap, but failed to apply this adjustment to NSM's variable cost of manufacture (VCOM) in the comparison market program.

NSM argues that petitioner, in addition to pointing out the above-mentioned clerical errors, should have also included two additional clerical errors. NSM maintains that it reported duty drawback (DTYDRAWU) in U.S. dollars in the U.S. sales database. However, NSM argues that the Department inadvertently used a duty drawback variable in its margin calculation program that it converted to U.S. dollars. Thus, NSM contends that the Department included duty drawback in its calculation that was unnecessarily converted to U.S. dollars.

In addition, NSM maintains that the Department inadvertently used a quantity variable (QTYH) that was not net of returns and adjustments in its comparison market calculation program. Instead, NSM contends the Department should use the variable NETQTYH, which represents returns and adjustments to quantity, in its comparison market program.

Department Position: We agree with petitioner that both CMNETPRI and VCOM were calculated incorrectly and have corrected these clerical errors for the final results. The Department inadvertently converted CMNETPRI twice into U.S. dollars. Additionally, steel scrap purchases and losses on scrap should have been accounted for in the calculation of VCOM. See Final Analysis Memorandum for the comparison market and margin program language used to correct these errors.

Regarding the conversion of duty drawback, we agree with NSM. We converted duty drawback, a dollar denominated variable, into U.S. dollars in the margin program by including it in the group of variables to be converted at lines 1952 and 1953 of the margin program, which is a clerical error. In addition, we inadvertently used a quantity variable (QTYH) in the comparison market program, which did not account for returns and adjustments. Instead, we should have used the variable NETQTYH. We will make the corrections to both the comparison market and margin programs for the final results and include the relevant language in the Final Analysis Memorandum.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date