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

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

DATE: January 30, 2006

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip from France (2003-2004)

Summary

We have analyzed the case and rebuttal briefs from interested parties in response to the preliminary results of this review. As a result of our analysis, we recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a complete list of the issues in this administrative review for which we received comments and rebuttal comments by the interested parties.

Issues

Comment 1: Actual Selling Expenses in Lieu of Commissions for Affiliated Reseller
Comment 2: Cost Averaging Periods for U&A France
Comment 3: Price Adjustment for U.S. Warranty Expenses
Comment 4: Calculation of Duty Assessment
Comment 5: Ministerial Errors

Background

On August 8, 2005, the Department of Commerce (the Department) published its Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France, 70 FR 45668 (August 8, 2005) (Preliminary Results), for the period of review (POR) July 1, 2003, through June 30, 2004. This review covers two French producers of the subject merchandise, Ugine & ALZ, France, S.A. and Imphy Ugine Precision (IUP), which have been collapsed into a single entity (collectively, U&A France) for purposes of calculating a dumping margin. See Memorandum to Maria MacKay, Acting Office Director, through Sean Carey, Program Manager, from Sebastian Wright, Analyst, Stainless Steel Sheet and Strip in Coils from France: Collapsing of Ugine & ALZ, France, S.A. and Imphy Ugine Precision, (August 1, 2005), on file in the Central Records Unit (CRU), Room B-099 of the main Commerce Building. The respondent is U&A France; the petitioners are Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization (collectively, the petitioners).

Discussion of Issues

Comment 1: Actual Selling Expenses in Lieu of Commissions for Affiliated Reseller

Petitioners state that U&A France normally pays a commission to its affiliated reseller in the home market. According to petitioners, U&A France reported the actual expenses incurred by the reseller rather than the commissions. Further, petitioners note that in the Preliminary Results, the Department treated those affiliated actual expenses as commissions and applied a commission offset to these selling expenses for comparisons that involved commissions in one market but not in the other market. In addition, petitioners state that the Department subtracted those expenses as commissions when conducting the arm's length test.

According to petitioners, it is the Department's practice to rely on the actual expenses incurred by the affiliated reseller rather than the commission amounts. Petitioners cite to Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod From Spain 65 FR 60905, 60907 (October 13, 2000) (Steel Wire Rod From Spain), and Issues and Decision Memorandum for the Administrative Reviews of Antifriction Bearings (other than taper roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom - May 1, 1998 through April 30, 1999, 65 FR 49219 (Aug. 11, 2000) (Antifriction Bearings), at Comment 3C, where the Department reduced the U.S. starting price by the actual selling expenses incurred rather than the commissions.

However, petitioners argue that the affiliated reseller expenses reported in the home market commission field by U&A France do not warrant treatment as commissions because the methodology used by U&A France shows that these expenses are not direct in nature. Petitioners argue that these reported actual selling expenses should be treated as indirect selling expenses since these expenses are based on a uniform ratio that applies to all of the sales made through its affiliated reseller, U&A France Service, and U&A France has not provided any information to demonstrate that these expenses should be treated as direct selling expenses. Finally, petitioners contend that these selling expenses also should be applied as indirect selling expenses for purposes of the arm's length test.

U&A France responds that the Department correctly included the actual selling expenses of its affiliated reseller in the home market commission field, arguing that it is the Department's practice to deduct actual selling expenses incurred when commissions are paid to affiliated parties and may not be at arm's length. This practice, U&A France claims, is also reflected in the Department's questionnaire, and U&A responded accordingly.

Department's Position:

In prior reviews of this proceeding, U&A France reported, and the Department consistently used, the actual selling expenses of its affiliated reseller as the value for home market commissions paid to affiliated parties. The record in this review adequately demonstrates that commissions are being paid to an affiliated party that acts in the role of a selling agent and that U&A France has reported the actual selling expenses of this affiliated selling agent. The petitioners have not supported their allegation that the allocation methodology used and accepted by the Department in prior reviews of this proceeding is not representative of the actual selling expenses incurred by the affiliated selling agent. Therefore, we will continue to follow this practice as outlined in the Preliminary Results by using the affiliated reseller's reported actual selling expenses as representing the commission amount and will continue to apply a commission offset for comparisons that involve commissions in one market but not in the other market. Similarly, we will continue to subtract those expenses as commissions when conducting the arm's length test.

The two determinations that petitioners cite (i.e., Steel Wire Rod From Spain and Antifriction Bearings) do not contradict the Department's practice in this case. In both cases, the Department deducted from CEP a U.S. affiliate's actual selling expenses instead of commissions paid to the U.S. affiliate. There is no indication in those cases that the Department treated the actual selling expenses as indirect selling expenses instead of as a surrogate for commissions paid to a U.S. affiliate.

Comment 2: Cost Averaging Periods for U&A France

U&A France argues that the Department should rely on its monthly cost data for the sales-below-cost analysis, in light of the fact that raw material prices increased significantly during the POR. U&A France contends that as a result of increasing raw material prices, the Department's normal practice of using an average per-unit cost for the entire POR does not reflect the actual costs incurred during the review period. As a result, U&A France argues, there is a misallocation of costs to merchandise that is produced at different times during the POR.

In addition, U&A France argues that in the Preliminary Results, the Department based it decision on selected control numbers that were heavily weighted toward the merchandise that was least relevant to the margin calculation. The respondent contends that the Department's analysis focused primarily on the results with respect to austenitic stainless steel, while a majority of the merchandise sold in the United States was ferritic stainless steel. U&A France submitted its own figures to argue that the change in raw material prices for ferritic products was significant. U&A

France also calculated the percentage difference in material costs between the month with the lowest raw material prices and the month with the highest material prices, to support its argument to use monthly per-unit costs rather than POR per-unit costs in the margin analysis.

Petitioners argue that the Department should continue to use U&A France's POR-average costs as calculated in the Preliminary Results. Petitioners state that it is the Department's policy that in order to depart from using one average-POR cost, the respondent must demonstrate that its costs show a significant and consistent increase or decrease during the POR, and that its corresponding sale prices show a similar pattern of change. In support of their position, petitioners cite to Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order: Brass Sheet and Strip From the Netherlands, 64 FR 48760, 48762 (September 8, 1999); 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, 748 (January 6, 2000) (Brass Sheet and Strip from the Netherlands Final); Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467, 15476 (March 23, 1993), which petitioners claim are all examples of when the Department departs from its normal policy of using weighted-average POR costs.

Petitioners contend that the ferritic table included in Attachment 1b of the Department's analysis memorandum to the file regarding the use of monthly costs shows that direct material costs actually declined in the beginning of the POR and then gradually rose at the end of the POR. In addition, petitioners argue that sale prices followed the opposite pattern by increasing slightly and then declining. Accordingly, petitioners assert that this analysis shows there was no consistent rise or decline in the cost of direct materials and home market prices. Petitioners argue that the Department's analysis also shows similar results for austenitic and martensitic grade products. Finally, petitioners conclude that there is no correlation between direct material costs and home market prices. Therefore, petitioners argue that the Department should continue to use one weighted-average per-unit cost for the POR.

Department's Position:

The evidence on the record of this review does not support a departure from the Department's normal practice of using POR-average costs to calculate COP and constructed value. U&A France's argument that averaging of cost over the full year results in a misallocation of costs to merchandise produced at different times during the POR gets it backwards. The Department uses POR-average costs in order to even out swings in the production cost experienced by the respondent over short periods of time. A product cost calculated at a point in time does not reflect the normalized cost incurred to produce the product and thus, can distort a cost analysis. Numerous factors such as fluctuating raw material prices, fluctuating conversion costs, differences in the sourcing of inputs, production cycles, starts and stops in the production process due to repairs and maintenance, and inefficient production runs, all affect the per-unit costs on a daily or monthly basis.[1] Thus, for cost accounting purposes, costs are typically calculated over an extended period of time if they are to be relied upon as a basis to make sales and planning decisions.

By following our normal practice of calculating costs over a longer period of time, the Department can smooth out the effect of fluctuating costs and obtain a more accurate cost calculation. The Department has a well-established practice of using one average cost for the POR. See, e.g., Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990), at Comment 10, where we agree with the respondent that the use of quarterly cost of production data would cause aberrations due to short-term cost fluctuations such as employee bonuses or lump-sum insurance payments, which properly should be allocated over one year; see also Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47256 (September 8, 1993), at Comment 2, where we conclude that an annual period be used for calculating constructed value since it best reflects any seasonal fluctuations which may occur during the full operating cycle; and, Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part, 70 FR 67665 (November 8, 2005) (Reinforcing Bars from Turkey), and accompanying Issues and Decision Memorandum, at Comment 1, where we use the annual average costs in order to even out swings in the production cost experienced by the respondent over short periods of time. This way, we smooth out the effect of fluctuating raw material costs.

While our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single average cost for the entire POR, we have resorted to using shorter cost averaging periods in certain circumstances. We analyzed this issue following the criteria identified in Brass Sheet and Strip from the Netherlands Final, 746 at Comment 2. In Brass Sheet and Strip from the Netherlands Final, we determined that the cost of the main input (raw materials) changed significantly throughout the POR. Specifically, we found that monthly costs were more appropriate to use because they captured the pass-through cost of the main metals. In Brass Sheet and Strip Final for the Netherlands Final, we noted that the respondent tracked each purchase of raw material inputs by sales transaction in its books and records. Therefore, it was possible to make a contemporaneous comparison of metal values and sales prices which resulted in a more accurate calculation of the dumping margin in that instance. We note that the Department did not use monthly comparisons for the fabrication costs, but only for the pass-through metal costs.

[1] The effect of input price changes on the per-unit costs of finished products are influenced by many factors, such as the timing of the relationship between the purchase of raw materials, production, and sale of the finished product. Factors such as the raw material inventory turnover period, inventory valuation method used by the company (e.g., last-in, first-out versus first-in, first-out versus weighted-average), extent to which raw materials are purchased pursuant to long-term contracts, finished goods inventory holding period, and whether finished merchandise is sold to order or from inventory, all affect raw material costs. As a result, the relationship of the sales transactions and the costs cannot be directly linked over short periods. Thus, raw material price changes may not directly correlate to increased product costs over short periods of time.

We analyzed this issue following the criteria identified in the Brass Sheet and Strip from the Netherlands Final, since this case does not involve a high technology product which experienced drastic cost and price changes over a short period of time due to rapid technological advancements in the production process. Specifically, we analyzed the significance of the effect that the raw material price changes had on the annual average cost of manufacture (COM). We also examined whether the change in cost occurred consistently and significantly throughout the POR, and whether the direct material inputs causing the cost fluctuation can be directly tied to the related sales transactions.

In the instant case, we find that changes in COM were neither significant nor consistent, and that the fluctuations in raw material prices did not parallel home market prices. The changes in COM experienced by U&A France both decreased and increased during the POR for all three steel grades of stainless steel (austenitic, ferritic and martensitic).[2] In analyzing this point, we first identified high volume and home market control numbers for these three steel types. We examined the relationships between home market prices, direct material costs (DIRMAT), and the total cost of manufacture (TOTCOM) when using annual average costs of manufacturing versus monthly average costs of manufacturing. We found that the reported data show that there was no consistent rise or decline in the cost of DIRMAT, TOTCOM, and in the home market prices for all three steel types. In addition, the raw material price fluctuations did not significantly affect the COM because of the large number and insignificant weighting of the various raw materials that are needed to produce the finished merchandise, and because of the relative significance of the conversion costs in total COM. Most importantly, we found no significant change between the monthly COMs and the annual average COMs. For a complete detail of the analysis discussed above using the proprietary data submitted on the record, see Final Calculation Memorandum, to Neal Halper from Christopher J. Zimpo, through Michael Martin: Analysis of Monthly Costs Submitted by Ugine & ALZ France, dated January 6, 2006.

In addition, unlike Brass Sheet and Strip from the Netherlands Final, where the price of the raw material inputs was a direct pass-through item, the sales transactions reported in this review cannot be directly tied to a particular raw material purchase or price increase. Thus, even if we considered the fluctuation in manufacturing costs to be significant, the record does not show a direct link between the input raw material costs and the related sales transactions. Without a direct link between the input raw material costs and the related sales transactions, there is no certainty that the sale prices in a given month are directly the result of the reported raw material costs occurring in the same month. This point is supported by the results of our analysis, in that the raw material price fluctuations did not follow the home market price fluctuations. Our results show that for certain months, raw material costs increased from one month to the next while the average home market prices decreased during the same time period.

[2] See Certain Pasta from Italy, where we stated that when there are inconsistent fluctuations in both directions we use a single weighted-average cost for the entire POR.

Finally, we find that our analysis is reflective of the vast majority of merchandise for which the dumping margin is calculated. Specifically, the data for all three steel types show that there was no consistent rise or decline in the cost of direct materials and TOTCOM. In addition, home market prices had no relationship to cost and in some instances actually had an inverse relationship to costs. In addition, for one of the largest ferritic CONNUM sold in the home market, the patterns of raw material price, TOTCOM, and home market prices were similar to the results for austenitic and martensitic products. We also note that the raw material inputs (only austenitic uses nickel) and the production process are practically the same for all three steel types. Therefore, for the final results, we have continued to follow our normal practice of using POR-average costs for the foreign like product in calculating the dumping margin for U&A France.

Comment 3: Price Adjustment for U.S. Warranty Expenses

U&A France argues that the Department's established practice is to use the cost of merchandise as the warranty expense, not the amount refunded to the customer. The Department's practice in this regard is confirmed by the Antidumping Procedures Manual, which instructs that, "these expenses are usually based on the cost of repairing or replacing a defective item." According to respondent, using the total amount of the credit memos would overstate the warranty expense because they reflect a refund of the purchase price for the merchandise on which a warranty claim was made. U&A France contends that a credit memo issued for a warranty claim includes, for example, the lost profit on the sale that would have been earned if no warranty claim had been made. According to respondent, a proper calculation of the warranty expense would not include this amount because it is not part of the cost that was incurred on this merchandise. Therefore, U&A France argues that the Department should revert back to the methodology utilized in prior segments of this proceeding, and make an adjustment to the total of credit memos issued for warranty claims on U.S. sales to account for this difference between reversal of sales revenue and warranty expense.

U&A France also argues that warranty expenses should be calculated on a company-specific basis for each affiliated U.S. reseller. Respondent notes that in the Preliminary Results, the Department applied a single warranty expense factor to all U.S. sales. In addition, respondent argues that these warranty expenses should be allocated on the basis of sales value rather than quantity because IUP's merchandise and warranty experience is significantly different from that of U&A France, as demonstrated by the differences in the reported warranty expense factor for each company. U&A France argues that the Department has an established practice of allocating company-specific warranty expenses on the basis of sales value rather than on the basis of quantity. In support, respondent cites, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Venezuela, 62 FR 51584, 51586 (October 1, 1997); see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Defrost Timers From Japan, 58 FR 44655, 44656 (August 24, 1993).

Petitioners argue that the Department's revision to U&A France's reported U.S. warranty expenses that was used in the Preliminary Results is proper and should be used in the final results. According to the petitioners, U&A France's description in its case brief of its accounting practices supports using the actual amount shown on the credit memo since it accurately reflects the cost in respondent's ledgers.

Petitioners also note that U&A France provided no proof that the material subject to warranty claims was returned to the mill in France. Further, petitioners argue that U&A France did not provide any information on what happened to the material that was claimed as a warranty expense (i.e., no proof of it being returned and resold). Therefore, petitioners contend that the amount of the credit memo best represents the cost of the warranty claim.

Petitioners further argue that U&A France has no basis for claiming separate warranty expenses for each of the U&A France corporate affiliates. According to petitioners, since the purpose of this review is to calculate a single weighted-averaged dumping margin for U&A France, and not one for each of its U.S. affiliates, it is appropriate for the Department to use an average per-unit warranty expense that is allocated to all of U&A France's U.S. sales. Furthermore, petitioners state that U&A France provided no information to support its claim that warranty expenses should be calculated on the basis of sales values because warranty expenses varied by the value of the merchandise. According to petitioners, the Department's antidumping questionnaire specifically asked U&A France to submit product-specific warranty expenses, but U&A France failed to do so. Therefore, petitioners argue that U&A failed to demonstrate that product-specific variations occurred in the reported warranty expenses.

Department's Position:

We continue to find the use of the full value of the warranty credit memos to be the most accurate reflection of the actual price adjustment that occurs with respect to defective merchandise sold in the U.S. market. Record evidence indicates that these credit memos account only for defects in reported U.S. sales, and are issued only in instances where the merchandise was retained by the customer. As a result, none of these expenses can be based on any actual costs for repairing or replacing defective merchandise. In addition, the record indicates that all returned sales to the U.S. affiliate have been deleted from the U.S. sales file and are not accounted for in these credit memos.[3] Accordingly, for these final results, we will continue to calculate warranty expenses based on the sum of the actual credit memos issued by U&A France's U.S. affiliates to the unaffiliated customer in the United States.

In the Preliminary Results, we calculated warranty expenses by summing the total warranty claims paid during the POR for credit memos issued to the unaffiliated U.S. customer, and divided this amount by the total quantity of U.S. sales. We did not adjust these warranty

[3] See U&A France's Supplemental Questionnaire Response for Sections B and C dated April 1, 2005, at page 53.

expenses to determine the cost associated with each warranty claim issued during the POR. We will continue to calculate warranty expenses on a company-wide (collapsed) basis,[4] as the total value of all the credit memos best represents U&A France's overall expenses associated with defective merchandise sold in the U.S. market. Further, we determine that the warranty expense should be allocated based on sales value rather than on quantity. As noted by U&A France, this will capture the price differences of the subject merchandise sold in the United States. Therefore, for these final results, we calculated the warranty expense based on the ratio of the sum of the U.S. affiliates credit memos, divided by the total sales value for all of U&A France's sales to the United States. We then applied the resulting ratio to the reported U.S. price in order to calculate the amount of the U.S. price adjustment associated with warranty expenses in the U.S. market. See Memorandum to File through Sean Carey from Elfi Blum: Analysis for Ugine & ALZ France S.A. (U&A France) for the Final Results of the Fifth Administrative Review of Stainless Steel Sheet and Strip from France (July 1, 2003 through June 30, 2004), dated January 30, 2006 (Final Analysis Memo).

Comment 4: **Calculation of Duty Assessment**

Petitioners argue that the Department should calculate the dumping margin on a specific rate basis rather than an ad valorem basis. Petitioners contend that the Department asked U&A France to confirm that its calculated entered values for its U.S. sales were the same as the entered values reported on the U.S. Customs and Border Protection (CBP) Form 7501. According to petitioners, U& A France was unable to confirm that the values calculated in the questionnaire response matched to those reported on the CBP Form 7501. Petitioners argue that because it is unclear where this discrepancy lies, the Department cannot rely on respondent's reported entered values. Therefore, petitioners contend that to prevent any under-collection of duties based on inaccuracies in the reported entered values, the Department should assess duties on a specific rate basis rather then an ad valorem basis, citing to Honey from the People's Republic of China: Final Results and Final Recision, In Part, of Antidumping Duty Administrative Review, 70 FR 38873 (July 6, 2005) (Honey from China), and accompanying Issues and Decision Memorandum, at Comment 7.

U&A France contends that, according to section 351.212(b)(1) of the Department's regulations, the Department will calculate the assessment rate based on entered values, unless those are determined to be unreliable. According to U&A France, there is no record evidence that the reported mill-invoice prices that are used as the reported entered values are inaccurate. U&A France insists that it has submitted all documentation requested by the Department, including samples of CBP Form 7501.

In addition, U&A France rejects petitioners' claim that it was unable to confirm that the reported entered values matched the entered values in the CBP Form 7501. Instead, U&A France

[4] See Memorandum to Maria MacKay through Sean Carey from Sebastian Wright: Stainless Steel Sheet and Strip from France: Collapsing of Ugine & ALZ France, S.A. and Imphy Ugine Precision, dated August 1, 2005.

explained to the Department that it is not possible to match the reported entered values to the CBP Form 7501 because there are multiple line items on the CBP Form 7501, with each line item reporting the total, combined entered value of several mill invoices. Therefore, in the absence of any indication that the reported entered values are unreliable, U&A France argues, the Department should calculate an ad valorem assessment rate provided for in the Department's regulations, and applied in previous segments of this proceeding.

Department's Position:

For these final results, we calculated a per-unit assessment rate rather than an ad valorem rate that was used in the Preliminary Results. In our supplemental questionnaire to U&A France's section A response dated July 29, 2005, the Department requested that U&A France tie the entered values for several reported U.S. sales to the entered values reported on its CBP Form 7501. In its response of August 29, 2005, page 3 and Exhibit A-1, U&A France provided the Department with with the CBP Forms 7501 for the requested sales observations, but there was no documentation which traced these CBP Forms 7501 to the sales by quantity and value. However, given the aggregate nature of the entered value amounts reported on the CBP Form 7501 this form, which reflects several mill invoices containing a variety of mill invoice prices, as U&A France stated in its supplemental response, we were not able to directly match the relevant CBP Form 7501 to the selected entered values reported in the questionnaire response.

While the Department normally directs CBP to collect cash deposits and liquidate entries on an ad valorem basis where entered values have been reported, we are not required to do so by statute or our regulations, and have in the past used quantity-based rates. See e.g., Honey from China and Freshwater Crawfish Tail Meat from the Peoples Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546, 19549 (April 22, 2002); see also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551, 36554 (July 12, 2001). Furthermore, the parties should be indifferent with respect to whether the duties are collected on a per unit or ad valorem basis, since the purpose of both methods is to ensure the collection of the proper amount of antidumping duties.

Comment 5: Ministerial Errors

Petitioners note that the Department did not include inland freight from port to warehouse (INLFPWU) in the calculation for total US movement expenses. Petitioners contend that this results in an understatement of total U.S. movement expenses. Petitioners also argue that the Department should revise its CEP profit calculation to correct two errors in the formula used to calculate U.S. selling expenses (SELLEXPU). Petitioners state that the first problem is caused by a missing parentheses that prevented the full application of the exchange rate, leaving direct selling expenses, credit expenses, and commissions in U.S. dollars, while indirect selling expenses were properly converted. Petitioners also note that the Department failed to convert the indirect selling expenses incurred in Europe, which are denominated in US dollars, into euros.

Petitioners state that U&A France sold prime and non-prime merchandise in the home market and prime merchandise only in the United States. However, petitioners argue that the Department did not include the variables PRIMEH or PRIMEU in the matching criteria for the arm's length test and for the margin analysis, thus resulting in prime merchandise being compared to secondary merchandise. Petitioners contend that the Department's practice is to compare the sales prices for identical or most similar physical characteristics of the same quality for sales to home market and U.S. customers in margin analysis, and the like practice when conducting the arm's length test. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55782 (August 30, 2002) (Steel Wire Rod From Canada), and accompanying Issues and Decision Memorandum, at Comment 14; Stainless Steel Wire Rod from India: Amended Final Results of Antidumping Administrative Review, 70 FR 47177 (August 12, 2005) (Steel Wire Rod From India). Thus, petitioners conclude that the Department failed to distinguish sales of prime from secondary merchandise in conducting the arm's length test and the margin analysis. To correctly compare merchandise, petitioners suggest adding the PRIMEH or PRIMEU variable, respectively, each time the macro variables are used to sort, to calculate the weighted average price/expense, and to merge the sales databases in the comparison market program and the U.S. sales program. Alternatively, petitioners argue that the Department could redefine the macro variables to include CONNUMH and CONNUMU, as well as PRIMEH and PRIMEU.

U&A France did not comment on petitioners' arguments.

Department's Position:

We agree with petitioners, we determine that the Department inadvertently omitted inland freight from port to warehouse (INLFPWU) from its calculation of total U.S. movement expenses, and have corrected that error. We further find that the U.S. direct selling expenses, credit expenses, commissions, and indirect selling expenses incurred in Europe were not properly converted into euros in the Department's CEP profit calculations. We have corrected the programming language to convert those expenses into euros.

In addition, we agree that the Department did not include the prime and secondary merchandise matching criteria for the arm's length test and for the margin analysis. This resulted in prime merchandise being compared to secondary merchandise. We corrected this mistake by including a variable to match prime merchandise in the U.S. market with prime-only merchandise in the home market.

Recommendation

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

Agree__________   Disagree__________

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David M. Spooner
Assistant Secretary
  for Import Administration