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2005/2006 Administrative Review
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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 2005/2006 Antidumping Duty Administrative Review of Stainless Steel Bar from India

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SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 2005/2006 administrative review of stainless steel bar from India. As a result of our analysis, we have made changes to the preliminary results. **We recommend that you approve the positions in the "Discussion of Issues" section of this memorandum**. Below is a complete list of the issues in this review for which we received comments and rebuttals from interested parties:

General Comments

Comment 1: Application of Review-Specific Rate to Non-Reviewed Companies
Comment 2: Treatment of Sales Made Above Normal Value

Comments Relating to Bhansali Bright Bars Pvt. Ltd.

Comment 3: Treatment of DEPB Application Charges
Comment 4: Comment on Verification: Correct Payment Date
Comment 5: Comment on Verification: Correct Gross Unit Price
Comment 6: Inclusion of Implied Interest on Non-Interest Bearing Loans
Comment 7: Calculation of Home Market Imputed Credit Expenses
Comment 8: Treatment of Billing Adjustments

Comments Relating to Venus Wire Industries Pvt. Ltd.

Comment 9: Calculation of Home Market Imputed Credit Expenses

BACKGROUND

On March 7, 2007, the Department of Commerce ("the Department") published in the Federal Register the preliminary results of the 2005/2006 administrative review of the antidumping duty order on stainless steel bar ("SSB") from India.[1] The period of review ("POR") is February 1, 2005, through January 31, 2006. We invited interested parties to comment on the Preliminary Results.

On July 31, 2007, the Department received case briefs from Carpenter Technology Corporation, Crucible Specialty Metals, a division of Crucible Materials Corporation, Electralloy Company, North American Stainless, Universal Stainless, and Valbruna Slater Stainless (collectively, the "petitioners"); and Bhansali Bright Bars Pvt. Ltd. ("Bhansali"). On August 2, 2007, the Department rejected the case brief filed by Bhansali due to the submission of new, untimely filed information.[2] Bhansali submitted a revised case brief on August 4, 2007. On August 6, 2007, Bhansali submitted a rebuttal brief. On August 10, 2007, the petitioners, and interested parties Facor Steels, Ltd. ("Facor") and Mukand Ltd. ("Mukand") filed rebuttal briefs.

DISCUSSION OF ISSUES

General Comments

Comment 1: Application of Review-Specific Rate to Non-Reviewed Companies

Petitioners' Arguments: The petitioners argue that the Department should not apply a review-specific average rate to respondents that either requested a review, or for whom a review was requested by petitioners, but that the Department did not individually review. In particular, the petitioners object to applying a review-specific average rate to companies that have been found in past reviews to be uncooperative and, thus, have been assigned a rate based upon adverse facts available.

The petitioners claim that the Department's application of the review-specific average rate in this review is absurd because the circumstances are vastly different from other instances where the Department applied this policy. The petitioners note that for the Preliminary Results, the Department cited to Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: Certain Softwood Lumber Products From Canada, 70 FR 33,063, 33,064 (June 7, 2005) ("Softwood

[1] See Notice of Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 72 FR 10151 (March 7, 2007) ("Preliminary Results").

[2] See Letter from Brandon Farlander, Program Manager, to Bhansali Bright Bars Pvt. Ltd., dated August 2, 2007.

Lumber"). The petitioners argue that in Softwood Lumber, the Department received requests for review for over 400 companies and, of that number, it chose the eight largest exporters/producers. By comparison, the petitioners note that in this case reviews were requested for only eight companies and the Department choose two. Furthermore, the petitioners assert that the two companies selected by the Department were not necessarily the largest of the group and three of the companies that benefitted from the review-specific rate policy are among the largest exporter/producers of stainless steel bar. According to the petitioners, the other cases in which the Department has applied the review-specific rate to non-reviewed companies are likewise distinguished by the sheer number of companies involved, and there is no question that the Department cannot examine each and every one. The petitioners further contend that because the Department declined to fully verify the two mandatory respondents, it is irresponsible for the Department to apply a weighted-average of their rates to other companies.

The petitioners claim that the Department's application of a review-specific weighted-average rate to all non-reviewed respondents in this review also is contrary to the Department's policy itself. The petitioners state that the Department has said that in calculating the weighted-average rate, it will exclude any company rates that are *de minimis* or margins determined entirely on adverse facts available ("AFA"). The petitioners argue that the apparent purpose of excluding the AFA margins from the weighted-average is because it would be unfair to impose on non-reviewed respondents margins based on uncooperative respondents' behavior. Similarly, petitioners point out that this policy would also give non-reviewed respondents an unfair benefit if zero or *de minimis* margins were included in the average. According to the petitioners, in this review, the Department's application of the weighted-average rate to respondents such Mukand, Isibars, and Facor does precisely what the policy attempts to avoid, it gives each of these companies a benefit.

The petitioners suggest that for the final results the Department should consider two different approaches with respect to the margins assigned to the six non-mandatory respondents: 1) the review-specific weighted-average rate should not be applied to any company that previously received a company-specific rate or alternatively, 2) the Department should not apply any new rate to a non-reviewed respondent when that respondent's current rate is based on adverse facts available.

Mukand and Facor's Arguments: In their rebuttal brief, Mukand and Facor argue that the Department should continue to assign the review-specific weighted-average rate to the non-selected respondents, as it did in the Preliminary Results.

Mukand and Facor assert that the petitioners' arguments are misguided. First, Mukand and Facor argue that the statute does not limit the Department's authority to sample to situations where there is overriding evidence that the Department cannot review each respondent. According to Mukand and Facor, the statute permits the Department not to examine each and every respondent when "it is not practical to do so...because of the large number of exporters and producers." Mukand and Facor assert that whether there is a "large number" of producers should be evaluated based upon both the Department's resources and the import volumes and value of the case. Moreover, Mukand and Facor argue that what constitutes a "large number" can vary from case to case, based upon the circumstances. According to Mukand and Facor, the Department did allocate its available resources reasonably. Second, Mukand and Facor assert that the petitioners' claim that the Department did not select the largest companies for review in this case is erroneous and unsupported. Third, with respect to the petitioners' argument that Mukand and Facor should not receive review-specific rates because the Department failed to conduct full verifications, Mukand and Facor argue that there is no statutory requirement for the Department to conduct verifications in this review. Fourth, with respect to the petitioners' argument that it is unfair to assign the review-specific rate to companies previously found to be uncooperative, Mukand and Facor argue that the Department has a long-standing policy of treating each review as a separate matter and not faulting respondents for events from prior reviews.

With respect to the petitioners' proposed revisions to the review-specific rate applied in this review, Mukand and Facor assert that both proposals lack merit and would deny the affected respondents the right to an administrative review. Citing to section 751(a)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), Mukand and Facor claim that the Department is required to "review, and determine...the amount of any antidumping duty" for a respondent that has requested an administrative review. Moreover, according to Mukand and Facor, the Department does review and determine the amount of any antidumping duty when it assigns the review-specific margin to non-mandatory respondents. However, Mukand and Facor claim that the Department would not "review and determine" the amount of any antidumping duty for non-mandatory respondents if, as the petitioners propose, it merely left a pre-existing rate unchanged because such respondents already had received a company-specific rate in prior reviews.

Mukand and Facor argue that the petitioners' second proposal of maintaining adverse facts available rates for a non-reviewed respondent such as Mukand is contrary to the statute. Citing section 776(b) of the Act, Mukand and Facor claim that the Department may apply adverse inferences to a respondent only if the administering authority finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. According to Mukund and Facor, Mukand has cooperated fully with the Department's request for information and has acted to the best of its ability during this review. Therefore, citing to sections 776(b) and 751 of the Act, Mukand and Facor claim that there is no statutory basis for the application of adverse facts available under these circumstances.

<u>Department's Position</u>: We have not adopted the petitioners' argument that a review-specific rate should not be applied in this case. It is the Department's normal practice to calculate a review-specific weighted-average rate (excluding any *de minimis* margins or margins determined entirely on adverse facts available) for the companies requesting a review, but not selected for individual examination. <u>See, e.g.</u>, <u>Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada</u>, 70 FR 73437, 73442 (December 12, 2005); <u>Certain Fresh Cut Flowers from Colombia: Final Results and Partial Rescission of Antidumping Duty Administrative Review</u>, 62 FR 53287, 53289 (October 14, 1997) ("<u>Flowers</u>"); <u>Honey from Argentina: Preliminary Results of</u>

Antidumping Duty Administrative Review and Intent Not to Revoke in Part, 71 FR 78397, 78402 (December 29, 2007) (unchanged for the final results; Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke In Part, 72 FR 25245 (May 4, 2007)).

While petitioners are correct that the cases cited by the Department in the Preliminary Results involved significantly more potential respondents than this review, there is nothing in the statute that limits respondent selection to reviews involving hundreds of respondents. Section 777A(c)(1) of the Act, directs the Department to calculate individual weighted-average dumping margin for each exporter/producer of the subject merchandise unless it is not practicable to do so. According to section 777A(c)(2) of the Act:

> If it is not practicable to make individual weighted average dumping margin determinations...because of the large numbers of exporters or producers involved in the investigation or review, the administrating authority may determine the weighted average dumping margin for a reasonable number of exporters or producers by limiting its examination to: (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

For the reasons explained in our respondent selection memorandum, resource constraints prevented us from conducting individual reviews of more than two companies. See Memorandum from Scott Holland to Susan H. Kuhbach, Senior Office Director, "*Stainless Steel Bar from India: Respondent Selection*," dated June 7, 2006, ("*Respondent Selection Memorandum*").

Moreover, there are several cases where the Department has limited the number of respondents to be examined where the total number of potential respondents was comparable to the number in this review. 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 Brazil, 67 FR 18165, 18167 (April 15, 2002) (unchanged for the final results; see Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil 67 FR 55792 (August 30, 2002)); where the petitioners identified four producers and the Department selected one of two producers that had shipments to the United States as mandatory respondents. See also, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 From India, 69 FR 35293 (June 24, 2004) (unchanged for the final results; see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India, 69 FR 35293 (June 24, 2004)); where the petitioners identified 12 producers and the Department selected two of the four producers that had shipments to the United States as mandatory respondents.

With respect to the petitioners' assertion that the Department should not apply the review-specific rate because the Department "declined to fully examine even the two companies from which it requested information," we disagree. Although the Department elected not to verify the cost response of Venus, we conducted a successful on-site verification of Bhansali's sales and cost responses, and Venus' sales response. We further note that neither verification was required under 782(i) of the Act.

With respect to petitioners' claim that the selected respondents are not the largest producers and that three of the non-selected companies are among the largest exporters/producers of SSB, we agree with Mukand and Facor that no support has been provided for the claim. As explained in our respondent selection memorandum, of the companies for which a review was requested, Bhansali and Venus are the two exporters accounting for the largest quantity and value of exports to the United States during the POR. Moreover, Bhansali and Venus accounted for over eighty percent of the total reported quantity and value of imports of the subject merchandise from these companies to the United States during the POR. See *Respondent Selection Memorandum* at 4.

Finally, the petitioners were on notice nine months before the publication of the Preliminary Results of the Department's intentions with respect to assigning a review-specific rate to non-selected respondents:

> In cases where the Department has limited its examination of requested companies, the Department has based the dumping margins for companies that requested a review, or for which a review was requested, and which complied with any request for information from the Department, but were not individually examined, on the weighted-average dumping margins found for those companies that were examined (see, e.g., Flowers).

See *Respondent Selection Memorandum* at 3. No objections to this method for assigning a rate to non-selected respondents was made until after the publication of the Preliminary Results.

For the reasons explained above, we are not persuaded that the Department should deviate from its policy of applying the review-specific rate to non-selected companies. We agree with Mukand and Facor that the statute directs the Department to review, and to determine the amount of any antidumping duty for respondents that have requested administrative reviews. See section 751(a)(1)(B) of the Act. Furthermore, Mukand and Isibars have cooperated fully in this review and have acted to the best of their abilities in their responses to the Department's requests for information. Moreover, there is no basis to maintain AFA rates under 776(b) of the Act. Therefore, consistent with the Preliminary Results, we are continuing to apply the review-specific average rate to the non-selected respondents.

Comment 2: Treatment of Sales Made Above Normal Value

Bhansali's Arguments: Bhansali asserts that the Department's practice of setting sales with negative margins to zero ("zeroing") in the calculations of overall dumping percentages violates a ruling made in January 2007 by the Appellate Body ("AB") of the World Trade Organization ("WTO"). According to Bhansali, the AB found in United States - Measures Related to Zeroing and Sunset Reviews, Report of the Appellate Body, WT/DS322/AB/R, (December 14, 2006) (adopted January 23, 2007) ("U.S. - Zeroing (Japan)"), that zeroing in administrative reviews is inconsistent with Articles 2.4 and 9.3 of the Antidumping Agreement [3] and Article VI:2 of the GATT 1994 (no page citation). The respondents argue that, for the final results, the Department should recalculate the respondents' margins without using the practice of zeroing.

Petitioners' Arguments: The petitioners assert that the courts have consistently upheld the Department's practice of zeroing, despite WTO rulings finding that zeroing in various applications is contrary to the WTO antidumping agreement. Citing Timken Co. V. United States, 354 F.3d 1334, 1342-43 (Fed. Cir.) (2004) ("Timken"), the petitioners note that the U.S. Court of Appeals for the Federal Circuit upheld the numerous decisions of the U.S. Court of International Trade ("CIT") (including the pre-Uruguay Round Agreements Act ("URAA") cases of Serampore Industries Pvt. Ltd. V. United States, 675 F. Supp. 1353 (CIT 1987) and Böwe Passat Reinigungsund Wäschereitechnik GmbH v. United States, 926 F. Supp.1138 (CIT 1996)) that have previously found the Department's zeroing policy to be reasonable and in accordance with law.[4]

In particular, the petitioners point out that the court held that the Department reasonably interpreted 19 U.S.C. § 1677(35)(A), which defines dumping margin as "the amount by which the normal value exceeds the export price or constructed export price of subject merchandise," as allowing for zeroing in administrative reviews.[5] The petitioners claim that the CIT recently rejected the suggestion that recent WTO decisions required that the Department abandon its practice of zeroing, finding that "the Federal Circuit in {Timken} has: 1) expressly affirmed the reasonableness of the Department's use of zeroing in an administrative review, and 2) concluded that WTO decisions are not binding on the United States and cannot trump domestic legislation." See Corus Staal BV v. United States, Slip Op. 06-112 at 6

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[3]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("GATT") 1994 ("Antidumping Agreement").

[4] See Timken at 1343.

[5] Id. at 1341-1343.

(CIT, July 25, 2006) (citing Corus Staal BV v. United States, 387 F. Supp. 2d 1291, 1298 (CIT 2005) aff'd Slip Op. 05-1600, 2006 U.S. App. LEXIS 15022 (Fed. Cir.) (June 13, 2006)).

The petitioners argue that it is the Department's and the court's responsibility to interpret the U.S. antidumping statute, which necessarily often means "filing the gaps" that (U.S.) Congress has either deliberately or inadvertently left in the statutory regime. The petitioners further assert that the courts have long recognized that in light of the antidumping law's inherent complexity, the Department's attempts to interpret and apply the statute are entitled to special deference. See Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir.) (1983) ("The Secretary has broad discretion in executing the {antidumping}law."). Citing to Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 70 FR 3677 (January 26, 2005), and the accompanying Issues and Decision Memorandum at Comment 16, the petitioners argue that in interpreting the statute as a whole, the Department has long recognized that the statutory regime as a whole is best effectuated when negative margins of dumping are treated as non-dumped sales, but not allowed to cancel out positive margins. Accordingly, the petitioners contend that the Department should continue using the zeroing methodology for the margin calculations of the respondents in the final results.

Department's Position: Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, Commerce interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, Commerce will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir.), cert. denied sub nom., Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). See also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006).

The Department notes it has taken action with respect to two WTO dispute settlement reports finding the denial of offsets to be inconsistent with the Antidumping Agreement: United States - Laws, Regulations and Methodology for Calculating Dumping Margins, Report of the Appellate Body, WT/DS294/AB/R, (Apr. 18, 2006) (adopted May 9, 2006) ("U.S. - Zeroing (EC)," (that zeroing in administrative reviews is inconsistent with Article 9.3 of the Antidumping Agreement)[6] and U.S. - Zeroing (Japan).

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[6] U.S. - Zeroing (EC) Appellate Body Report at paragraph 135.

With respect to US – Zeroing (EC), Commerce recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006). In doing so, Commerce declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See 71 FR at 77724. With respect to the specific administrative reviews at issue in that dispute, the United States has determined that each of those reviews has been superseded by a subsequent administrative review and the challenged reviews are no longer in effect.

As such, the Appellate Body's reports in US – Zeroing (EC) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Corus Staal, 395 F.3d at 1347-49; Timken, 354 F.3d at 1342. Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

With respect to US – Zeroing (Japan), Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. § 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary); see also SAA at 354 (" {a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations. . . "). Because no change has yet been made with respect to the issue of "zeroing" in administrative reviews, the Department will continue with its current approach to calculating and assessing antidumping duties in this administrative review. For the reasons mentioned above, we have not changed our calculation for these final results.

Comments Relating to Bhansali Bright Bars Pvt. Ltd.

Comment 3: Treatment of DEPB Application Charges

Bhansali's Arguments: Bhansali argues that the Department should not deduct the duty entitlement pass book ("DEPB") application charges from the U.S. gross unit price, because the Department did not increase the U.S. gross unit price for duty drawback in the Preliminary Results.

Petitioners' Arguments: The petitioners contend that the consideration of the DEPB application charges is separate and distinct from the Department's analysis of the duty drawback claim. The petitioners argue that the Department's treatment of these expenses in the Preliminary Results is consistent with the Department's definition of a direct expense in its standard questionnaire, the Department's regulations, and Bhansali's statements on the official record of this proceeding.

The petitioners cite the Department's standard questionnaire, which notes that direct selling expenses are typically variable expenses that are incurred as a direct and unavoidable consequence of the sale (i.e., in the absence of the sale these expenses would not be incurred).[7] The petitioners further point to Bhansali's questionnaire responses where it states that the DEPB expenses are paid to the Government of India when applying for duty drawback and can be tied directly to a sale in the United States.[8] Thus, the petitioners assert that the Department should continue to make a downward adjustment for this expense pursuant to 772(c)(2)(A) of the Act.

Department's Position: We agree with the petitioners. In its questionnaire responses, Bhansali reported that it incurs a direct transaction-specific expense paid to the Government of India as the result of a sale to the United States. At verification, we reviewed documentation supporting the adjustment.[9] Therefore, in accordance with 772(c)(2)(A) of the Act, the Department has continued to deduct DEPB application fees from the U.S. gross unit price for the final results.

Comment 4: Comments on Verification: Clarification of Payment Date

Bhansali's Arguments: Bhansali claims that the bank documentation it provided at verification in support of the payment date for one U.S. sales observation was not printed properly and this error caused company officials to confirm the wrong payment date for the sale.[10] Consequently, according to Bhansali, the Department's verification report incorrectly states that the reported payment date for the U.S. sale is wrong. Instead, according to Bhansali, the payment date originally reported in its sales listings is correct. In its case brief, Bhansali re-submitted a bank statement and a payment voucher originally reviewed by Department officials at verification.

Petitioners' Arguments: The petitioners argue that based upon the information contained in the documentation presented to officials at verification, the Department verified that the payment date was mis-reported in Bhansali's U.S. sales listing. The petitioners assert that Bhansali did not explain in its case brief why the Department should ignore the payment date it verified, nor has Bhansali explained why the information contained in its case brief should trump the verification findings.

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[7] See the Department's Standard Questionnaire at I-127.

[8] See Supplemental Sections B-C Response, (December 8, 2006), at 24 ("Bhansali SQR").

[9] See Memorandum to the File, "*Verification of the Sales and Cost Responses of Bhansali Bright Bars Pvt. Ltd. in the 2005/2006 Antidumping Duty Administrative Review of Stainless Steel Bar from India*," dated July 24, 2007, ("*Verification Report - Bhansali*"), at Verification Exhibit VE-14, at 56-58.

[10] *Verification Report - Bhansali*, at 19; and at VE-14, at 44.

Department's Position: The Department agrees with Bhansali. At verification, Bhansali presented evidence of the payment for the U.S. sale, including a payment voucher and Bhansali's bank statement for the payment date in question.[11] The Department noted in its verification report that there was an error in the reporting of the payment date for the sale in question. However, the re-submitted bank statement in Bhansali's case brief clearly shows when Bhansali had access to the funds and that date corresponds to the payment voucher, which is the date reported to the Department before verification. Therefore, we find that our verification report is in error and that the date Bhansali originally reported in its sales database is correct. Thus, no change is required to the payment date for this sale.

Comment 5: Comments on Verification: Correct Gross Unit Price for Home Market Sale

Bhansali's Arguments: Bhansali disputes information contained in the verification report that it misreported the gross unit price for one home market sale invoice.[12] Bhansali contends that the error for the invoice in question had already been clarified by Bhansali in a supplemental questionnaire response submitted to the Department.[13]

Petitioners' Arguments: The petitioners did not comment on this issue.

Department's Position: The Department agrees with Bhansali. We confirmed that information submitted by Bhansali in its questionnaire responses supports the gross unit prices for the home market sales observations in question and that the prices were reported to the Department correctly. Therefore, no adjustments are necessary for the final results.

Comment 6: Inclusion of Implied Interest on Non-Interest Bearing Loans

Bhansali's Arguments: Bhansali argues that the Department should not have imputed interest on the company's loans from shareholders and directors.

Petitioners' Arguments: The petitioners assert that the Department should not change its calculation of implied interest accrued on non-interest bearing loans because Bhansali has not presented any information in its case brief that would warrant a change in the Department's findings on these loans at the Preliminary Results.

Department's Position: Bhansali had several outstanding loans from directors and other affiliated shareholders during the fiscal year 2005-2006, which did not accrue interest. For the Preliminary

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[11] Id.

[12] See *Verification Report - Bhansali* at 14; and at VE-5, at 4.

[13] See Bhansali SQR at 35-36.

Results, we computed the implied interest accruable for these loans during the period as required by section 773(f)(2) of the Act, the "Transaction Disregarded Rule."[14] As the implied interest rate, we used the average interest rate Bhansali paid on similar unsecured loans which were outstanding during the same period using Bhansali's most recently audited financial statements. We included the implied interest for these affiliated-party loans in Bhansali's financial expense ratio. We note that Bhansali did not submit timely information on the record that would support a re-calculation of Bhansali's financial expense ratio. Therefore, for these final results, we have continued to use an implied interest rate to calculate Bhansali's interest expense on these non-interest bearing loans from shareholders and directors.

Comment 7: Calculation of Home Market Credit Expenses

Bhansali's Arguments: Bhansali states that the Department should revise its calculation of home market imputed credit expense for the final results. Without citation, Bhansali claims that the correct calculation of imputed credit expense should include taxes (i.e., value-added taxes ("VAT") and excise taxes) and indirect expenses such as freight expenses and insurance. Moreover, according to Bhansali, credit cost is the cost of total credit given to the customer on a particular sale (i.e., the total invoice value).

Petitioners' Arguments: According to the petitioners, pursuant to section 773(A), the Department requires respondents to report the sale price, discounts, rebates and all other revenues and expenses net of taxes rebated or not collected when the product is exported. Therefore, the petitioners argue that the Department should deny Bhansali's request that home market credit expenses should be recalculated inclusive of taxes for the final results.

Department's Position: It is the Department's longstanding practice to calculate imputed credit based on the price net of taxes, freight, and insurance. See, e.g., Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review, 63 FR 12744, 12747-48 (March 16, 1998); Notice of Final Determination of Sales at Less than Fair Value; Certain Hot-Rolled-Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38772-73 (July 19, 1999). As explained in these decisions, there are varying opportunity costs (or gains) associated with each of these expenses depending on when the payment for them is made. To account properly for these opportunity costs would impose an unreasonable onerous burden on both the respondent and the Department. Therefore, although expenses such as taxes, freight, and insurance may be reflected in the invoice price (the amount charged by the seller and paid by the buyer), we do not include them when calculating the cost of extending credit to the purchases.

Comment 8: Treatment of Billing Adjustments

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[14] See *Cost of Production and Constructed Value Adjustments for the Preliminary Results - Bhansali Bright Bars Pvt. Ltd.*, (February 28, 2007).

Petitioners' Arguments: The petitioners argue that the Department should deny Bhansali's claim for an adjustment to normal value for billing adjustments because Bhansali was unable to substantiate its claim at verification. Petitioners state that there were reporting errors for all of the sales examined by the Department for which billing adjustments had been claimed. Therefore, according to petitioners, the Department has not verified Bhansali's reported billing adjustments.

Petitioners argue that the Department has a longstanding practice of denying a claim for an adjustment where the Department cannot verify the claimed adjustment because the respondent failed to provide supporting evidence. See, e.g., Metal Calendar Slides from Japan: Final Determination of Sales at Less than Fair Value, 71 FR 36063 (June 23, 2006), and the accompanying Issues and Decision Memorandum at Comment 9 ("Metal Slides - Investigation"); (citing Final Results of Antidumping Duty Administrative Review: Polyvinyl Alcohol From Taiwan, 63 FR 32,810, 32,819 (June 16, 1998). Furthermore, petitioners argue that the Department has stated in previous cases that the burden of proof to substantiate the legitimacy of a claimed adjustment falls on the respondent party making that claim. Id. (citing Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (Feb. 13, 2006) and the accompanying Issues and Decision Memorandum at Comment 4.

Bhansali's Arguments: Bhansali argues that the documentation reviewed by the Department clearly shows that Bhansali received reduced payments from customers and, therefore, billing adjustments were made on certain home market sales.[15] According to Bhansali, given the fact that the Department verified the billing adjustments, the Department should not deviate from its calculations made for the Preliminary Results.

Department's Position: In the Preliminary Results, we re-classified billing adjustments reported for specific sales as bad debt expenses and treated them as indirect selling expenses.[16] However, at verification, we found that the billing adjustments were transaction-specific and, therefore, could be tied directly to home market sales. [17]

In contrast to the Metal Slides - Investigation, where the Department denied a claim for an adjustment because the respondent failed to provide any supporting evidence for the claimed adjustment, Bhansali substantiated its claim for billing adjustments at verification by providing supporting documentation including sales invoices and payment documentation. We also tied the credit for the adjustments to Bhansali's accounting system. While we agree with the petitioners that the Department did find errors

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[15] See *Verification Report - Bhansali*, at VE- 8, 9, 10, and 11.

[16] *Preliminary Results Calculation Memorandum for Bhansali Bright Bars Pvt. Ltd.*, dated February 23, 2007, at 2.

[17] See *Verification Report - Bhansali*, at VE- 8, at 10.

in the calculation of reported billing adjustments, the errors were the result of the inclusion of taxes in Bhansali's per-unit calculation.

For the final results, we are applying the reported billing adjustments on a transaction-specific basis and, therefore, deducting the per-unit amounts from the gross unit price. Furthermore, we are adjusting Bhansali's reported billing adjustments downward to eliminate taxes.

Comments Relating to Venus Wire Industries Pvt. Ltd.

Comment 9: Calculation of Home Market Imputed Credit Expenses

Petitioners' Arguments: According to the petitioners, because Venus calculated its imputed credit expense based upon a gross-unit price inclusive of taxes, Venus' methodology is unreasonably distortive. The petitioners argue that the Department should reject Venus' claim for an adjustment for home market credit expenses because the Department could not verify Venus' claim for this adjustment.

The petitioners further argue that the Department cannot recalculate Venus' home market credit expenses because at verification the Department additionally found that the payment dates were not properly reported for the sales examined. Petitioners also note that for certain sales reviewed, Venus had not been paid for significant periods of time, calling into question the validity of Venus' reported dates of payment for all sales.[18]

Citing to Metal Slides - Investigation, the petitioners state that the Department will deny a claim for an adjustment where the Department cannot verify the claimed adjustment. Thus, for the final results, the Department should set home market credit expenses to zero.

Venus' Arguments: Venus did not comment on this issue.

Department's Position: We agree with petitioners, in part. At verification, we found that Venus reported imputed credit expenses based on its total sales accounts receivable figure. The sales values in this account included taxes. Thus, for the reasons explained in response to comment 7, Venus' imputed credit for its home market sales was overstated.

However, we disagree with the petitioners that the imputed credit cost cannot be recalculated. Venus originally reported as its payment date the date it records the customer's payments in its account, and

[18] See Memorandum to the File, "*Verification of the Sales Responses of Venus Wire Industries Pvt. Ltd. in the 2005/2006 Antidumping Duty Administrative Review of Stainless Steel Bar from India*," dated July 24, 2007, ("*Verification Report - Venus*"), at 18-19.

not the date that the payment clears the bank and Venus has access to the funds. This is the misreported payment date that petitioners refer to in their comment.

The difference between the reported date and the date Venus has access to the funds averages one-to-two days. Although the difference is minimal, we asked Venus to resubmit its sales database using the date it has access to the funds as the payment date, and to calculate imputed credit using the net-of-tax prices. This database was submitted on August 13 and we are
using it for these final results.

RECOMMENDATION

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

AGREE __________ DISAGREE __________

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David M. Spooner
Assistant Secretary
for Import Administration

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Date