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Investigations
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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration
Group II

DATE: September 23, 2002

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty (AD) Investigation of Certain Cold-Rolled Carbon Steel Flat Products (Cold-Rolled Steel) from Belgium

Summary

This memorandum addresses issues briefed in this proceeding. Section A lists the issues briefed by the parties. Section B sets out the scope, or product coverage, of this investigation. Section C analyzes the comments of the interested parties and provides our recommendations for each of the issues.

A. Issues

Sales Issues

1) Whether to Apply Partial Adverse Facts Available (AFA) to Sidmar's U.S. Sales of Products Further Processed by Laminoir de Dudelange S.A. (LDD) and Imported by J&F Steel Corporation (J&F)

2) Constructed Export Price (CEP) Offset

3) Whether the Department Should Make All Minor Corrections Presented On the First Day of Verification

4) Whether to Correct Sidmar's Failure to Report Rebates for Certain U.S. Sales

5) Whether to Apply Partial Adverse Facts Available for Sidmar's Failure to Report Certain Movement Expenses

6) Whether the Department Should Calculate U.S. Credit Expense Using the Weighted Average of TradeARBED (TANY)'s Short-Term Interest Rates

7) Whether Sidmar's Freight Components Arranged Through Transaf N.V. (Transaf) Were at Arm's Length

8) Whether the Department Should Calculate TANY's Indirect Selling Expenses Using TANY's Corrected Indirect Selling Expense Ratio

9) Whether to Apply Partial Adverse Facts Available (AFA) for Sidmar's Misreporting of its Billing Adjustments on its U.S. Sales

10) Early Payment Discounts

11) Alleged Clerical Errors in the Preliminary Determination

Cost Issues

12) General & Administrative (G&A) Expense

13) Foreign Exchange Gains and Losses

14) Valuation of Certain Inputs in the Cost of Manufacture

15) Affiliated Input Transactions

B. Scope of the investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation is contained in "Appendix I" attached to the Notice of Correction to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia, 67 FR 52934 (August 14, 2002). For a complete discussion of the comments received on the Preliminary Scope Rulings, see the memorandum regarding "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the CRU.

C. Discussion of comments raised by interested parties and other participants

Comment 1: Whether to Apply Partial Adverse Facts Available (AFA) to Sidmar's U.S. Sales of Products Further Processed by Laminoir de Dudelange S.A. (LDD) and Imported by J&F Steel Corporation (J&F)

Petitioners[1] argue that the Department should apply partial adverse facts available for the U.S. sales of LDD-processed merchandise based on the Department's findings at verification, which refute Sidmar's claim that they were unable to report product characteristics of the merchandise because Sidmar was unable to link J&F's sales of its further processed products to the coils annealed and skinpassed by LDD and originally produced by Sidmar. According to petitioners, Sidmar asserted that it was unable to determine the product characteristics for that merchandise because LDD did not use the same order management system used by Sidmar. See Sidmar's Response to Department's First Supplemental Questionnaire (March 29, 2002) (Sidmar's First Supplemental Response) at 66. Consequently, Sidmar contended that it was unable to link LDD's production records to J&F's invoices or link LDD's sales to specific coils purchased from Sidmar. See Sidmar's Response to Department's Questionnaire (January 14, 2002) (Sidmar's Questionnaire Response) at 66. Petitioners state that based on this claim the Department excluded the U.S. sales of LDD-processed merchandise for purposes of the preliminary determination.

However, petitioners claim that at the verifications of Sidmar and J&F, the Department found that Sidmar's claim was incorrect. Specifically, at verification, the Department found, on one of the invoices it examined, that J&F could link the sale of its further processed products to coils annealed by LDD and originally produced by Sidmar. See Verification of the Sales Questionnaire of Sidmar (August 9, 2002) (Sales Verification Report) at 13. Indeed, the documents obtained by the Department at verification demonstrate that J&F had the ability to report the product characteristics for the LDD-processed merchandise. Even assuming that J&F was unable to perform the necessary linkages for one of the two invoices examined by the Department at verification, the Department verified that J&F was able to do so with respect to other invoices examined.

While petitioners acknowledge that the Department was unable to perform the necessary linkages for one of the invoices, (see Sales Verification Report at exhibit 31) the documents obtained by the Department at verification and Sidmar's own statements on the record provide evidence that using its invoices and the Stelplan system, J&F was cable of performing the necessary linkages and had the ability to report the product characteristics for all of its sales of LDD-processed

[1]The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

merchandise. As a consequence, petitioners argue, J&F's failure to report the product characteristics for the sales in question mandates the use of facts available.

Petitioners argue that in selecting facts available, the Department should apply an adverse inference because Sidmar and J&F failed to act to the best of their ability. See Notice of Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 30710, 30741-43 (June 8, 1999) (Stainless Steel from Germany). In Stainless Steel from Germany, petitioners argue that the respondent claimed that its computer system could not link its U.S. reseller's sales transactions to the appropriate supplying mills, and that it therefore could not determine the necessary product characteristics for the merchandise sold, or even whether merchandise was subject or non-subject. In that case, the Department discovered at verification that the merchandise on three out of seven randomly selected invoices from the U.S. reseller could, in fact, be linked to specific supplying mills. The Department therefore applied partial adverse facts available for those sales made through the U.S. reseller. Petitioners argue that the Department should likewise apply partial adverse facts available for J&F's U.S. sales of LDD-processed merchandise. For purposes of the final determination, petitioners recommend that the Department use the higher of the petition margin- 25.41 percent- or the highest, non-aberrational dumping margin found in any sale in the final determination calculations.

Sidmar argues that the Department should not apply adverse facts available for J&F's U.S. sales of merchandise processed by LDD. Sidmar states that the petitioners do not understand the actual barriers in determining the product characteristics of the coil imported and the source and type of prematerial used by LDD to produce the cold-rolled coils at issue. Sidmar states that, at verification, company officials at LDD demonstrated through presentation of several examples the difficulties involved in tracing the further manufactured products sold by J&F to the cold-rolled material sold by LDD and in determining whether the pre-material was (a) hot-rolled material produced by Sidmar, (b) hot-rolled material produced by another supplier such as Stahlwerke Bremen, or (c) full-hard coils produced by Sidmar. See Sales Verification Report at 4839. According to Sidmar, in order for LDD to identify the coil used to produce the J&F further manufactured product, J&F must provide both the purchase order (PO) number and the coils' tag reference number from its Stelplan system. From this information, LDD then has to undertake a time-consuming search of its production and inventory records systems to determine whether the coil in question was produced by Sidmar or another producer. Sidmar states that if it is not the producer the inquiry ends, because only Sidmar material is subject to the investigation. If the material is Sidmar's, LDD must determine further if the material was hot-rolled or full-hard. If Sidmar hot-rolled material was purchased the inquiry ends, because the hot-rolled product converted to cold-rolled is no longer a product of Belgium. Sidmar states that the process is like searching for a needle in a haystack.

Sidmar argues at verification it demonstrated the complexity of linking a J&F sale to an LDD coil. While the Department was able to verify in one particular instance the trace between the J&F sale and the LDD coil, LDD presented another example to the Department where the link between J&F and the LDD coil was impossible. See Sales Verification Report at 13. According

to Sidmar, the examples provided to the Department at verification show that J&F could not provide the data necessary to link the majority of sales based on LDD prematerial to specific coils imported from LDD. Even in those instances where the Department could link the tag number and order number to the material J&F purchased from LDD, LDD would still have to perform a complex search of its inventory and production records to identify the prematerial for that sale. Further, even if LDD were to attempt this complex, time- consuming search of its inventory and production records to identify the prematerial for that sale, as the Department noted, LDD sometimes sells merchandise to J&F out of stock and often does not maintain information with regards to the type of material it purchased for the product sold to J&F. See Sales Verification Report at 13.

Sidmar contests petitioners' claim that the Stelplan system allows J&F to link further manufactured material to coils produced by Sidmar and sold to LDD. First, while Sidmar agrees that the Stelplan system can tell Sidmar if the vendor of the material sold to J&F is LDD, the Stelplan system cannot determine whether the cold-rolled coil material purchased from LDD is subject merchandise or non-subject merchandise. Second, Sidmar argues that petitioners erroneously mis-interpret the tag system that ties into the record-keeping system of Sidmar, and erroneously believes that the Steplan system utilized by the six J&F facilities, the Sidstahl order system, the LDD production and inventory systems, and the LDD sales systems are integrated. Third, like any computer software program, data out is only as good as data in. In other words, if the underlying data input into the Steplan system is missing or flawed, the most advanced computer software package in the world cannot rectify the problem. For example, some branches consistently include the PO or tag reference number while others do not. Because these fields had not previously been needed by J&F for any internal reporting or tracking purposes, it was not important that each branch enter their data in the Stelplan system in a consistent or complete manner. Thus, just because petitioners assert that the Steplan system should enable J&F to report the data in such a manner does not make it so.

Sidmar also contests the petitioners' assertion that Sidmar's inability to trace the J&F sales to those LDD coils subject to investigation and to identify the product characteristics of the LDD coil as imported constitutes a failure to cooperate and as such, warrants the application of adverse facts available to J&F's U.S. sales. Sidmar claims that petitioners' attempt to equate the factual situations in this case to the facts in Stainless Steel from Germany is wrong. According to Sidmar, in Stainless Steel from Germany, the Department was not made aware of any reporting difficulties by the affiliated U.S. reseller until the eve of verification. In contrast, Sidmar notified the Department of its reporting difficulties in its initial questionnaire response, submitted on January 14, 2002. Sidmar's Response to Section C of the Questionnaire at 7 (January 14, 2002) (Sidmar's Section C Response). In addition, in Stainless Steel from Germany, the sales at issue constituted "a large quantity of sales." See Stainless Steel from Germany at 30710 and 30742. In this case, in contrast, the sales Sidmar was not able to report constitute a very small percentage of Sidmar's total U.S. sales.

For the reasons outlined above, Sidmar states that it demonstrated in its questionnaire response

and at verification that in many instances it was not possible for LDD to distinguish subject cold-rolled coils from non-subject cold-rolled coils or to link them to J&F's sales of further manufactured sales. Further, there is no evidence that Sidmar was an uncooperative respondent, or one that withheld information that it could have provided to the Department. Moreover, Sidmar states that the Department is not required to examine all U.S. sales transactions in an antidumping investigation. Citing the Notice of the Final Determination of Sales at Less Than Fair Value: Pure Magnesium for the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying Decision Memorandum at comment 10, where the Department disregarded unusual transactions because they represented a small percentage of a respondent's total sales (*i.e.*, typically less than five percent). In this case, the sales in question represent substantially less than five percent of Sidmar's total U.S. sales in the POI. See Sidmar's Exclusion Request Letter at 2 (July 23, 2002) (Sidmar's Exclusion Request). Therefore, for the final determination, the Department should not apply adverse facts available to J&F's sale of LDD coils and should disregard these sales for the final determination.

Department Position:

We agree with Sidmar and for purposes of the final determination we have continued to exclude these sales from our analysis. As we stated in the Preliminary Determination Sales Calculation Memorandum of Certain Cold-Rolled Carbon Steel Flat Products from Belgium, dated April 26, 2002 (Sales Calculation Memorandum), we permitted Sidmar not to report these sales based on the fact that they represented such a small portion of the U.S. sales. Consistent with our past practice, the Department has disregarded unusual transactions when they represent a small percentage (i.e., typically less than five percent) of a respondent's total sales, as is the case here with J&F's sales of LDD coils. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan, 64 FR 8291, 8295 (Feb. 19, 1999); see also Notice of Final Determination of Coated Grounded Paper from Finland, 56 FR 56363 (November 1, 1991). Furthermore, because these sales represented only a small portion of the total volume of U.S. sales made by Sidmar, they would have had an insignificant effect on our calculations. See Sales Calculation Memorandum.

The Department also excluded these sales on the basis that they were difficult to report. See Sales Calculation Memorandum. In a letter to the Department, as well as in its questionnaire response, Sidmar had requested that the Department exclude these sales because of the difficulty in linking the J&F further processed products to LDD-annealed coils and ultimately back to Sidmar full-hard coils. Sidmar stated that it had not been able to identify a reliable methodology that would enable it to report product characteristics of those imported coils for other sales. See Sidmar's Exclusion Request at 2; see also Sidmar's Section C Response at 7. Sidmar goes on to state that reporting these sales is so difficult that it would impose an enormous burden on J&F, LDD, and Sidmar. See Sidmar's Exclusion Request Letter at 3 (July 23, 2002). The Department verified Sidmar's response and found that while there was evidence that Sidmar was able to identify the product characteristics for some of its J&F sales, there was also evidence that Sidmar

was unable to identify the product characteristics using its order management system. See Sales Verification Report at 12 and 25. Although we found an example that could be traced, this did not disprove the overall difficulty of doing so. More specifically, we found evidence that it was not possible for LDD to distinguish subject cold-rolled coils from non-subject cold-rolled coils and link them to J&F's sales of further manufactured sales on a regular basis. See Sales Verification Report at 13 and exhibit 31.

Being able to report sales and having significant difficulty reporting sales are two separate issues. The record indicates that Sidmar provided sufficient information for the Department that reporting these sales would be burdensome and very difficult. Thus, petitioners' reliance on the Stainless Steel From Germany case is off point. In that case, the respondent did not provide information on the difficulty of reporting sales until the eve of verification. Furthermore, the sales in question did not represent a small percentage of the U.S. sales. In the instant case, Sidmar provided information regarding the difficulty in reporting these sales prior to verification, which Department officials were able to verify. Moreover, the quantity of these sales was very small, therefore we have continued to exclude these sales from our analysis for purposes of the final determination.

Comment 2: CEP Offset

Petitioners claim that Sidmar has failed to meet its burden to establish its entitlement to a CEP offset and that the Department should deny Sidmar's claim for such an adjustment in the final determination. According to petitioners, Sidmar has failed to demonstrate that its home market sales were made at a more advanced level of trade(LOT) than its CEP sales in the United States. Citing the Notice of Final Results of the Antidumping Administrative Review: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany, 63 FR 13217 at 13225 (March 18, 1998) (Seamless Pipe from Germany), petitioners state that Sidmar has failed to provide a single piece of evidence (i.e., manuals, sales forecasts, supporting affidavits, etc.) either in its questionnaire response or at verification that would substantiate its description of the degree to which its home market and U.S. selling functions were performed. Instead, petitioners claim that the degree of selling functions performed for its respective sales were based upon the "personal experience" and "common judgement" of its senior employees.

Furthermore, petitioners claim that the selling functions performed in the home market were not substantially different from and more advanced than those in the United States. Citing the Sales Verification Report, petitioners state that the Department's analysis of the selling functions at verification indicates that the selling functions performed in the home market and the United States were virtually identical. See Sales Verification Report at exhibit 5. While the Department granted a CEP offset in the preliminary determination, petitioners contend that the difference in the selling functions performed for sales in the respective markets does not warrant a CEP offset. As a result, Sidmar has failed to meet its required burden to establish its entitlement to a CEP offset, and the Department should deny Sidmar's request for such an adjustment.

Sidmar argues that petitioners' assertions regarding LOT are without merit, are contradicted by record evidence and the Department should continue to grant Sidmar a CEP offset. First, at verification, the Department spoke with company officials and gathered documentation regarding the sales process and the activities and functions performed in selling to customers in the home and U.S. markets. Sidmar's officials' response was fully recorded in the verification report. See Sales Verification Report at 6. Second, evidence on the record demonstrates that Sidmar performs more functions in selling to customers in the home market than it performs in selling to J&F and TANY in the United States. See Sidmar's Response to Section A of the Questionnaire (December 14, 2001) at exhibits A-3(a)(1), A-3(c)(2), and A-4(f)(Sidmar's Section A Response). Specifically, Sidmar/Sidstahl incurred double the amount of indirect selling expenses on sales in the home market as compared to U.S. sales, which it states correlates to Sidmar/Sidstahl expending twice the effort on sales activities to home market as compared to U.S. sales.

Sidmar also notes that nothing in the Department's regulations or the Act requires respondents to provide any of the documents listed above. Finally, Sidmar claims that the primary reason it has affiliated resellers in the U.S. market is to perform most of the selling activities and functions that Sidmar/Sidstahl performs in the home market. Based on the facts listed above, the Department should continue to grant a CEP offset for the final determination.

Department Position:

We agree with Sidmar. In the preliminary determination, we found Sidmar's home market sales were made at a more advanced LOT than its CEP sales, see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products from Belgium, 67 FR 31195 at 31198 (May 9, 2002) (Preliminary Determination). Specifically, we found that in comparing the CEP LOT, after making the appropriate deductions under section 772(d) of the Act, against the home market LOT, we noted that the selling activities differed with respect between the two markets. See Preliminary Determination at 67 FR 31198, see also Sales Calculation Memorandum at 8 and 9.

In the Preliminary Determination, the Department based its decision to grant Sidmar a CEP offset on information provided by Sidmar in its questionnaire response. See Sidmar's Section A Response at exhibits A-3(a)(1), A-3(c)(2), A-4(f), and 16 through 36. The information provided by Sidmar was later verified by the Department. See Sales Verification Report at 6 and 25. We disagree with petitioners and find that with respect to selling functions, Sidmar provided sufficient information for the Department to compare selling functions in the two markets. See Sales Calculation Memorandum at 8 through 10. Information provided by Sidmar, and verified by the Department, demonstrates that Sidmar's selling functions for the home market sales are different and more extensive than those associated with Sidmar's sales to J&F and TANY. See Sales Verification Report at 6, 25 and exhibits 4, 5, J3, and T3. See Sales Verification Report at exhibits 4, 5, J3, and T3. Therefore, we conclude that home market sales are at a more advanced LOT than U.S. sales.

Finally, the information on the record indicates that it is not possible for the Department to make a LOT adjustment. Specifically, because all home market sales were made at one LOT which is not the same LOT as that of the U.S. sales, it is not possible to quantify the extent to which price differences are due to LOT differences. Given that the home market sales are at a more advanced LOT, and that it is not possible to make a LOT adjustment, section 773(a)(7)(B) of the Act directs the Department to make a CEP offset.

The record indicates that Sidmar provided sufficient information for the Department to conduct a LOT analysis and to determine that a CEP offset was appropriate. Thus, petitioners' reliance on the Seamless Pipe from Germany case is off point. In that case, the respondent did not provide information either before or during the verification for the Department to conduct a LOT analysis. In this instant case, Sidmar provided information prior to verification, and Department officials were able to verify the accuracy of the information during verification.

Since we found that there is no compelling information on the record which would reverse our preliminary LOT determination, but rather our verification confirmed our preliminary findings, we continue to conclude that we cannot match CEP sales to sales at the same LOT in the home market, and therefore Sidmar qualifies for a CEP offset adjustment pursuant to section 773(a)(7)(B) of the Act.

Comment 3: Whether the Department Should Make All Minor Corrections Presented On the First Day of Verification

Petitioners argue that for the final determination, the Department must make certain corrections to Sidmar's database based upon errors discovered at verification. Petitioners specifically mention four errors the Department should correct: 1) all home market rail expenses, 2) J&F's indirect selling expenses, 3) J&F's marine insurance, and 4) TANY's indirect selling expenses.

Sidmar disagrees with petitioners' recommendation that the Department make only four adjustments to Sidmar's sales-related expenses for purposes of the final determination. According to Sidmar, petitioners conveniently urge the Department to make only those corrections that would increase Sidmar's margin. Therefore, for the final determination, Sidmar recommends that the Department make all minor corrections presented on the first day of verification.

Department Position:

We agree with Sidmar. It is standard Department practice to accept corrections of minor errors identified by respondents at the outset of verification. See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8929 (February 23, 1998); see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737 at 9746

(March 4, 1997). The errors identified by Sidmar were minor in that they affect only variables (e.g., marine insurance, credit expenses) with respect to a select percentage of sales. See Sales Verification Report at 2, 23, and 38; see also, Verification of the Cost Questionnaire of Sidmar (July 22, 2002) (Cost Verification Report) at 3; see also, Verification of the Further Manufacturing Questionnaire of Sidmar (July 25, 2002) (Further Manufacturing Verification Report) at 2. Furthermore, company officials presented the minor errors to the Department at the outset of verification. See Sales Verification Report at 2. The minor errors accepted by the Department at the beginning of verification served only to corroborate and clarify information on the record.

We disagree with petitioners that the Department should only correct four of the errors identified by Sidmar at the beginning of verification. The Department will accept minor corrections if the information corrects information already on the record, or the information corroborates, supports, or clarifies information already on the record. See Preliminary Results of Antidumping Duty Administrative Review: Elemental Sulfur from Canada, 62 FR 969 at 970 (Jan. 7, 1997), which outlines the conditions under which the Department will accept new information. Based on established verification procedures, we are satisfied that the errors presented at the outset of verification were correct, and requested that Sidmar submit a revised database correcting for these errors for this final determination. See the letter from the Department to Sidmar requesting new databases dated September 5, 2002. Therefore, while we agree with petitioners that we should make changes for the four errors they identified, we do not agree that we should limit the corrections to just those four errors.

Comment 4: Whether to Correct Sidmar's Failure to Report Rebates for Certain U.S. Sales

Petitioners state that for one of J&F's customers, J&F calculated a per-unit rebate amount based upon the total amount of rebates granted and allocated by the total quantity of merchandise sold to this customer during the POI. According to petitioners, in the U.S. sales database, Sidmar failed to report the rebate amount for all of the sales to this customer during the POI. Petitioners request the Department correct this error for our final determination.

Sidmar argues that the Department should ignore petitioners' comments and rely on the verified rebate information reported in the U.S. sales database for purposes of the final determination. Citing the Sales Verification Report, Sidmar contends that for the customer in question, Sidmar granted a rebate for only five months during the period of investigation. See Sales Verification Report at 30. As such, the Department verified the accuracy of this information. See Sales Verification Report at 30. Therefore, for the final determination, Sidmar requests that the Department make no adjustment with regards to this customer in the U.S. sales database.

Department Position:

We agree with Sidmar. At verification we reviewed the method by which rebates were granted in the U.S. market and noted no discrepancies in the reported data. See Sales Verification Report at 30 and exhibit J-14. Therefore, for the final determination we will make no changes to this adjustment with regard to this customer.

Comment 5: Whether to Apply Partial Adverse Facts Available (AFA) for Sidmar's Failure to Report Certain Movement Expenses

Petitioners claim that there are a number of sales in the U.S. sales database for which Sidmar failed to report other movement expenses (USOTHTRU) incurred by J&F. As a result, the Department should apply the highest value reported in the USOTHTRU field to those U.S. sales for which Sidmar failed to report this expense.

Sidmar contends that petitioners' claims regarding USOTHTRU incurred by J&F are without merit and should be disregarded. In its Section C Response, Sidmar stated that any sale which incurred a USOTHTRU expense was labeled with an "OT" in the delivery method field. See Sidmar's Section C Response at 45. According to Sidmar, this issue was addressed at verification. See Sales Verification Report at 23 and 34. Specifically, Sidmar states that the Department noted at verification that Sidmar inadvertently made a coding error with regard to the delivery method for the majority of these sales. In addition, Sidmar states that it addressed all issues regarding the delivery method reported as "OT" at verification. Therefore, for the final determination, Sidmar requests that the Department make the necessary changes regarding these sales noted at the outset of verification and disregard petitioners' comments.

Department Position:

We agree with Sidmar. At the start of verification for J&F, J&F explained to the Department that it had inadvertently made a coding error for the terms of delivery for a small number of sales. See Sales Verification Report at 23 and 34. We found its explanation to be reasonable. Since the effect of the error was understandable and minor overall, we permitted Sidmar to submit a revised database correcting for this error. See comment 3 listed above.

Comment 6: Whether the Department Should Calculate U.S. Credit Expense Using the Weighted Average of TradeARBED (TANY)'s Short-Term Interest Rates

Sidmar argues that the Department should change its U.S. credit expense calculation and should use the weighted-average of TANY's short term interest rate from the POI as listed in the Section C response and verification exhibit T-13. Sidmar notes that the Department was correct when it found at verification that TANY used a simple average of its POI short-term borrowing rates in

its calculation of interest for U.S. credit expense. For the final determination Sidmar requests that the Department change its U.S. credit expense by using a weighted-average of TANY's short term interest rate.

Department Position:

For the final determination, the Department has decided not to change its credit expense calculation with regard to the interest rate because it has minimal effect on the dumping margin. The majority of Sidmar's borrowings are overnight. See Sidmar's Section C Response at exhibit C-41. Therefore, the difference between a simple average and a weighted-average is almost none. As a result, for the final determination, the Department has decided not to change the interest rate for its credit expense calculation with regard to TANY's sales. However, we did make an adjustment for a clerical error with regard to the credit expense calculation. See comment 11 listed below; see also Final Calculation Memorandum.

Comment 7: Whether Sidmar's Freight Components Arranged Through Transaf N.V. (Transaf) Were at Arm's Length

Petitioners claim that Sidmar placed no information on the record which would demonstrate that the commissions paid by Sidmar to Transaf, an affiliated shipping agent, were at arm's length prices. Citing the Notice of the Final Determination of Sales Less Than Fair Value: Structural Steel Beams From Luxembourg 67 FR 35488 (May 20, 2002) and Decision Memorandum at comment 5 (Beams from Luxembourg), petitioners state that the Department should apply adverse facts available to Sidmar's reported brokerage and handling, and international freight costs since Sidmar has failed to provide the information requested by the Department. As adverse facts available, the Department should apply the highest reported brokerage and handling fees and international freight expenses reported in the U.S. sales database.

Sidmar argues that petitioners' comments regarding Transaf are misguided and wrong. First, citing Sidmar's Supplemental Section A-C Questionnaire Response, Sidmar states that it has repeatedly disclosed Transaf's role in U.S. sales. See Sidmar's First Supplemental Response at 61. Furthermore, the Department verified the accuracy of this response. See Sales Verification Report at 20. In addition, Sidmar states that Transaf is not the ocean freight provider for any of Sidmar's U.S. sales; rather, ocean freight carriers are unaffiliated vessel operators. While petitioners note correctly that Transaf "plays a significant role in brokering and assisting in the transporting of Sidmar's subject merchandise" (see Nucor Corporation's case brief at 12), that is much different from being the actual ocean freight carrier. Furthermore, Sidmar states that the record demonstrates that Transaf's fees reflect market prices. See Sidmar's Section A Response; see also, the Sales Verification Report.

Sidmar also states that Sidmar has fully co-operated with all requests for information concerning Transaf and did nothing to impede the Department's investigation of Transaf. In addition,

Sidmar argues that Beams from Luxembourg is inapposite to the instant case. In Beams from Luxembourg, the Department's use of nonadverse facts available rested on the factual finding that "ProfilARBED" used an affiliated carrier for ocean freight transportation. According to Sidmar, the evidence in this case points to the fact that Transaf does not serve as Sidmar's ocean freight carrier. Similarly, in Beams from Luxembourg, the Department found that ProfilARBED made the erroneous assumption that, "ocean freight expenses were incurred to unaffiliated carriers." The evidence in this case is that Sidmar's ocean freight carriers are, in fact, unaffiliated carriers. Therefore, for the final determination, and for the reasons listed above, the Department should not resort to adverse facts available.

Department Position:

We agree with Sidmar. Petitioners' citing of Beams from Luxembourg is off point. As stated in Sidmar's Section A response, Transaf arranges the ocean freight as opposed to providing the ocean freight service. In addition, the Department verified the amount paid to Transaf and noted no reason to believe that the commissions paid were not reasonable fees for brokering transport. See Sales Verification Report at 20. Therefore, for the final determination, we are making no adjustments with regard to ocean freight other than the clerical error presented at the outset of verification. See comment 3.

Comment 8: Whether the Department Should Calculate TANY's Indirect Selling Expenses Using TANY's Corrected Indirect Selling Expense Ratio

Sidmar claims that in order to avoid double-counting, the Department should include credit-line and management fees in the indirect selling expense ratio and deduct these from the selling, general, and administrative expense calculation as stated in the minor corrections exhibit 1. See Sales Verification Report at exhibit T-1 and comment 3.

Petitioner requested that we revise TANY's indirect selling expense ratio based on clerical errors presented at the outset of verification. See Sales Verification Report at exhibit T-1.

Department Position:

We agree with both Sidmar and petitioners. Therefore, for the final determination we requested Sidmar to submit a revised sales database correcting this error presented at the beginning of verification. See comment 3. The Department also made additional changes to TANY's indirect selling expense ratio based on findings at verification. See Sales Verification Report at 47; see also Sidmar's Final Determination Sales Calculation Memorandum (September 23, 2002) (Final Calculation Memorandum).

Comment 9: Whether to Apply Partial Adverse Facts Available (AFA) for Sidmar's Misreporting of its Billing Adjustments on its U.S. Sales

Petitioners argue that Sidmar's reporting of billing adjustments was inaccurate and distortive. According to petitioners, the Department found at the verification of J&F that the billing adjustments granted for sales made through J&F were not properly reported in the U.S. sales listing. Specifically, for one invoice, the Department found that J&F had attributed the per-unit billing adjustment calculated for all of the sales on the invoice to only one of the sales listed in the U.S. sales database. Upon discovering this problem, the Department requested that J&F Steel provide it with a listing of all billing adjustments granted during the POI. See Sales Verification Report at 30. Based on the review of this list the Department found that the same problem had been repeated for other sales. Furthermore, petitioners note that the Department found instances where no billing adjustment should have been reported for a sale or the values were reported incorrectly.

Petitioners state that by failing to report correct, accurate, and verifiable billing adjustments, Sidmar has failed to act to the best of its ability in this proceeding. Citing section 776(b) of the Act, the petitioners assert the Department should apply partial adverse facts available for the billing adjustments in question. As partial adverse facts available, the Department should apply the highest billing adjustment reported for any U.S. sale on an invoice covering multiple sales to all of the U.S. sales meeting that description. In addition, for the U.S. sales not on invoices covering multiple sales, the Department should deny a positive billing adjustment.

Sidmar differs with petitioners that the Department should apply partial facts available with regard to its billing adjustments on U.S. sales. Sidmar acknowledges that there are inadvertent errors in J&F's reported billing adjustments. However, Sidmar contends that as a factual matter, J&F's computer system is not capable of automatically tying the billing adjustments to the relevant sales to which they pertain. Furthermore, J&F has reported a number of expenses in a relatively short time period. Sidmar argues that J&F should be commended for its efforts and not penalized. Sidmar states that it would be particularly unreasonable for the Department to apply partial adverse facts available when the corrected data is on the record and could be used for purposes of the final determination. For these reasons, Sidmar maintains the Department should use the corrected billing adjustment data contained in the Sales Verification Report at exhibit J-18.

Department Position:

We agree with petitioners. J&F did not demonstrate at verification that it had properly reported billing adjustments. The regulations specifically provide that a respondent seeking to report billing adjustments on an allocated basis must "demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions." See 19 CFR § 351.401(g)(1) (2001). At verification we noted that for one invoice J&F had attributed the per-

unit billing adjustment calculated for all of the sales on the invoice to only one of the sales listed in the U.S. sales database. See Sales Verification Report at 30. Upon discovering this problem, we requested that J&F Steel provide us with a listing of all billing adjustments granted during the POI, by branch. After reviewing this list we found that not only had this problem been repeated in other invoices but that in some instances no billing adjustment should have been reported for a sale or the values were reported incorrectly. See Sale Verification Report at exhibit J-18.

While Sidmar requests that we use the data provided in exhibit J-18, not all of the information was able to be verified. Because Sidmar failed to provide this information, in accordance with section 776(a)(2)(A) of the Act, we have determined that facts available is warranted in this instance. Furthermore, as opposed to the errors addressed in comment 3, where the errors were minor in effect, the errors here are so pervasive, resulting from Sidmar's lack of cooperation in acting to the best of its ability in providing this information, that they warrant the use of adverse facts available. The information was reasonably accessible. Specifically, in the Department's first supplemental questionnaire, we requested that Sidmar correct errors reported in its billing adjustment field. See Sidmar's First Supplemental Response at 56. While Sidmar corrected some errors, Sidmar had the opportunity to review and correct their billing adjustment allocation as well. In addition, evidence gathered at verification indicated that Sidmar was capable of providing the information from the outset, so that these errors are not clerical in nature but reflect a failure to make the necessary effort to supply the correct information at its disposal. See Sales Verification Report at 30 and exhibit J-18.

By not providing verifiable information for billing adjustments when such information was reasonably available to J&F, and because the error was not minor or clerical in nature such that the error shows an unwillingness to fully address the questionnaire even when faced with related supplemental questions, we have determined that Sidmar failed to act to the best of its ability to comply with the request for information and an adverse inference is warranted, in accordance with section 776(b) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 30309 at 30312 (June 14, 1996) (Pasta from Turkey); see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia, 66 FR 49628 (September 28, 2001) (Steel Flat Products From Indonesia), and accompanying Decision Memorandum at comments 1 and 2. As partial adverse facts available, we have set all positive billing adjustments to zero and where the negative billing adjustment is misreported, the Department will take each unique combination of J&F branch and invoice number for which a negative billing adjustment is reported and apply the largest per-unit negative billing adjustment for all records sharing the same branch/invoice number combination. See Final Calculation Memorandum. Section 776(c) of the Act provides that when the administering authority relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

Because we are using as adverse facts available the information supplied by J&F, which

information is part of the record, we are not using secondary information. See 19 CFR 351.308(c)(2). Accordingly, the information used is not subject to the corroboration requirement.

Comment 10: Early Payment Discounts

Petitioners argue that the Department should deny all early payment discounts for all home market sales, because Sidmar has failed to satisfy its burden to be entitled to such a favorable adjustment. Citing the Sales Verification Report, petitioners state that Sidmar overstated the number of customers who received an early payment discount. See the Sales Verification Report at 31. Citing the Notice of the Preliminary Results: Polyvinyl Alcohol from Japan, 65 FR 36112 (June 7, 2000) (Polyvinyl Alcohol from Japan) petitioners state that it is Departmental practice to reject a respondents' claim for a favorable adjustment where the respondents are unable to demonstrate their entitlement to those adjustments at verification. In this case, Sidmar has failed to demonstrate that it is entitled to these adjustments, therefore, petitioners argue, for the final determination the Department should deny all early payment discounts reported by Sidmar for its home market sales.

Sidmar claims that the Department should disregard petitioners' comments and use the information regarding early payment discounts provided at verification. According to Sidmar, the misapplication of these customers' discount rates in its home market sales database resulted from a data collection error. Sidmar agrees that the erroneous discounts identified at verification should not be included in the Department's final margin calculation. See Sales Verification Report at 31. However, Sidmar has provided the Department with accurate information about the extent and nature of Sidmar's early payment discount program, and the Department tested the accuracy of this information. See Sales Verification Report at 31. Therefore, for the final determination, Sidmar requests the Department to use the information provided at verification with regard to early payment discounts.

Department Position:

We agree with petitioners. Sidmar did not demonstrate at verification that it had properly reported early payment discounts in the home market database. The regulations specifically provide that a respondent seeking to report billing adjustments on an allocated basis must "demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions." See 19 CFR § 351.401(g)(1) (2002). At verification the Department noted that Sidmar overstated the number of customers who received an early payment discount. In addition, in those instances where a customer received an early payment discount it was not accurately reported. See the Sales Verification Report at 14. A respondent seeking a favorable adjustment, such as the deduction of early payment discounts on its home market sales, has the burden of establishing entitlement to that adjustment. See Polyvinyl Alcohol from Japan at

36114. Because Sidmar has failed to demonstrate that it is entitled to such a favorable adjustment, we are denying all early payment discounts for the final determination.

Comment 11: Alleged Clerical Errors in the Preliminary Determination

Sidmar argues that, for purposes of its final dumping margin calculations, the Department should correct clerical errors which appeared in the Department's preliminary dumping margin calculations. Sidmar states that it notified the Department of these errors after the preliminary determination, even though these errors were not "significant" within the meaning of the Department's regulations, for the purpose of the Department to amend its preliminary determination. See Sidmar's letter to the Department Clerical Errors in the Preliminary Determination, dated May 13, 2002.

The first clerical error in the Department's margin program is that the Department failed to convert the weighted-average surrogate commissions from amounts per hundredweight to amounts per metric ton thus understating the CEP offset. In addition, the Department failed to include U.S. indirect selling expenses in the calculation of the CEP offset.

The second clerical error occurs in that the Department incorrectly deducted billing adjustments from the U.S. and home market gross unit prices. According to Sidmar, the billing adjustments in both the U.S. and home market database are reported such that the negative value in the billing adjustment field signifies a reduction to the gross unit price. However, because the Department's margin program subtracts the billing adjustment from the reported gross unit price, the negative values are in fact added to the gross unit price. To correct this error, Sidmar states that the Department should convert the negative value reported in the billing adjustment field to a positive value in order for the billing adjustment to be properly deducted from the gross unit price.

The third clerical arose when the Department incorrectly converted home market packing cost and movement changes from Euros to U.S. dollars twice in the program.

Petitioners differ with Sidmar arguing that it failed to identify in the program where the Department converts home and U.S. market packing and movement charges twice. Furthermore, petitioners state that a review of the program indicates that packing and movement expense are converted only once. Therefore, for the final determination the Department should make no adjustment.

According to Sidmar, the fourth clerical error occurs because the Department's margin program incorrectly calculates a separate weighted-average net price for CEP sales of identical products based on whether or not they were further manufactured in the United States. The Department should calculate a single weighted-average net price by control number for all CEP sales by removing references to the variable "FMFLAG" in the margin program.

The final clerical error occurs because the Department incorrectly treated Sidmar's warehousing expenses for home market and U.S. sales as direct selling expenses rather than movement expenses. Sidmar states that the Department should reclassify warehousing expenses for the final determination.

Petitioners contend that the Department should not treat Sidmar's warehousing expenses in the home and U.S. market as a movement expense, citing section 351.401(e) of the Department's regulations which states that the Department will treat warehousing expense as a movement expense only when warehousing expenses are incurred after the goods left the production facility. Moreover, with respect to warehousing, the Department's regulations state that it "will not deduct factory warehousing as a movement expense." According to petitioners, Sidmar's warehousing expenses are incurred at the factory and prior to the merchandise leaving the production facility. As such, for the final determination, the Department should continue to treat these expenses as a direct selling expense.

Petitioners state that the Department made an error in its margin calculation program when it converted certain items from per metric ton to per hundred weight. Petitioners request that we correct this for our final determination.

Petitioners also state that a clerical error occurred in the Departments' calculation of U.S. direct selling expense (DIRSELLU). According to petitioners, the Department failed to use its re-calculated credit expense and instead used the original credit expense calculation provided by Sidmar. Petitioners request we correct this error for the final determination.

Department Position:

We agree that the Department inadvertently made the above-listed errors in our comparison market and margin calculation programs. We agree with petitioners in part. The Department finds no evidence that we incorrectly converted home market packing and movement expenses twice in the margin calculation program. However, we disagree with petitioners that Sidmar did not provide enough evidence to substantiate its error allegations with regards to the fifth error identified by Sidmar above. See Clerical Errors in the Preliminary Determination at 3; see also, Sales Verification Report at 20 and 33. Therefore, the Department has corrected the majority of these errors for the final determination. See Final Calculation Memorandum.

Comment 12: General & Administrative (G&A) Expense

Petitioners allege that in calculating its G&A rate, Sidmar has excluded several items from G&A expense that should be included as a matter of fact and in accordance with the Department's practice. Petitioners claim it is the Department's practice to include G&A expenses that may relate to non-subject merchandise unless all associated manufacturing costs can be identified and also withdrawn from the denominator of the G&A expense ratio calculation. Petitioners argue

that because G&A expenses relate to the general operations of the company, as a whole, rather than to the production process, it is not relevant whether or not a particular asset was used to produce subject merchandise. Petitioners advocate including losses on the sale of subsidiaries in the current case because the subsidiary's cost of assets has been included in the denominator of the value calculation through Sidmar's reported depreciation or amortization. Petitioners maintain these principles have been established Department practice through references to the Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Canada, 64 FR 17324, 17333 (April 9, 1999), the Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan, 64 FR, 56308, 56323 (October 19, 1999) and the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Korea, 64 FR, 73196, 73209 (December 29, 1999). Petitioners advocate adding these excluded expenses to the numerator of the G&A calculation.

Respondent replies that none of these excluded items benefitted the company as a whole and therefore were properly excluded. Sidmar notes that the electron beam technology unit is responsible for the sale and development of that technology, represents a separate product line of the company, and that the expenses of the unit are specific to manufacturing, selling and further developing electron beam technology, and thus does not meet the definition of a G&A expense and was appropriately excluded from this calculation. Respondent contends that the other amounts in question are not general overhead expenses; rather, they were incurred on behalf of specific product lines, production activities or corporate entities, some of which are not located in Belgium.

Department Position:

We note that respondent does not classify expenses using the category title "selling, general and administrative expense" nor does it use the title "cost of sales" in the normal course of business. The company uses the title "operating charges" on its audited income statement to describe all operating expenses during the period which would include manufacturing costs, selling, general and administrative costs. Thus we requested and received a schedule from Sidmar which classified all of the expenses within the caption "operating charges" (i.e., industrial plus non-industrial costs) as manufacturing, selling, G&A, interest and packing costs.

As stated in the Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan, 64 FR, 56308, 56323 (October 19, 1999) (DRAMs), "in calculating the G&A rate, the Department's practice is to include certain expenses and revenues that relate to the general operations of the company as a whole, as opposed to including only those expenses that directly relate to the production of the subject merchandise. Accordingly, the G&A category covers a diverse range of items. Consequently, in determining whether it is appropriate to include or exclude a particular item from the G&A calculation, the Department reviews the nature of the G&A activity and the relationship between this activity and the general operations of the company." We have

continued this practice in this case by analyzing each of the reported G&A expenses for the nature of the G&A activity and the relationship between this activity and the general operations of the company. For example, we exclude production costs per se, but not product-specific costs that are not production costs. See Notice of Final Results of Antidumping Duty Administrative Review: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan, 66 FR 11555 (February 26, 2001), and accompanying Decision Memorandum at comment 6. In the instant case we have included in G&A expenses those items that relate to the general operations of the company as a whole. Due to the proprietary nature of the expenses in question, see the final cost calculation memo from Peter Scholl to Neal Halper dated September 23, 2002 for a more detailed discussion of this issue.

Comment 13: Foreign Exchange Gains and Losses

Petitioners state that Sidmar excluded its foreign exchange gains and losses from the reported costs. Petitioners point out that Sidmar excluded the ARBED consolidated foreign exchange gains and losses because they were negligible. Petitioners cite Certain Hot-Rolled Carbon Steel Flat Products from Indonesia and Decision Memorandum at comment 3, to support their contention that unconsolidated foreign exchange gains and losses related to accounts payable and cash are included in G&A.

Sidmar agrees with petitioners that certain foreign currency exchange gains and losses that Sidmar incurred during fiscal year 2000 should be included in Sidmar's G&A expenses. Sidmar disagrees with petitioners' assertions that the Department should include both Sidmar's foreign exchange information as well as all of the foreign exchange gains and losses incurred by ARBED S.A., Sidmar's parent company. Sidmar reasons that by doing so, the Department would be double-counting Sidmar's reported foreign exchange information.

Department Position:

The Department's normal practice is to include a portion of foreign exchange gains and losses in the calculation of Cost of Production (COP) and Constructed Value (CV). Specifically, it is our normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 17324, 17334 (April 9, 1999) (Stainless Steel Wire from Canada) and Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998) (Steel Wire Rod from Trinidad and Tobago). Thus, we normally include in the calculation of COP and CV the foreign exchange gains and losses that result from transactions related to a company's production activities. In addition, we normally include exchange gains and losses related to financing activities in the financial expense rate. We have adjusted G&A in this case to include certain unconsolidated foreign exchange gains and losses. We have reduced the consolidated exchange losses by the amount included in G&A to

avoid double counting. It is our practice to include gains and losses on foreign currency denominated loans in the calculation of the company's financial expense rate. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 68 FR 49622 (September 28, 2001) referencing "Issues and Decision Memorandum" from Joseph A. Spetrini, Deputy Assistant Secretary to Faryar Shirzad, Assistant Secretary Import Administration dated September 21, 2001, comment 6. Due to the proprietary nature of the specific items in question, see the final cost calculation memo from Peter Scholl to Neal Halper dated September 23, 2002 for a detailed discussion of this issue.

Comment 14: Valuation of Certain Inputs in the Cost of Manufacture

Petitioners argue that the cost of slabs purchased but not consumed during the POI should be included as a raw material cost in the cost of manufacture of merchandise under consideration. Petitioners state that the cost of manufacture should include the cost of all purchases during POI regardless of whether the slabs were consumed in the POI.

Sidmar responds that by excluding from its reported cost of manufacture the cost of slabs purchased but not consumed during the POI, Sidmar calculated manufacturing costs for the merchandise under investigation that are reasonable and that reconcile to its audited financial statements. Sidmar argues that petitioners' proposed cost calculation methodology would result in a significant overstatement of manufacturing costs.

Department Position:

We disagree with petitioners that the cost of slabs purchased but not consumed during the POI should be included as a raw material cost in the cost of manufacture of merchandise under consideration. We specifically disagree with petitioners' statement that the cost of manufacture should include the cost of all purchases during the POI regardless of whether the slabs were consumed in the POI. The purpose of calculating COP/CV is to determine the cost to produce the merchandise under investigation, during the POI. If the slabs were not used during the POI to produce merchandise under investigation, then the costs of these slabs should not impact the cost of production of the merchandise.

Comment 15: Affiliated Input Transactions

Respondent maintains that during the POI, Sidmar's flame coal and scrap purchases from affiliates were at market prices and thus for the final determination, the Department should not make an adjustment to Sidmar's reported purchase prices for flame coal or scrap from affiliates as was done in the preliminary determination.

Sidmar explains that the affiliate from which it bought flame coal does not produce flame coal

but is simply a reseller of flame coal purchased from an unaffiliated mine. Respondent states this transaction is valued at arm's length because its affiliate bought the flame coal from an unaffiliated mine. Sidmar objects to the Department's comparison in the preliminary determination of a single purchase of flame coal from an affiliate to the average price paid to all of Sidmar's unaffiliated suppliers. Additionally, respondent offers a comparison of the affiliated purchase of flame coal to a purchase from an unaffiliated supplier and shows that the affiliated purchase is at arm's length. Finally, Sidmar argues that if the Department makes an adjustment, it should base the adjustment on the actual percentage that flame coal represents of the total cost of manufacture of the merchandise under investigation.

Respondent argues that the Department's analysis of affiliated transactions in the preliminary determination, which compared average prices for scrap between affiliated and unaffiliated suppliers, was misleading because scrap prices vary depending on the time period, the local market, the distance from the scrap supplier to the mill, the quality of the scrap, the quantity purchased and the terms of sale. Respondent points to selected purchases on the record and argues that Sidmar paid affiliated and unaffiliated suppliers comparable prices for scrap.

Petitioners counter that the Department's findings in the preliminary determination that Sidmar obtained these inputs from its affiliates at less than the average market price for such inputs was confirmed at verification. Petitioner cites the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate Products from Korea, 64 FR 73196, 73208-73209 (December 29, 1999) where the Department found that under section 773(f)(2) of the Act, it may disregard the respondent's purchase of an input from an affiliated supplier, whether that supplier is a producer or reseller of the input, if the transfer price charged by the affiliated reseller does not fairly reflect the price usually charged in the market under consideration. Petitioners counter that the average price paid to unaffiliated parties during the POI is the appropriate benchmark to use to test transactions with affiliates, because the statute, at section 773(f)(2) uses the words "usually reflected," which implies an average value.

Petitioners object to respondent's attempts to make a comparison of flame coal purchases between the affiliated supplier and an unaffiliated supplier as self-serving and unreflective of market prices, since the selected unaffiliated supplier was the lowest price supplier. Petitioners point to a logical flaw in respondent's proposal for calculating a percentage adjustment representing the difference between the affiliated and unaffiliated prices. Petitioners claim respondent's method would incorporate two different and incompatible denominators in the calculation.

Petitioners respond that Sidmar has not offered any basis or support for its stated reasons why scrap prices vary. Petitioners object to respondent's attempts to make a comparison of scrap purchases between the affiliated suppliers and unaffiliated suppliers as self-serving and unreflective of market prices since; 1) the selected unaffiliated price ranges were not averages, 2) they were from selected months only, and 3) its analysis does not incorporate all of the factors it identified by respondents above. Petitioners claim the Department's preliminary analysis of

scrap purchases employed weighted average values from affiliated and unaffiliated suppliers over the course of the entire POI, and, therefore provide a more broad-based and meaningful basis for comparison.

Department Position:

Section 773(f)(2) of the Act directs the Department to disregard transactions between affiliated persons if those transactions do not fairly reflect the value in the market under consideration. The Department's practice in conducting this analysis has been to compare the transfer prices for the inputs charged by affiliated persons to the market price for the same input. See, Notice of Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, 65 FR 49219 (August 4, 2000), and accompanying Issues and Decision Memorandum at comment 61.

In performing our analysis, we normally compare the POI average transfer prices to the POI average market prices stated on comparable terms of sale. We compare average POI prices between affiliated and unaffiliated suppliers because the average POI figures show a more broad-based, meaningful analysis over time. In addition, we disagree with respondent's selective use of data in its comparisons of affiliated to unaffiliated prices as it is self serving and it is not representative of all such purchases throughout the POI.

We further disagree with the respondent that purchases from affiliated resellers are automatically market prices if the affiliated reseller purchased the inputs from an unaffiliated supplier. The affiliated reseller is free to price its products at the price management decides to offer its customers. The sole fact that the reseller bought merchandise from an unaffiliated supplier does not indicate that the price at which the reseller sold the merchandise is a market price. We agree with petitioner that the Department has addressed the issue before in the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate Products from Korea, 64 FR 73196, 73208-73209 (December 29, 1999) and reached the same conclusion. Therefore for the final determination we compared the transfer prices to market prices in this case in accordance with our normal practice.

Recommendation

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

Agree _____ Disagree _____

_____
Faryar Shirzad
Assistant Secretary
for Import Administration

_____
Date