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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Belgium

Summary

We have analyzed the comments and rebuttal comments of interested parties in the administrative review of the antidumping duty order covering Stainless Steel Plate in Coils (SSPC) from Belgium, covering the period May 1, 2000 through April 30, 2001. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments by parties.

1. U.S. Billing Adjustment 2
2. CEP Profit Calculation
3. Indirect Selling Expenses
4. Date of Sale
5. Warranty Expenses

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On June 7, 2002, the Department published Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review, 67 FR 39345 (June 7, 2002) ("Preliminary Results"). On July 9, 2002, we received written case briefs from the respondent ALZ and its affiliated U.S. importer TrefilARBED and from Allegheny Ludlum, Corp., AK Steel Corporation, Butler Armco Independent Union, North American Stainless, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners). On July 15, 2002, we received rebuttal briefs from the respondent. We have now completed the administrative review in accordance with section 751 of the Act.

Discussion of Issues

Comment 1: U.S. Billing Adjustment 2

ALZ claims that the Department incorrectly deducted Billing Adjustment 2 from the U.S. price. According to the respondent, this billing adjustment in the U.S. sales file represents an adjustment for freight billed to the customer on certain sales. As such, ALZ maintains that the subject adjustment reflects additional revenue earned on the sale, and should be added to U.S. price. In order to correct this "clerical error," ALZ suggests the Department should revise its margin program to reflect the addition of Billing Adjustment 2 to U.S. price. Petitioners did not comment on ALZ's claim.

Department's Position: We agree with respondent that we should have added Billing Adjustment 2 to U.S. price, rather than subtracting it, because it represents additional revenue earned on each of the sales for which the Billing Adjustment 2 is reported. We have corrected our calculation in the margin program for our final results. See Analysis of ALZ, N.V. for the Final Results of Antidumping Duty Administrative Review for Stainless Steel Plate in Coils from Belgium (A-423-808), Memorandum to the File from Javier Barrientos, Case Analyst, through Sally C. Gannon (October 7, 2002) (Final Analysis Memorandum).

Comment 2: CEP Profit Calculation

The respondent states that, in calculating total revenue for purposes of deriving constructed export price (CEP) profit, the Department failed to deduct billing adjustments from both the U.S. and home market prices. As a result, ALZ contends that total revenue and, thus, the overall profit have been overstated. ALZ proposes that the Department correct this error by deducting the respective billing adjustments from gross unit price in calculating total revenue in the home and U.S. markets. Petitioners did not comment on ALZ's claim.

Department's Position: We agree with respondent that the respective total billing adjustments variable for home market and U.S. sales (BILLADJH and BILLADJU, respectively) should have been deducted from the U.S. and home market prices in the CEP profit calculation.

In the home market, respondent reported Billing Adjustment 2 as an adjustment made when the customer picks up the merchandise at ALZ, instead of ALZ arranging for transportation, which results in a decrease in sales revenue. We verified this adjustment in the context of the sales traces at verification. See Antidumping Administrative Review on Stainless Steel Plate in Coils from Belgium (A-423-808): Sales and Cost Verification of ALZ, N.V., Memorandum to the File from Julio Fernandez, Case Analyst, through Sally C. Gannon (May 24, 2002) (Home Market Verification Report), at Exhibit 19. This adjustment should, thus, be deducted from home market price in calculating ALZ's dumping margin. Likewise, for purposes of calculating total home market sales revenue in the CEP profit calculation, we should have deducted this billing adjustment from the home market price and have done so for the final results. See Final Analysis Memorandum.

In the U.S. market, respondent reported Billing Adjustment 2, described above in Comment 1, and Billing Adjustment 3, which ALZ reported as an adjustment related to customer claims, clerical errors on the invoice and other miscellaneous adjustments. We verified these adjustments in the context of the sales traces at verification. See Antidumping Administrative Review on Stainless Steel Plate in Coils from Belgium (A-423-808):Sales Verification of TrefilARBED, Inc., Memorandum to the File from Julio Fernandez and Brett Royce, Case Analysts, through Sally C. Gannon (May 29, 2002) (U.S. Verification Report), at Exhibit 21. Billing Adjustment 2, being additional sales revenue received, should be added to U.S. price in calculating ALZ's dumping margin. Billing Adjustment 3, being a decrease in sales revenue, should be deducted from U.S. price in calculating ALZ's dumping margin. As discussed in Comment 1 above, the Department erred in the preliminary results by deducting Billing Adjustment 2 from U.S. price, rather than adding it, in calculating ALZ's dumping margin; we are correcting this error for the final results. For purposes of calculating total U.S. market revenue in the CEP profit calculation, Billing Adjustment 2 should be added to total U.S. sales revenue, and Billing Adjustment 3 should be deducted from total U.S. sales revenue. We have adjusted our calculation accordingly for these final results. See Final Analysis Memorandum.

Comment 3: Indirect Selling Expenses

ALZ argues that the Department's margin program incorrectly deducts the field INDEXPU, the indirect selling expenses incurred in Belgium, from U.S. price. ALZ holds that only indirect selling expenses incurred in the United States should be deducted from U.S. price.

The petitioners argue that the Department correctly deducted from CEP indirect selling expenses recorded in Belgium. The petitioners cite to Antidumping Duty Preliminary Determination on Stainless Steel Plates in Coils (SSPC) from Belgium–Level of Trade Analysis Memorandum for ALZ, N.V. (May 31, 2002) (Level of Trade Analysis Memorandum for ALZ, N.V.), which states that:

> . . .ALZ performs the majority of the selling functions reported in its response in both the home and U.S. markets, including the following: strategic and economic planning, market research, R&D and technical programs, visiting customers, sales negotiation,

> product information and training, advertising, computer training and assistance, freight arrangements, packing and after-sales servicing and claims.

Thus, the petitioners claim that the Department determined that ALZ's own indirect selling functions pertained to U.S. economic activity. As such, petitioners explain that the expenses incurred, though booked in Belgium, properly should be deducted from the U.S. price. The petitioners state that, as noted by the Department, this fact pattern was established at verification.

According to the petitioners, under sections 772(d)(1)(A), (B), and (C) of the Tariff Act, the Department will subtract from CEP all commissions, direct expenses, and selling expenses incurred by or for the account of the producer or exporter, or the affiliated reseller in the United States. Further, the petitioners note that, under section 772(d)(1)(D) of the Act, the Department will subtract any other selling expenses incurred by or for the account of the producer or exporter, or the affiliated reseller in the United States, that are not explicitly identified in sections 772(d)(1)(A), (B), and (C) of the Act. The petitioners also explain that the Statement of Administrative Action states that the expenses covered by section 772(d)(1)(D) are commonly referred to as "indirect selling expenses." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc No. 103-316, vol. 1, at 824 (1994)("SAA"). In addition, the petitioners hold that the SAA also states that expenses to be deducted from CEP are "associated with economic activities occurring in the United States." See Id. at 823.

As noted in the Preamble to the Department's antidumping regulations, pursuant to 19 C.F.R. § 351.402, petitioners state the Department will deduct all CEP expenses related to the sale to the first unaffiliated U.S. customer "no matter where or when paid" so that "if commercial activities occur in the United States and relate to the sale to an unaffiliated purchaser, expenses associated with those activities will be deducted from CEP even if for example, the foreign parent of the affiliated U.S. importer pays those expenses." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27348 (May 19, 1997) (AD/CVD Final Rule). According to the petitioners, this statement reflects the Department's policy of deducting from CEP any costs incurred in selling to U.S. customers, even if the U.S. economic activity was paid for and/or recorded by a branch of the producer not physically located in the United States. The petitioners state that this policy was expressed consistently by the Department throughout the process that led to the promulgation of its most recent dumping regulations. See Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308 (February 27, 1996).

The petitioners claim that the deduction of ALZ's indirect selling expenses recorded in Belgium is supported by administrative and judicial precedent. With regard to Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review, 67 FR 7668 (February 20, 2002) (SSSS from Germany), according to the petitioners the Department deducted expenses relating to the U.S. economic activity recorded by German producer KTN's sales agency, KTNE, in Germany. The petitioners explain that the Department reached this determination, even though KTNE is located in Germany, based on KTNE's active and direct involvement in establishing, consummating and supporting sales made in the United States. The petitioners hold that, in a manner parallel to that in this case, the Department's

determination regarding the subject expense and its proper treatment were based in good part upon its findings at verification.

The petitioners also cite to Mitsubishi Heavy Industries Ltd. v. United States (Mitsubishi), in which they contend the CIT upheld in principle the deduction from CEP of indirect selling expenses recorded in the home market because "{e}xpenses incurred outside of the United States could still be associated with economic activity occurring in the United States." 15 F. Supp 2d 807, 818 (CIT 1998).

The respondent responds that, pursuant to 19 C.F.R. § 351.402(b)[1], "[t]he Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." Respondent argues that the phrase "no matter where or when paid," however, must not be interpreted to require the deduction of all indirect selling expenses incurred in the home market. The respondent contends that such expenses should only be deducted if they meet both of the additional criteria stated in the regulation: (1) the expenses must be associated with economic activities in the United States; and (2) the expenses must relate to the sale to an unaffiliated purchaser. The respondent maintains that ALZ's indirect selling expenses incurred in Belgium do not meet these criteria.

The respondent claims that, in accordance with the precedents set by the Department and the United States Court of International Trade (CIT), the Department should not have deducted ALZ's indirect selling expenses from CEP. Respondent cites Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa, 62 FR 61084 (Nov. 14, 1997), in which the Department states that "[w]e do not deduct indirect selling expenses incurred in the home market on behalf of U.S. sales, except when such sales {sic} are associated with economic activity in the United States."[2]

The respondent holds that, in the Preamble to the Department's antidumping regulations, the Department noted that the phrase "no matter where or when paid" in the regulation was intended merely "to indicate that if commercial activities occur in the United States and relate to the sale to an unaffiliated purchaser, expenses associated with those activities will be deducted from CEP even if, for example, the foreign parent of the U.S. importer pays those expenses." See AD/CVD Final Rule 62 FR 27351. The respondent contends that ALZ's indirect selling expenses are not merely *paid* in Belgium; they are general expenses *incurred* in Belgium. Respondent maintains that there is no U.S. commercial activity associated with these expenses, and that these expenses do not relate to TrefilARBED's unaffiliated U.S. customers. Moreover, the respondent claims that these are general selling expenses which would be incurred regardless of whether ALZ made any sales to the U.S. market.

[1] The respondent cites to 19 C.F.R § 351.401(b), but the context of its argument demonstrates that they meant to cite to 19 C.F.R § 351.402(b).

[2] The Department states that ". . .except when such expenses. . ."

The respondent further claims that all of ALZ's sales are CEP transactions made through its affiliated U.S. reseller, TrefilARBED, and that all of ALZ's indirect selling expenses incurred in Belgium relate to the sale to TrefilARBED, not to the sale to TrefilARBED's unaffiliated U.S. customers. The respondent explains that a review of the indirect selling expenses in Exhibit C/46.1 (Tab 14) of ALZ's September 5, 2001 questionnaire response, which were verified by the Department, confirms that they are general in nature and apply to all markets. ALZ and TrefilARBED hold that these expenses include: salesmen's salaries, car expenses, advertising and publicity, and miscellaneous selling expenses (such as office supplies, telephones, office space, etc.).

ALZ and TrefilARBED contend that the petitioners confuse the Department's discussion of the level of trade issue in the Preliminary Results with the indirect selling expenses incurred in Belgium. Respondent claims that, pursuant to 19 C.F.R. § 351.412, the Department's level of trade analysis focuses on the types of activities performed at different marketing stages in the comparison and U.S. markets and the effect on price comparability. According to the respondent, the determination as to whether indirect selling expenses incurred in the home market are associated with economic activities in the United States and relate to the sale to the first unaffiliated purchaser requires an examination of whether the foreign producer is actually paying for the activities that occur in the United States in selling to the unaffiliated customer. Respondent claims that this is not the case here.

ALZ and TrefilARBED note that the petitioners' reliance on Mitsubishi is similarly misplaced. The respondent contends that, while the petitioners claim that the CIT upheld in principle the deduction of indirect selling expenses incurred in the home market from CEP, the Mitsubishi court actually only upheld the Department's decision to deduct certain indirect selling expenses incurred in the home market related to U.S. sales. According to the respondent, the court also found that "Commerce erred by deducting expenses that were not associated with economic activity occurring in the United States." As such, the respondent claims that the court remanded the decision to the Department instructing that the indirect selling expenses incurred in the home market unrelated to economic activity in the United States not be deducted from CEP.

Department's Position: At verification in Belgium, the Department verified ALZ's indirect selling expense calculation, which involved an allocation of total expenses over its different markets (Belgian, U.S. and other markets). See Home Market Verification Report, at 15 and Exhibits 13-14. Further, we verified TrefilARBED's reported indirect selling expenses in the U.S. market (INDIRSU). See U.S. Verification Report, at 10 and Exhibit 27.

The SAA states that the CEP shall be reduced by certain expenses "associated with economic activities occurring in the United States," and that the CEP should be "calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers." See SAA, at 823. The interpretation of both statements in the SAA are codified in section 351.402(b) of the Department's regulations, which states:

> In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the

> sale to an unaffiliated purchaser, no matter where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.

See 19 C.F.R. § 351.402(b). The Preamble to the regulations states, with regard to changes which resulted in the above-noted language, that:

> The purpose of these changes is to distinguish between selling expenses incurred on the sale to the unaffiliated customer, which may be deducted under 772(d)(1), and those associated with the sale to the affiliated customer in the United States, which may not be deducted. In addition, the phrase "no matter where or when paid" is intended to indicate that if commercial activities occur in the United States and relate to the sale to an unaffiliated purchaser, expenses associated with those activities will be deducted from CEP even if, for example, the foreign parent of the affiliated U.S. importer pays those expenses.

See AD/CVD Final Rule 62 FR 27351. Consistent with section 772(d) of the Act, the SAA, and section 351.402(b) of the regulations, we have not deducted indirect selling expenses that are not directly associated with economic activity in the United States. As ALZ argues, an examination of its reported indirect selling expenses incurred in Belgium for U.S. sales reveals that these are general expenses incurred in Belgium which are not associated directly with the sale to the unaffiliated U.S. customer. Rather, they relate to the overall selling activities of ALZ in Belgium which support ALZ's sales in all of its markets, including the U.S. market. Such expenses include salesmen's salaries, car expenses, advertising aimed at the different markets (and allocated based on the language used), and other miscellaneous expenses not associated with a particular market. See U.S. Verification Report, at Exhibits 13-14.

Furthermore, we disagree with petitioners' assertion that the Department's level of trade analysis for the preliminary results supports a conclusion that the indirect selling expenses reported under the variable DINDIRSU should be deducted from CEP. Contrary to petitioners' argument, the position the Department outlined in the Issues and Decision Memo for SSSS from Germany supports the Department's decision not to deduct these particular indirect selling expenses from CEP. See 67 FR 7668 (Feb. 20, 2002) Issues and Decision Memo, at Comment 4. In SSSS from Germany, the Department, in calculating U.S. price, deducted indirect selling expenses that were associated with economic activities in the United States. Id. The indirect selling expenses involved United States economic activities and related to sales to an unaffiliated purchaser. Id. Such indirect selling expenses "will be deducted from CEP even if, for example, the foreign parent of the affiliated U.S. importer pays those expenses." See AD/CVD Final Rule 62 FR 27351. In SSSS from Germany, the Department adhered to its practice of deducting indirect selling expenses that were associated with economic activities in the United States, and of not deducting selling expenses that were general in nature and did not relate directly to economic activities in the United States. See SSSS from Germany, Issues and Decision Memo, at

Comment 4 (citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61750-51 (November 19, 1997)).

The Department found at verification that certain of ALZ's selling functions, which it initially reported did not apply to the U.S. market, were performed by ALZ to some extent for the U.S. market. These included such activities as: strategic and economic planning, market research, research and development/technical programs, advertising (on a general basis) and computer training and assistance (to TrefilARBED personnel). See Home Market Verification Report, at 9. However, these selling functions relate to ALZ's overall selling activities for all of its markets, including its U.S. market, rather than relating directly to the sales to the unaffiliated U.S. customers. In addition, an examination of ALZ's indirect selling expense allocation, as noted above, supports its contention that the reported expenses are of a general nature and apply to all markets. See Home Market Verification Report, at Exhibits 13-14.

Therefore, for these final results, we are not deducting ALZ's reported indirect selling expenses (DINDIRSU), including inventory carrying costs (DINVCARU), incurred in Belgium for U.S. sales from U.S. price in the dumping margin calculation. As discussed above, ALZ's reported indirect selling expenses incurred in Belgium for U.S. sales are not specifically related to economic activity in the United States nor sales to the unaffiliated U.S. purchasers. See 19 C.F.R. § 351.402(b). We will, however, continue to include the variable DINDIRSU in the calculation of CEP profit, which is then deducted from U.S. price.[3] See AD/CVD Final Rule 62 FR 27354; Import Administration Policy Bulletin 97.1, and Final Analysis Memorandum.

Comment 4: Date of Sale

The petitioners argue that the Department should use order confirmation date as the date of sale for both markets, rather than invoice date, which the Department used as date of sale in the preliminary results.

The petitioners allege that ALZ's own treatment of the material terms of sale in its everyday business practice supports order confirmation date as the proper date of sale. The petitioners note that it is the Department's longstanding practice to consider price and quantity as material terms of sale referenced in 19 C.F.R. § 351.401(I). The petitioners hold that, where the Department found that "quantity can and *regularly does* change between contract date" it determined that "the invoice date better reflects the date on which the essential terms of sale are established. See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review, 63 FR 55587, 55588 (October 16, 1998). However, petitioners submit that ALZ's essential terms of sale do not regularly change between confirmation and invoicing.

[3] DINVCARU is not included in the CEP profit calculation because it is an imputed expense.

The petitioners claim that terms of ALZ's sales documentation show that the essential terms of sale are set by the order confirmation. The petitioners allege that the standard sales terms provide record evidence supporting use of order confirmation to set the date of sale and cite to ALZ's March 11, 2002 supplemental questionnaire at Exhibit 2. See Date of Sale for Final Results of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Belgium (A-423-808), Memorandum to Barbara Tillman, Director, Office 7, from Brett Royce, Case Analyst, through Sally C. Gannon (October 3, 2002) (Date of Sale Memorandum), for further business proprietary details. The petitioners note that, in Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat Rolled Carbon-Quality Steel Products from Japan, the Department stated that ". . .despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which material terms of sale were set" 64 FR 24329, 24334 (May 6, 1999).

According to the petitioners, the U.S. and home market sales data that ALZ submitted in its March 11, 2002 submission supports using order confirmation as the date of sale, rather than invoice date. The petitioners argue that changes to prices occurred months before invoicing and were documented by order confirmations. Furthermore, according to the petitioners, revisions of a purchase order may occur much closer to the date of original purchase order than to the date of invoicing and, therefore, reflect the point at which the material terms were established. The petitioners acknowledge the Department's presumption that invoice date reflects the proper date of sale, but submit that lag times of this magnitude support using order confirmation date as the date of sale. The petitioners note that, where the lag time between a finalized order and the invoice is significant, the Department may determine that the date of the order is the better indicator of when the terms of sale were established, citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 13170 (March 18, 1998) (Cold-Rolled Korea).

Referring to ALZ's March 11, 2002 response, petitioners contend that the essential terms of sale for the overwhelming majority of ALZ's sales in both the U.S. and the home markets were established at, and never changed from, the original confirmation order. According to the petitioners, such sales – whose terms never changed – have significant lag times between order and invoice date. The petitioners allege that, even for the small number of sales in the home and U.S. markets that did in fact experience changes in sales terms between order confirmation and invoice, the essential terms were normally established by a final revised confirmation order, not by the invoice. In addition, petitioners contend that many of these sales show significant lag times between order confirmation and invoicing.

The petitioners further argue, referring to ALZ's March 11, 2002 response, that ALZ has not demonstrated that changes to sales quantity fall outside any applicable tolerances set by ALZ's express terms of sale. Thus, according to petitioners, changes alleged by ALZ have not been shown to be actual changes in an essential term of sale and, thus, do not constitute a change in the terms of sale for purposes of the date of sale analysis. In addition, petitioners contend that quantity changes reported by ALZ on certain of its home market sales were confirmed well before invoicing. Petitioners further maintain that changes in certain of ALZ's home market sales relate to non-essential terms of the transactions and are not applicable to the date-of-sale

analysis. Petitioners note that the Department does not consider such terms of sale as payment terms, delivery terms, address changes, shipment date changes, to constitute essential terms of sale.

Regarding the materials presented by ALZ at verification for home market sales, the petitioners maintain that the Department's date of sale analysis must rely only on information concerning ALZ's sales of subject merchandise, rather than sales of non-subject merchandise or sales not properly reported in ALZ's submitted databases. Petitioners refer to Home Market Verification Report, at 5-6 and Exhibit 43. According to the petitioners, ALZ's home market presentation at verification contained sales of merchandise not included in the foreign like product, and sales of subject merchandise that were not properly reported during the POR. First, the petitioners contend that, sales of non-subject merchandise are not relevant to this proceeding and should not be considered in the Department's data of sale analysis. Second, the petitioners allege that, where sales pertain to the foreign like product sold during the POR, but are missing from ALZ's reported sales, their absence requires the application of partial adverse facts available (AFA). The petitioners claim that several invoices appear to pertain to foreign like product sales that were not reported to the Department in the home market database. They suggest that as partial AFA, the Department should assign the highest reported CONNUM-specific gross unit price to the observed volume of each missing sale found in ALZ's verification report.

Petitioners claim that an analysis of the data presented by ALZ in its home market databases and in the verification material demonstrates that most of the transactions should be disregarded. They contend that the overwhelming majority of the changes considered by the Department at verification pertain to transactions that were not reported or reportable for the POR. See Date of Sale Memorandum for further business proprietary details.

Regarding ALZ's U.S. sales, according to the petitioners, the vast majority did not experience changes in essential terms of sale. The petitioners allege that, while at first glance the quantity of changes documented in Exhibit 24 of U.S. Verification Report appear to exceed the normal industrial tolerance of ± 10 percent, careful analysis reveals otherwise. See Date of Sale Memorandum for the business proprietary details of petitioners' arguments.

The petitioners state that the respondent also claimed at verification that significant changes in price took place between order confirmation and invoicing, requiring the use of invoice date as the date of sale. The petitioners note that ALZ overstates its case, citing U.S. Verification Report, at Exhibit 26. The petitioners contend that, of the orders examined, some pertain to changes to non-essential terms and others are not reported in the U.S. sales databases. The petitioners hold that these items may well pertain to the class of products that ALZ has stated are not subject to the review. Thus, according to the petitioners, the remaining orders represent a small percentage of all U.S. sales. They state that, even for the remaining orders, ALZ notes that TrefilARBED used revised purchase orders to establish the changed prices, conforming to the general practice observed by the Department at verification.

The petitioners claim that the totality of changes affecting essential terms of sale (base price and quantity), all of which have revised order confirmations, affects only a small percentage of all U.S. sales. This small number of sales, according to the petitioners, does not support invoice

date as the date of sale because most of these sales document the final price or quantity in a revised order confirmation, not by invoice. The petitioners note that, in any event, where the essential terms of sale are set for the vast majority of sales by the order confirmation, as they are in this review, the Department can and should use order confirmation date, not invoice date, to set the date of sale. In support of this contention, petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30664 (June 8, 1999).

The respondent holds that it properly reported invoice date as the date of sale. The respondent argues that the Department's acceptance of invoice date as date of sale in its Preliminary Results is in accordance with the Department's regulations and practice, is supported by record evidence, and should be upheld in the final results of this review.

The respondent further argues that the Department's regulations state a strong presumption in favor of invoice date as the date of sale, citing to 19 C.F.R. § 351.401(I). Respondent maintains that this clear presumption in favor of invoice date may be rebutted only if satisfactory evidence exists that the material terms of sale were finally established on a different date, but that the petitioners have failed to rebut this presumption. According to the respondent, when the Department promulgated its regulations, it carefully considered comments regarding the use of a uniform date of sale – specifically, invoice date – and determined it appropriate to retain its "preference for using a single date of sale." Respondent notes that, in the Preamble to the regulations, the Department elaborated on the preference for invoice date by stating:

> In the Department's experience, price and quantity are often subject to continued negotiation between the buyer and seller until a sale is invoiced. The existence of an enforceable sales agreement between the buyer and the seller does not alter the fact that, as a practical matter, customers frequently change their minds and sellers are responsive to those changes."

See AD/CVD Final Rule 62 FR 27348-27349.

The respondent contends that the date of sale issue was examined in detail in the original investigation, and date of invoice was determined to be the appropriate date of sale, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium, 64 FR 15476 (March 31, 1999) (SSPC 1999 Final Determination). The respondent maintains that nothing has changed from the original period of investigation to the period of review at issue here with respect to ALZ's selling practices in the Belgian and U.S. markets.

According to the respondent, the Department should continue to view the full range of data presented at verification as relevant to the date of sale analysis. The respondent maintains that there is no reason why the Department's date of sale analysis must focus exclusively on subject merchandise and that the purpose of the analysis is to determine the point at which a company finalizes the material terms of sale. Respondent notes that the CIT has stated that "[t]he question is *could* the terms be changed, or were they fixed at the time of the initial order" (see Thai Pineapple Canning Industry Corp. v. United States, Slip Op. 00-17, 98-03-00487, 2000 WL

174986, at *2 (CIT February 10, 2000) (Thai Pineapple) (emphasis added)). The respondent claims that, indeed, it would be absurd to conclude that ALZ and TrefilARBED have divergent policies for SSPC of 4.74 mm in thickness versus 4.75 mm in thickness. The respondent holds that non-subject merchandise contained on the same invoice as subject merchandise, or subject to the same policies and general terms of sale, is relevant in establishing selling practices.

In support of this contention, the respondent cites Oil Country Tubular Goods from Korea; Final Results of Antidumping Duty Administrative Review, Issues and Decision Memorandum, 65 FR 13364 (Mar. 13, 2000), wherein the Department's conclusion that SeAH Steel's sales policy allowed changes in essential terms of sale after contract date was based entirely on documentation regarding sales of non-subject merchandise. The respondent further notes that the Department's reliance on changes made to a contract including both subject and non-subject material was upheld by the CIT in SeAH Steel Corporation, Ltd. v. United States, Slip Op. 01-20, at 8, 15 (CIT Feb. 23, 2001) (SeAH Steel). In that case, the court held that the documentation submitted by SeAH Steel, including "a fax transmitted subsequent to the signing of the sales contract, [where] on one of SeAH's customers changed the quantity of non-subject merchandise ordered under the sales contract" constituted "variances in the material terms of sale after the contract date" for purposes of the sale date of the subject merchandise.

The respondent contends that the materials presented to the Department during verification of both home market and U.S. sales included numerous examples of cases where changes were made to essential terms of sale after order confirmation. Respondent notes that petitioners mistakenly assume that the sample taken as verification exhibits by the Department constitute all changes to material terms of sale. However, the respondent argues that the CIT has held that the key to the date of sale analysis is establishing the policy of the respondent firm, citing Thai Pineapple. According to the respondent, in order to make such a determination, the Department need only determine "whether changes are sufficiently common to allow [it] to conclude that initial agreements should not be considered to finally establish the material terms of sale " (see Allied Tube & Conduit Corp. v. United States, 127 F. Supp. 2d 207, 220 (CIT 2000) (Allied Tube I)). The respondent maintains that the "standard" communicated by the court has been met in the case of both ALZ's home market sales and ALZ/TrefilARBED's U.S. sales. SeAH Steel, Slip Op. 01-20, at 8, 15.

The respondent claims that evidence of price and quantity changes in the home market, as well as the inherent characteristics of ALZ' order entry system, confirm that invoice date is the appropriate date of sale. According to the respondent, the instances of changes between order date and invoice date cited by the petitioners constitute the minimum possible number of changes during the POR based on the verification exhibits taken by the Department. The respondent states that, as explained at verification, reporting sales according to petitioners methodology, i.e., order confirmation date or revised order confirmation date, would be unduly burdensome to respondent and would increase the probability of reporting inaccuracies. Because ALZ's order entry system generates a revised order confirmation whenever a change to an order is made, whether or not to essential terms, numerous revised confirmation orders may be generated. Thus, according to respondent, the most recent order confirmation cannot be used to

establish date of sale, and a painstaking manual review of each order confirmation, revised order confirmation, and invoice for each sale would be required to ascertain which sales had material changes.

The respondent argues that TrefilARBED's presentation at verification conclusively supports the use of invoice date as date of sale for U.S. sales. At verification, the respondent states that TrefilARBED provided three types of evidence in support of invoice date. First, the company provided numerous examples of changes to the material terms of sale that were not documented by a revised confirmation order – namely quantity changes outside the steel industry and TrefilARBED's normal quantity tolerance of ± 10 percent. Second, TrefilARBED documented its policy of providing price adjustments to customers when warranted by changes in market conditions. Third, the company provided evidence, which was verified by the Department, that TrefilARBED's SAP accounting system does not track order revision dates, making the order confirmation date/revised order confirmation date methodology suggested by the petitioners unsuitable for purposes of date of sale.

According to the respondent, TrefilARBED's policy regarding weight tolerances is consistent with the industry standard of ± 10 percent, citing to U.S. Verification Report, at 11 and Exhibit 25. Next, the respondent notes that the petitioners do not dispute the fact that numerous examples of changes outside the ± 10 percent tolerance exist in the POR. The respondent cites to Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1092 (January 18, 2001) (Allied Tube II), which indicates that, given the regulatory presumption in favor invoicing, even one sale outside of the established tolerance can provide sufficient evidence that quantity is not finalized until invoicing.

The respondent rejects petitioners' claim that TrefilARBED maintains a policy regarding weight tolerances that is not consistent with the industrial norm of ±10 percent. Respondent notes that the petitioners argue erroneously that, where a coil-specific range is provided by the customer, the weight tolerance is *not* defined by the weight tolerance stated in TrefilARBED's General Conditions of Sale, but instead by the outside parameter of the coil-specific tolerance. The respondent rebuts petitioners' theory, stating that *nowhere* on the customer purchase order or in TrefilARBED's own corresponding documents is the *number* of coils specified. According to the respondent, the coil-specific weight parameters exist independently of the ±10 percent weight tolerance that applies to the ordered quantity. Respondent notes that, as TrefilARBED explains, customers specify coil-specific parameters to serve a variety of their own business needs. See U.S. Verification Report, at 6 and 11, and Date of Sale Memorandum for further business proprietary details on this issue.

The respondent notes that petitioners ignore the fact that quantity changes are not tracked in TrefilARBED's SAP system. Respondent claims that new terms established by the change in quantity appear for the first time on the customer invoice and never appear on any revised order confirmation, even assuming that a revised order confirmation is generated. The respondent holds that, given the examples of quantity changes on the record, invoice date is the appropriate date for date of sale.

The respondent contends that, in addition to many examples of quantity changes, TrefilARBED also presented numerous examples of price adjustments due to fluctuations in market conditions, citing to U.S. Verification Report, at Exhibit 25. The respondent states that the price changes documented in Exhibit 25, even though by happenstance applying to non-subject merchandise,

illustrate a general policy on the part of TrefilARBED that price is subject to change up until the time of invoicing, should market conditions warrant such an adjustment.

With regard to normal business practices and computer capabilities, the respondent holds that TrefilARBED's SAP accounting system only tracks the original order confirmation date and does not record revised order confirmation dates. Respondent notes that, as discussed at the U.S. verification, TrefilARBED's record keeping system has limitations, i.e., it does not track the dates of changes to the terms of sale. The respondent notes that the Department's U.S. Verification Report (at 11) acknowledged the system's limitations by stating (in part) that "[n]ot all changes made to an order are documented in SAP." Further, "[p]rice changes are entered, for example, but changes to quantity are not referenced in SAP." According to respondent, these limitations make reporting by order confirmation date or revised order confirmation date an impossibility for TrefilARBED and confirm that invoice date is the appropriate date of sale for the U.S. market.

The respondent claims that ALZ's general terms of sale do not support order confirmation as date of sale. The respondent holds that, as stated in the Home Market Verification Report and U.S. Verification Report, Department officials reviewed numerous examples of changes to both price and quantity between the original order confirmation date and invoice date. The respondent states that these changes to price and quantity constitute substantial modification that beget the formation of a new contract based on new essential terms of sale. Respondent holds that the provisions in ALZ's sales terms, which petitioners quote, actually demonstrate that the purpose of these provisions is to deal with the reality that costs fluctuate between the time of order and invoice date. See Date of Sale Memorandum for further business proprietary details.

The respondent notes that petitioners unfairly accuse ALZ of failing to report all sales of subject merchandise. The respondent argues that there is no evidence that ALZ has failed to report all sales during the POR and that the line items referenced by petitioners are for out-of-scope merchandise. See Date of Sale Memorandum for further business proprietary details. In addition, the respondent states that, at verification, the Department verified the quantity and value of sales, as well as ALZ's reporting of subject and non-subject merchandise and found no discrepancies, citing Home Market Verification Report at 10-11.

Moreover, the respondent argues that the existence of a lag time between order confirmation and invoicing does not warrant substitution of order confirmation date for invoice date as the date of sale. The respondent notes that while long lag times may, in some cases, weigh against the use of invoice date as date of sale, the case law is also clear that lag times between order confirmation date and invoice date do not constitute sufficient grounds for the Department to break from the regulatory presumption that the invoice date should be used for date of sale. Respondent cites SSPC 1999 Final Determination, where the Department stated:

> ...time lags between order date and invoice date may be a factor used in its analysis of the appropriateness of invoice date as date of sale. See Certain Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833 (June 16, 1998) (Steel Pipe from Korea), at 32835. However, the circumstances in Steel Pipe from Korea differ markedly from those in this case. In Steel Pipe from Korea, "[t]he material terms of sale in the United States are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur." Id., at 32836. In this case, ALZ reported that there were numerous instances of changes in terms of sale after the initial order date, and, as noted above, we observed many such instances at verification.

See SSPC 1999 Final Determination 64 FR 15481-15482. Furthermore, according to respondent, the CIT ruled in SeAH Steel that "[w]here the record reveals some change in material terms of sale subsequent to the contract date and less than full documentation by respondent, the presence of lag times between contract date and invoice date do not, without further explanation, warrant substitution of contract date for the presumptive date of sale as mandated by 19 C.F.R. § 351.401(I)." SeAH Steel, Slip Op. 01-20, at 14.

The respondent argues that the facts in this review more strongly support using invoice date as date of sale than the facts in SeAH Steel Corp., Ltd. v. United States. The respondent reiterates that Department verified numerous examples of changes to price and quantity, which firmly establish that the policy of both ALZ and TrefilARBED during the POR was that essential terms of sale are finally established only at the time of invoicing. The respondent contends that, while the petitioners attempt to emphasize that there were only a few sales that experienced material changes to essential terms of sale as a justification for why lag time between order confirmation and invoice date is significant, the facts on the record demonstrate that ALZ and TrefilARBED's sales underwent numerous changes to price and quantity during the POR.

The respondent notes that, contrary to the petitioners' allegation, order revisions frequently take place shortly before the time of invoicing (usually the same day), rather than near the date of the original order confirmation. Respondent refers to the changes evidenced in the home market verification exhibits to disprove petitioners' contention. See Date of Sale Memorandum for further business proprietary details of respondent's and petitioners' arguments. The respondent claims that this is consistent with the position that, in the case of ALZ, the essential terms of sale may change at any time prior to invoicing, and are certainly not finalized, as a rule, by the order confirmation.

The respondent contends that the pattern of essential terms of sale changing prior to invoice and not being finalized, as a rule, by order confirmation is replicated in the case of U.S. sales. The respondent claims that, in the United States, none of the quantity changes were documented prior to invoice date. Furthermore, the respondent maintains that a review of the sales files contained in U.S. Verification Report at Exhibit 25, which contains examples of changes to sales price, reveals that those price changes took place approximately at the midpoint between order

confirmation and invoicing. According to the respondent, a more precise reckoning regarding the price changes occurred cannot be calculated because, as already stated, TrefilARBED's SAP system does not track order revision dates.

Department's Position: Pursuant to section 351.401(I) of the Department's regulations, the Department will normally use the date of invoice as recorded in the producer's or exporter's records kept in the ordinary course of business as the date of sale. However, the Department recognizes the need for flexibility in those circumstances in which an alternative date better reflects the date of sale. Pursuant to section 351.401(I), "the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of the sale." The Department will use an alternative date if it "is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice." See AD/CVD Final Rule 62 FR 27349. Material terms include price and quantity. See Id. at 27348, Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea, 64 FR 14865, 14869 (March 29, 1999). After reviewing all of the information on the record of this review with respect to the date of sale issue, the Department finds that respondent has demonstrated that invoice date is the appropriate date of sale for both home market and U.S. sales because the material terms of sale can and did, in a number of instances, change in each market up until this date.

At verification, respondent established that ALZ and TrefilARBED have a clear practice wherein material changes to sale terms, including both price and quantity (outside standard tolerances), can occur after the initial order confirmation date. As respondent noted, the Department stated the following in the Preamble to the regulations:

> In the Department's experience, price and quantity are often subject to continued negotiation between the buyer and seller until a sale is invoiced. The existence of an enforceable sales agreement between the buyer and the seller does not alter the fact that, as a practical matter, customers frequently change their minds and sellers are responsive to those changes."

See AD/CVD Final Rule 62 FR 27348-27349. Petitioners point to ALZ's business proprietary standard sales terms to support their argument that the essential terms of sale are set by the order confirmation. However, our examination of these sales terms, together with the evidence presented at verification, leads us to the conclusion that material changes to an order indeed can and do occur after the initial order confirmation. See Date of Sale Memorandum for further business proprietary details. Therefore, there is insufficient evidence to compel a rejection of the regulatory presumption in favor of invoice date as the date of sale. See Allied Tube II, 132 F. Supp. 2d at 1090.

In the home market, the Department found at verification that any change to a sale term is documented with a revised confirmation order. However, because changes may be both material or non-material, it would be difficult for respondent to pinpoint, without a painstaking manual review, the exact date of every material change for every sale. See Home Market Verification

Report, at 5-6 and 11-12. Thus, even if the Department were to determine that the latest revised order confirmation date should be used as date of sale in the home market, the reporting burden to respondent would be significant and the latest revised confirmation date would not necessarily correspond to the actual material change to the order. In addition, the examples of material changes presented by respondent for the home market show that such changes can and did take place up until the date of invoicing, indicating further that invoice date is the appropriate date of sale in the home market. See Date of Sale Memorandum, at Attachment 1, for further business proprietary details.

In the U.S. market, the Department found that TrefilARBED's system only tracks the original order confirmation date but that not all changes made to an order are documented in the system, including quantity changes. See U.S. Verification Report, at 11 and 12. What is clear is that material changes do occur in both markets after the issuance of the order confirmation, and the verification reports document examples of such changes. See Date of Sale Memorandum, at Attachments 1 and 2, for further business proprietary details.

As described above, petitioners make numerous arguments referring to ALZ's March 11, 2002 submission, at 2 and Exhibit 3, in which ALZ listed examples of changes in sales terms for both home market and U.S. sales. We note, however, that we consider the concrete examples of material changes to POR sales presented at the home and U.S. verifications to be more on point and representative of this issue than the March 11, 2002 listing initially presented by ALZ in its questionnaire response. See Date of Sale Memorandum, at Attachments 1 and 2, for further business proprietary details. These examples show that ALZ and TrefilARBED do allow for changes after the initial order confirmation date, including changes to price and quantity (outside of standard tolerances), and that such changes did occur--even up to the date of invoicing.

We disagree with petitioners' assessment that the changes presented at verification only represent a small portion of the sales in each market and, thus, are not indicative that invoice date should be used as the date of sale. As noted by respondent, the examples presented were provided to illustrate that material changes did occur in both markets and were not represented by ALZ as an exhaustive compilation of POR sales with changes.

We disagree with petitioners' argument that TrefilARBED maintains a policy regarding weight tolerances that is not consistent with the industrial norm of $\pm$10 percent. First, we verified that TrefilARBED has a policy of adhering to an industry standard of $\pm$10 percent for weight tolerances. See U.S. Verification Report, at 11. Second, we examined TrefilARBED's practices regarding coil-specific ranges in the context of the sales traces. See U.S. Verification Report sale trace documentation, at Exhibits 16,19, 20, 21, 22, and 23. We examined numerous changes in quantity outside of the industry standard of $\pm$10 percent. See U.S. Verification Report, at Exhibit 24, and Date of Sale Memorandum, at Attachment 2. Furthermore, we disagree with petitioners that examples of unreported sales can be found in these exhibits. We verified the quantity and value of sales in both the home market and U.S. markets and found no discrepancies. See Home Market Verification Report, at 9, 10, and U.S. Verification Report, at 2-4. We also verified ALZ's practices with regard to its coil cards in the cost portion of the home market verification and examined its methodology in identifying cold-reduced sales. We found no discrepancies in

this methodology and have no reason to suspect that ALZ has not reported subject sales. See Home Market Verification Report, at 23-24.

In summary, our examination of the evidence on the record of this review results in a determination that material changes occurred after order confirmation date for ALZ's sales in both markets. In accordance with this finding, we have continued to use invoice date for date of sale in both the home and U.S. markets for our final results of review.

Comment 5: Warranty Expenses

According to the petitioners, at verification, TrefilARBED provided new data concerning warranty claims on subject merchandise in the POR. The petitioners claim that TrefilARBED proposes to report the aggregate amount allocated over aggregate sales, citing U.S. Verification Report, at Exhibit 1, and ALZ's May 2, 2002 submission, at 2. The petitioners contend that the subject warranty expenses, however, should be deducted from the specific sales for which the quality claims were established. In addition, the petitioners argue that ALZ has failed to report warranty expenses on a timely, accurate and complete basis. Moreover, the petitioners maintain that ALZ has not provided either a direct linkage for direct warranty expenses to specific sales or the three-year analysis of both direct and indirect warranty costs required for aggregate allocations, elements required by the Department in its questionnaire (citing ALZ's September 5, 2001 questionnaire response, at C-41). The petitioners further maintain that ALZ's omissions and its untimely partial revelations at verification constitute a failure by ALZ to act to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act. As a result, the petitioners argue that an adverse inference is justified for the treatment of warranty expenses. They suggest that the Department apply the average per-unit warranty expense reviewed at verification to those U.S. sales for which the actual direct warranty expense calculation cannot be tied to specific transactions by invoice number.

The respondent argues that U.S. warranty expenses were properly reported by TrefilARBED and verified by the Department. The respondent holds that, under any reasonable definition, this is a legitimate minor correction and should be accepted as such by the Department. The respondent notes that the Department's questionnaire requests that the per-unit warranty expenses be reported for subject merchandise or, if different models or types of subject merchandise are produced, the warranty costs should be reported on a model-specific basis. According to the respondent, the subject merchandise at issue in this review is not sold by model or type of stainless steel plate in coil; therefore, the reporting of the quality claim expenses allocated over all U.S. sales of subject merchandise is both reasonable and appropriate. The respondent further notes that the Department's Antidumping Manual explains that historical warranty experience is requested because many warranties extend over a period of time that is longer than the POI or POR, and complete information may not be available at the time the questionnaire response is submitted. Respondent maintains that this situation is not applicable here and that ALZ's reporting of actual warranty expenses on sales in the POR renders the reliance on its historical warranty experience unnecessary. Thus according to respondent, there is no basis to resort to facts available.

Department's Position: Respondent first indicated in its questionnaire response that it had no U.S. warranty expenses during the POR to report and also did not report historical warranty expenses. See ALZ's September 5, 2001 questionnaire response at C-41. At verification, TrefilARBED submitted a minor correction regarding warranty claims that it discovered in preparing for verification. These were small claims on only a few sales. The Department verified these claims. See U.S. Verification Report, at 2 and 13 and Exhibit 10. Subsequently, respondent submitted a new computer tape in which it allocated the newly-reported warranty claims over total U.S. sales.

In requesting the reporting of warranty expenses, the Department's questionnaire states:

> If you produce different models or types of the merchandise under review, warranty cost should be based upon your experience by model. If this is impractical, express warranty cost on the most product specific basis possible.

Thus, the Department's normal practice is to allocate such expenses on a model- or product-specific basis. See Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part, 64 FR 46344, 46347 (August 25, 1999). In this case, ALZ claims that the subject merchandise is not sold by model or type of stainless steel plate in coil and that reporting the quality claim expenses allocated over all U.S. sales of subject merchandise is, thus, appropriate. We disagree with respondent in that the subject sales are reported on a control number (CONNUM)-specific basis. An individual CONNUM corresponds as closely as possible to a product- or model-specific basis as it represents merchandise of a specific grade, width, gauge, finish, etc. Therefore, for these final results, we have allocated the U.S. warranty claims reported by TrefilARBED on a CONNUM-specific basis.

We disagree with petitioners' assertion that ALZ's non-reporting of a direct linkage for direct warranty expenses to specific sales and of historical warranty expenses warrants an adverse inference for the treatment of warranty expenses. The warranty claims reported by respondent at verification were linked directly with specific invoices. See U.S. Verification. Report, at 13 and Exhibit 17. Furthermore, we agree with respondent that, in this case, it has reported the actual warranty expenses, thus rendering reliance on historical warranty experience unnecessary. Therefore, we do not agree with petitioners that an adverse inference is warranted for the treatment of warranty expenses and have allocated the reported claims as described above.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final weighted-average dumping margin and the final results of this administrative review in the Federal Register.

_____ _____

Agree Disagree

_____

Faryar Shirzad
Assistant Secretary
for Import Administration

_____

Date