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Investigation
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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary for
Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary, Group I
Office of AD/CVD Enforcement

DATE: September 23, 2002

SUBJECT: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil

Summary

We have analyzed the case and rebuttal briefs of interested parties in the less than fair value investigation on certain cold-rolled carbon steel flat products from Brazil. As a result of our analysis, as well as our findings at verification, we have made changes in the margin calculations for the final determination. 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 investigation for which we received comments from interested parties:

1. Use of Facts Available
2. Treatment of PIS and COFINS Taxes in Normal Value
3. Treatment of PIS and COFINS Taxes in the Cost of Production
4. Arm's-Length Test
5. Calculation of the Overall Dumping Margin
6. Upward Billing Adjustments
7. Downward Billing Adjustments
8. ICMS and IPI taxes
9. Discounts
10. Home Market Inland Freight Expenses for COSIPA
11. Foreign Inland Freight Expenses for COSIPA
12. Home Market Inland Freight Expenses and Foreign Inland Freight Expenses for USIMINAS
13. Foreign Brokerage and Handling Expenses

14. Credit Expenses for USIMINAS
15. Credit Expenses for COSIPA
16. Warranties vs. Rebates for USIMINAS
17. Warranty Expenses for COSIPA
18. Technical Service Expenses
19. Use of Facts Available to Determine USIMINAS's Cost of Production
20. Inclusion of Non-POI Costs in the Cost of Production
21. Reported Scrap Credit Values
22. Depreciation of Temporarily Idled Assets
23. Amortization of Goodwill
24. Exclusion of Financial Gains and Losses on Receivables from Financial Expenses

Background

On May 9, 2002, the Department of Commerce (the Department) published the preliminary determination in the less than fair value investigation on certain cold-rolled carbon steel flat products from Brazil. 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 Brazil, 67 FR 31200 (May 9, 2002) (Preliminary Determination). Three of the petitioners (i.e., Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation, collectively "Bethlehem") requested a public hearing, which was held at the Department on August 16, 2002.[1] The period of investigation (POI) is July 1, 2000, through June 30, 2001.

Margin Calculations

We calculated export price and normal value using the same methodology stated in the preliminary determination, except as follows:

- We disregarded sales to certain affiliated party customers which had been double counted in the preliminary determination;

- We offset the final margin percentage by the amount of countervailing (CVD) duty deposits related to export subsidies on imports of the subject merchandise, in accordance with our practice, rather than deducting these CVD duties directly from export price. See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India, 67 FR 34899 (May 16, 2002) and accompanying Issues and Decision memorandum at Comment 1;

- We adjusted the reported sales and cost data to account for minor errors found at verification. See the September 23, 2002, memorandum from Irina Itkin to the file

[1] We received case briefs from only one of the remaining petitioners in this proceeding, Nucor Corporation (Nucor). This company did not participate in the public hearing.

entitled "Calculations Performed for Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) for the Final Determination in the Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Brazil" (Final Sales Calculation Memo) and the September 23, 2002, memorandum from LaVonne Jackson to Neal Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination, RE: Antidumping Duty Investigation of Certain Cold-Rolled Carbon-Quality Steel Products from Brazil" (Final Cost Calculation Memo);

- We based the margin for certain unreported U.S. sales discovered at verification on adverse facts available. As adverse facts available, we used the highest non-aberrational margin calculated in the final determination. See Comment 1;

- We disallowed all downward billing adjustments reported in the respondent's[2] home market sales listings, as well as the freight expenses incurred on deliveries to customers reported in COSIPA's home market sales listing. See Comments 7 and 10;

- We made an adjustment for "other" discounts, as reported in USIMINAS's home market sales listing, based on our finding at verification that these expenses were reported on as specific a basis as possible. See Comment 9;

- We based the amount of COSIPA's foreign inland freight on adverse facts available, in accordance with our practice, because COSIPA was unable to demonstrate that the expenses charged by the company's affiliated freight providers were at arm's length. See Comment 11;

- We based foreign brokerage and handling expenses for USIMINAS on the vessel-specific information provided at verification. See Comment 13;

- For COSIPA, we disallowed all credit expenses for those sales reported in the home market sales listing with multiple payment dates. See Comment 15. For USIMINAS, we have used the average credit period for all home market sales not reported as paid on November 30, 2001, to calculate credit expenses for those sales reported as paid on November 30, 2001. See Comment 14;

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[2] We selected two companies as the respondents in this proceeding: Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) (collectively "USIMINAS/COSIPA"). For purposes of this investigation, we are treating these companies as the same entity based on a finding in other antidumping duty proceedings that they are affiliated parties which should be collapsed. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5554, 5562 (Feb. 4, 2000) (2000 Cold-Rolled Steel from Brazil).

- For COSIPA, we disallowed the reported home market warranty expenses and used the highest reported U.S. warranty expense amount for all U.S. sales. See Comment 17. For USIMINAS, we used the transaction-specific warranty expenses obtained at verification. See Comment 16;

- We made no separate circumstance-of-sale adjustment for COSIPA's technical services expenses because we found at verification that these expenses related to production, rather than sales, activities. See Comment 18;

- We no longer adjusted USIMINAS's cost of production (COP) using facts available, nor did we base the margin for certain U.S. products matched to home market products with missing cost data, because USIMINAS/COSIPA provided useable cost data after the preliminary determination at the Department's request. See Comments 19 and 20;

- We are no longer deducting PIS and COFINS taxes from USIMINAS/COSIPA's reported costs, based on our finding during the cost verification that these taxes were not included in these costs. See Comment 2;

- We used USIMINAS and COSIPA's unconsolidated, company-specific ratios for general and administrative expenses (G&A) to determine the product-specific COP for each company before weight-averaging the companies' costs. See the Final Cost Calculation Memo.

- We excluded depreciation expenses on COSIPA's idled blast furnace, under repair during the POI, from the calculation of COSIPA's G&A ratio. See Comment 22; and

- We excluded from USIMINAS/COSIPA's financial expense ratio the interest earned, and foreign exchange gains and losses made, on accounts receivable. See Comment 24.

Discussion of the Issues

Comment 1: *Use of Facts Available*

According to the petitioner Nucor, the Department's sales verification at USIMINAS revealed multiple and pervasive errors in the data reported by that company. For example, Nucor asserts that the Department not only discovered that USIMINAS failed to report certain sales, but it also was unable to substantiate specific elements of its response, including dates of sale and payment, billing adjustments, freight and warranty expenses, and taxes. Nucor claims that the company's errors in determining date of sale are particularly problematic because they call into question the validity of the company's entire sales universe.[3] Therefore, Nucor argues that the Department should disregard the reported information and base the margin for USIMINAS's U.S. sales on adverse facts available. As adverse facts available, Nucor contends that the Department should use either the highest margin calculated for USIMINAS in the preliminary determination or the highest non-aberrational margin calculated for COSIPA in the final determination.

In the event that the Department does not base the final margin for USIMINAS on total adverse facts available, Nucor argues that it should, at a minimum apply adverse facts available to the total quantity of unreported U.S. sales discovered at verification for USIMINAS. In addition, Nucor contends that the Department should similarly apply adverse facts available to the total quantity of unreported U.S. sales discovered at verification for COSIPA. According to Nucor, in Florex v. United States, 705 F.Supp. 582, 588 (CIT 1988), the Court of International Trade (CIT) held that the omission of even a single sale in an investigation is a "serious error" which undermines the basis of the antidumping investigation. Moreover, Nucor asserts that the Department not only has not hesitated to apply adverse facts available in similar cases, but it also generally does not consider whether the omission was deliberate or inadvertent. See Static Random Access Memory Semiconductors From Taiwan; Final Results of Antidumping Duty New Shipper Review, 65 FR 12214 (Mar. 8, 2000) and accompanying Issues and Decision memorandum at Comment 1 (SRAMs from Taiwan) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61747 (Nov. 19, 1997) (Carbon Steel Plate from South Africa).

The petitioner Bethlehem agrees that the Department should apply adverse facts available to USIMINAS/COSIPA's unreported U.S. sales. According to Bethlehem, USIMINAS/COSIPA disregarded the Department's express instructions to report all sales of subject merchandise having "nota fiscal" dates in the POI, and thus it failed to cooperate with the Department to the best of its ability. As adverse facts available, Bethlehem contends that the Department should apply the highest margin calculated for the final determination to the percentage of unreported sales by value (rather than volume).[4]

USIMINAS/COSIPA argues that there is no basis for applying adverse facts available in this case, given that it reported all relevant U.S. sales made by USIMINAS. Specifically, USIMINAS/COSIPA asserts that the date of the "nota fiscal" cannot be the appropriate date of sale because: 1) the price and quantity can change after issuance of the "nota fiscal" (i.e., while

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[3] USIMINAS based its universe of U.S. sales on the date of the invoice, rather than the date of the "nota fiscal" (equivalent to the factory shipment date) despite the Department's explicit instructions that it use the earlier of the two dates.

[4] In its rebuttal brief, USIMINAS/COSIPA claims that the Department overstated the value of the unreported sales in the verification report, because it mixed U.S. dollar and Brazilian reais amounts. Bethlehem asserts that neither the verification report nor the verification exhibits appear to support this contention.

the merchandise waits at the port for loading); and 2) the issuance of the "nota fiscal" does not trigger the recording of the sale in its accounting records. USIMINAS/COSIPA notes that it made these facts clear to the Department from the beginning of the case, and it cooperated by providing the "nota fiscal" dates for all of its reported sales when such data were requested. As evidence that its approach is valid, USIMINAS/COSIPA asserts that this approach has been used by the Department in previous cases. In any event, USIMINAS/COSIPA claims that the Department has not yet determined, as a matter of law, that the date of shipment from the mill is the appropriate date of sale.

USIMINAS/COSIPA does not address the petitioners' argument related to the unreported sales made by COSIPA.

Department's Position:

We do not agree that total adverse facts available for USIMINAS is warranted in this case. According to section 776(a) of the Act, the Department shall use the facts otherwise available in reaching a determination if:

> 1) necessary information is not available on the record, or
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> 2) an interested party or any other person --
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> > A) withholds information that has been requested by the administering authority or the Commission under this title,
> >
> > B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,
> >
> > C) significantly impedes a proceeding under this title, or
> >
> > D) provides such information but the information cannot be verified as provided in section 782(i).

The Department may use adverse inferences in the application of facts available pursuant to section 776(b) of the Act if the Department finds that the respondent has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information.

In this case, we find that USIMINAS/COSIPA cooperated in this proceeding by responding to each of the Department's requests for information in a timely manner. While it is true that certain information submitted by this company could not be verified, we disagree that the submitted responses were so incomplete that they could not be used or that USIMINAS significantly impeded the proceeding. For example, we found that the quantity and value of the vast majority of home market and U.S. sales were correctly reported, as was much of the company's reported price adjustment data.[5] Consequently, we have continued to rely on the reported data, except as noted below, for purposes of the final determination.

Nonetheless, regarding the unreported U.S. sales discovered at verification, we agree that the margin for those sales should be based on adverse facts available because they were not reported to the Department in a timely manner. Contrary to the assertions of USIMINAS/COSIPA, we did, in fact, require the company to base its date of sale on the earlier of the "nota fiscal" or invoice date. See the March 1, 2002, supplemental questionnaire at page 1. We note that this action is consistent not only with the decision made in a previous investigation involving the same product and the same respondent, but also with the Department's practice in this area. See, e.g., 2000 Cold-Rolled Steel from Brazil, 65 FR at 5574; Folding Metal Tables and Chairs from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 20090 (Apr. 24, 2002) and accompanying Issues and Decision memorandum at Comment 12 (Folding Metal Tables from the PRC); Stainless Steel Bar from Italy: Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 3155 (Jan. 23, 2002) and accompanying Issues and Decision memorandum at Comment 26 (2002 SSB from Italy); and Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Luxembourg, 67 FR 35488 (May 20, 2002) and accompanying Issues and Decision memorandum at Comment 4 (Steel Beams from Luxembourg).[6] In addition, we note that the sales of rectangular blanks omitted by COSIPA have always been included in the scope of this investigation, and the Department's antidumping duty questionnaire requested that COSIPA report them.

Because USIMINAS/COSIPA did not report the sales in question, the use of facts available is warranted for them, in accordance with section 776(a) of the Act. Further, we note that the information regarding the unreported U.S. sales was available at both USIMINAS and COSIPA. Therefore, we conclude that USIMINAS/COSIPA could have provided the data on these

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[5] We disagree with Nucor's contention that USIMINAS's use of an incorrect date of sale invalidates the entire sales database. Specifically, we disagree with Nucor's assertion that USIMINAS reported a significant number of pre-POI sales as a result of its misidentification of the appropriate date of sale. We verified that USIMINAS's first shipment in the POI was approximately two months into the POI, and consequently we found that no pre-POI sales were reported. Thus, Nucor's concern that USIMINAS "materially benefitted" from including higher-priced pre-POI transactions is unfounded in this case. Regarding unreported sales at the end of the POI, we note that the total volume and value of these sales was reflected in the sales verification report (see below).

[6] For example, in Folding Metal Tables from the PRC, we stated: "In instances where the invoice date is after the shipment date, it is the Department's normal practice to use the date of shipment, as the material terms of sale, particularly quantity, are understood to be set when the merchandise is shipped." Here, while USIMINAS/COSIPA claimed that the price and quantity of its sales may change between shipment and invoicing, it provided no evidence that they did so.

unreported U.S. sales but did not do so, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we have based the margin for USIMINAS/COSIPA's unreported U.S. sales on adverse facts available.

As adverse facts available, we have used the highest non-aberrant margin calculated for the sales of any U.S. product, in accordance with our practice. See, e.g., SRAMs from Taiwan at Comment 1; Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip from Germany, 64 FR 30710, 30732 (June 8, 1999); Carbon Steel Plate from South Africa, 62 FR at 61747; and Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China, 58 FR 48833, 48839 (Sept. 20, 1993). In selecting a facts available margin, we sought a margin sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin indicative of USIMINAS/COSIPA's customary selling practices and rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin on the sales of any product sold in a commercial quantity that fell within the mainstream of USIMINAS/COSIPA's transactions (i.e., transactions that reflect sales of products representative of the broader range of models used to determine normal value).

Finally, regarding the question of whether this facts available margin should be applied to the volume or value of the unreported sales, we agree with USIMINAS/COSIPA that the value shown in the verification report is stated in Brazilian reais. Because we do not have the actual value of these sales in U.S. dollars, we have weighted the margin applied to them into our final calculations using the total sales quantity for purposes of the final determination.

Comment 2: *Treatment of PIS and COFINS Taxes in Normal Value*

In Brazil, companies are required to pay certain taxes known as "PIS" and "COFINS" taxes, which are imposed, and paid monthly, on their total value of sales in the home market. In the preliminary determination, we treated these taxes as indirect taxes, and thus we made deductions from the starting price for them pursuant to section 773(a)(6)(B)(iii) of the Act,[7] in accordance with our practice. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 18165 (Apr. 15, 2002) (Wire Rod from Brazil).[8]

Bethlehem disagrees that it is the Department's practice to classify PIS and COFINS taxes as indirect. According to Bethlehem, the Department has consistently and repeatedly determined

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[7] This section is the provision under which we deduct indirect taxes from normal value.

[8] This methodology was unchanged in the final determination in that case. See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792 (Aug. 30, 2002).

that these taxes should not be deducted from normal value, as evidenced by its treatment of them in Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (Feb. 12, 2002) and accompanying Issues and Decision memorandum at Comment 7 (Silicon Metal from Brazil); 2000 Cold-Rolled Steel from Brazil, 65 FR 5554, 5579-80 (Feb. 4, 2000); and Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756, 38765 (July 19, 1999) (Hot-Rolled Steel from Brazil). Bethlehem asserts that the only case cited in the preliminary determination as the authority for classifying PIS and COFINS taxes as indirect (i.e., Wire Rod from Brazil) has no precedential value because the respondent in that case withdrew from the investigation. Thus, Bethlehem concludes that the Department's finding in Wire Rod from Brazil merely amounts to an "unverified surmise" which is flatly contradicted by the Department's longstanding verified findings in other cases.

In any event, Bethlehem argues that there is no basis for the Department to alter its settled practice with respect to PIS and COFINS taxes, given that they are imposed on all domestic sales of goods and services and are used to fund employee welfare programs. Bethlehem contends that, because these taxes are not imposed directly upon sales of the foreign like product, the statute does not permit their deduction from normal value. Indeed, Bethlehem notes that the Department examined this issue at both the sales and cost verifications conducted in this investigation. Bethlehem asserts that, during these verifications, the Department failed to identify a single factual change from the previous investigations that would warrant a reversal of the Department's longstanding verified finding that neither tax is imposed directly on the respondent's sales of foreign like product. Thus, Bethlehem concludes that the Department should disregard these taxes for purposes of the final determination.

USIMINAS/COSIPA argues that the Department has changed its practice with respect to PIS and COFINS taxes, despite Bethlehem's assertion to the contrary. USIMINAS/COSIPA disagrees that the PIS and COFINS policy stated in Wire Rod from Brazil should not be applicable here, given that the facts in the two cases are identical. Furthermore, USIMINAS/COSIPA maintains that the respondent's withdrawal prior to the final determination in Wire Rod from Brazil has no bearing on the appropriateness of the Department's determination with respect to PIS and COFINS taxes. In any event, USIMINAS/COSIPA states that the Department's change in practice was not limited to Wire Rod from Brazil, noting that the Department followed the same methodology in the recent final results of the antidumping duty administrative review on frozen concentrated orange juice from Brazil. See Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 18859,18861 (Apr. 17, 2002) (unchanged in the final results).[9]

[9] See Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 40913 (June 14, 2002) (FCOJ from Brazil)

USIMINAS/COSIPA contends that the Department has the discretion to make changes in its policies when it determines that such changes are warranted, as long as it articulates a rational basis for the change. According to USIMINAS/COSIPA, the Department provided such an explanation in Wire Rod from Brazil, based on a detailed examination of the PIS and COFINS laws. USIMINAS/COSIPA asserts that the Department reached the correct conclusion when it found that these taxes are not direct income taxes because companies must pay a flat portion of their gross home market sales value in PIS and COFINS, even if they have no profits (and hence no income). Therefore, USIMINAS/COSIPA maintains that these taxes are appropriately classified as "other" taxes, and as such they should be deducted from normal value pursuant to the Department's regulations.[10]

Finally, USIMINAS/COSIPA notes that these taxes are not assessed on export sales. Thus, because these taxes are incident on home market sales but are not collected on export sales, USIMINAS/COSIPA contends that the Department is required to deduct them from normal value for purposes of the final determination, pursuant to section 773(a)(6)(B) of the Act.

Department's Position:

Since the final determinations in Silicon Metal from Brazil and 2000 Cold-Rolled Steel from Brazil, we have reexamined our practice with regard to PIS and COFINS taxes and now find that it is appropriate to treat these taxes as indirect. As we stated in Wire Rod from Brazil,

> Section 351.102(b) of the Department's regulations defines an indirect tax as a 'sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, border tax, or any other tax other than a direct tax or an import charge.' As noted in the PIS and COFINS legislation, these taxes are derived from the 'monthly invoicing' or 'invoicing' originating from the sale of goods and services. Therefore, we preliminarily find that the manner in which these taxes are assessed is characteristic of an indirect tax, and we are treating PIS and COFINS taxes as indirect taxes for the purposes of this preliminary determination.

See Wire Rod from Brazil, 67 FR at 18169.

According to section 773(a)(6)(B)(iii) of the Act, normal value of the merchandise will be reduced by the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject

[10] USIMINAS/COSIPA asserts that the fact that these taxes are not separately identified on each sales invoice does not mean that they are not taxes on sales. According to USIMINAS/COSIPA, the tax rate is the same for all sales and all customers are aware of the taxes; therefore, it is a matter of convenience for the Brazilian government to assess them on gross home market sales, similar to the way that state sales taxes are assessed in the United States.

merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product. PIS and COFINS taxes are levied on the revenue received on each sale of the foreign like product or components thereof and are therefore imposed directly on the foreign like product or its components. (They are thereby paid indirectly by the buyer as part of the sales price, just as sales taxes or value added taxes are.) Because the taxes in question are imposed directly upon the foreign like product, but are not collected on the subject merchandise, we have deducted them from normal value, pursuant to section 773(a)(6)(B)(iii) of the Act, for purposes of the final determination.

Comment 3: *Treatment of PIS and COFINS Taxes in the Cost of Production*

In the preliminary determination, we reduced USIMINAS/COSIPA's reported costs by the amount of PIS/COFINS taxes USIMINAS/COSIPA paid on domestic sales of the foreign like product. We did not adjust the reported costs for the PIS/COFINS tax credits received by USIMINAS/COSIPA from the Brazilian government for materials used in the production of exported subject merchandise.

USIMINAS/COSIPA argues that the Department should reduce its cost of raw materials by the amount of the credit received for purposes of the final determination, consistent with the approach taken in FCOJ from Brazil. According to USIMINAS/COSIPA, the Department's long-standing policy is to exclude from the cost of materials any taxes on the materials when those taxes are refunded or not collected on exported products. USIMINAS/COSIPA asserts that, for this reason, the Department does not include value-added taxes such as ICMS and IPI on raw materials as part of cost of manufacturing (COM).

USIMINAS/COSIPA contends that the credit provided under the PIS and COFINS tax program operates in a manner similar to those provided for ICMS and IPI taxes. Specifically, USIMINAS/COSIPA asserts that in Brazil, when a company exports merchandise, it receives a credit almost equal to the amount of PIS/COFINS taxes included on raw materials used to produce the exported product. USIMINAS/COSIPA notes that the cost verification report issued in this investigation confirms this fact.[11]

In order to calculate the amount of the adjustment to COP, USIMINAS/COSIPA proposes that the Department apply the effective rate of the tax credit for each producer (i.e., the credit rate multiplied by the ratio of export sales to total sales for each company) to the value of direct materials reported by that company.

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[11] See page 25 of the July 5, 2002, memorandum to Neal Halper from LaVonne Jackson and Margaret Pusey entitled "Verification Report on the Cost of Production and Constructed Value Data Submitted by Companhia Siderurgica Paulista in the Antidumping Duty Investigation of Certain Cold-Rolled Carbon-Quality Steel Products from Brazil" (the cost verification report).

Finally, USIMINAS/COSIPA disagrees with the petitioners' argument (see below) that the Department should reverse the PIS/COFINS adjustment made in the preliminary determination in its entirety. According to USIMINAS/COSIPA, the petitioners' argument is based on a statement from the cost verification report which is taken out of context. USIMINAS/COSIPA notes that the verification report in fact confirmed that PIS/COFINS taxes paid on materials were included in COSIPA's reported costs, whereas PIS/COFINS taxes paid on sales of finished goods were not.

Bethlehem and Nucor both contend that the Department erred when it reduced USIMINAS/COSIPA's COM to account for PIS/COFINS taxes paid by the company. According to the petitioners, the Department found during verification that COSIPA's reported costs did not include PIS/COFINS taxes, and consequently the adjustment made in the preliminary determination to exclude these taxes from USIMINAS/COSIPA's reported costs was inappropriate.

Regarding the issue of the tax credits, Nucor contends that the Department should continue to include all PIS and COFINS taxes in COP. Nucor disagrees that these tax programs are similar to ICMS, because, unlike under the ICMS tax credit system, PIS and COFINS tax credits cannot be used to reduce home market tax liabilities. In any event, Nucor notes that the Court of Appeals for the Federal Circuit (CAFC) in Camargo Correa Metais S.A. v. United States, 200 F.3d 771 (Fed. Cir. 1999) (Camargo) held that ICMS taxes were properly included in COP. More importantly, Nucor asserts that USIMINAS/COSIPA has failed to place any evidence on the record of this case tying taxes paid on actual material inputs to any credits received on specific export sales. Rather, Nucor maintains that the record shows that there is no transaction-specific credit for export sales and that COSIPA and the Brazilian government simply maintain an escrow account whereupon either party may deposit or withdraw funds for any purpose, at any time. According to Nucor, it appears that these funds may be used to pay off both short-term and long-term tax obligations – a feature noted by the court in Camargo as evidence that taxes should be included in constructed value. Thus, Nucor contends that the Department should add ICMS, IPI, PIS, and COFINS taxes to COP.

Finally, both Bethlehem and Nucor contend that the respondent incorrectly calculated its proposed adjustment for the tax credit received on exported goods. Specifically, Bethlehem maintains that USIMINAS/COSIPA's proposal uses the wrong base (i.e., the direct materials field) because it comprises all materials used in the production of subject merchandise, including imported materials. Nucor asserts that the proposed ratio is miscalculated because it is based on sales of all products, including subject merchandise, to all markets. According to Nucor, the Department should base its ratio only upon sales of subject merchandise to the United States compared to sales of the foreign like product in the home market.

Department's Position:

In this case, normal value is based on the foreign like product sold in Brazil, rather than a third country. Therefore, the statute's requirement for the exclusion of PIS and COFINS taxes paid on materials does not apply to COP in this case. Moreover, regarding constructed value, section 773(e) of the Act states:

> [T]he cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.

This language also does not apply here because normal value was determined under section 773(a)(1)(B)(i) of the Act for all product comparisons.

Regarding the arguments related to the PIS and COFINS tax credit, we disagree with USIMINAS/COSIPA that we adopted the respondent's proposed approach in FCOJ from Brazil. In that case, we made no adjustment for the tax credit at all. In any event, this issue is not relevant here. Section 773(b)(3)(C) of the Act states:

> [I]f normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation.

During the cost verification, we confirmed that the PIS and COFINS taxes that USIMINAS/COSIPA paid on materials used in production were included in the reported costs. We also confirmed that the PIS and COFINS taxes paid on domestic sales of the foreign like product for which we reduced USIMINAS/COSIPA's reported costs in the preliminary determination were not included in the reported costs. Therefore, we determine that an adjustment for PIS/COFINS taxes paid on domestic sales by USIMINAS/COSIPA is not warranted, based on our findings at verification.

Finally, regarding Nucor's contention that ICMS and IPI taxes should be included in COP, we disagree. The respondent pays ICMS and IPI taxes on domestically-sourced raw materials, and collects ICMS and IPI taxes on home market sales. As such, the respondent incurs no ICMS/IPI costs on these home market sales, and accordingly our practice is to not include such taxes in COP or as an adjustment to the home market sales price when performing the sales below cost test.

Comment 4: *Arm's-Length Test*

During the POI, USIMINAS/COSIPA made sales to affiliated resellers in the home market. USIMINAS/COSIPA reported both the sales to these affiliates in its home market sales listings, as well as sales made by the affiliates to the first unaffiliated customer. In accordance with our practice, we performed the arm's-length test on sales to the affiliated parties in our preliminary determination.[12] Where we found that the sales to a particular affiliate were not made at arm's length, we found that these sales were not made in the ordinary course of trade and, consequently, we based normal value on the affiliate's sales to the downstream customer.

USIMINAS/COSIPA contends that the Department's arm's-length test, as it is currently applied, has been invalidated by the World Trade Organization (WTO). Specifically, USIMINAS/COSIPA asserts that a WTO Dispute Panel held that the 99.5 percent test "does not rest on a permissible interpretation of the term "sales in the ordinary course of trade." See Report of the Panel on United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/R (Feb. 28, 2001); and Report of the Appellate Body on United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R (July 24, 2001) (Hot-Rolled Steel from Japan). Therefore, USIMINAS/COSIPA contends that the Department must discard its arm's-length test in order to comply with the WTO's ruling, given that the United States is a signatory to the WTO Antidumping Agreement and Dispute Settlement Understandings.

USIMINAS/COSIPA maintains that it has provided considerable evidence showing how prices are negotiated with its affiliates. According to USIMINAS/COSIPA, to the extent that the affiliates receive lower prices, it is because they are large-volume customers. Moreover, USIMINAS/COSIPA asserts that these affiliates receive discounts completely in line with the discounts provided to unrelated large-volume customers. USIMINAS/COSIPA contends that, in the absence of any other analysis, the Department's refusal to use the sales prices to USIMINAS/COSIPA's affiliated parties is not in accordance with law.

Both Bethlehem and Nucor maintain that the Department is not bound by WTO panel decisions, and thus they contend that the Department should continue to disregard sales to affiliates that fail the arm's-length test. The petitioners note that the Statement of Administrative Action (SAA) provides that, under the Uruguay Round Agreements Act (URAA), U.S. law will take precedence in instances where a WTO decision conflicts with U.S. law. They further note that in such cases, only Congress and the Administration can decide how to implement a WTO panel recommendation.

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[12] This test provides that sales to affiliates are made in the ordinary course of trade only when they are sold at average prices which are at least 99.5 percent of the average prices charged to unaffiliated parties.

According to the petitioners, the Department's arm's-length test is set forth in the statute and in the Department's regulations at 19 CFR 351.403(c). The petitioners assert that this methodology is not only well-established, but it has also been affirmed by the CIT in any number of proceedings. (See, e.g., Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 67 FR 12518 (Mar. 19, 2002) and accompanying Issues and Decision memorandum at Comment 6 (Mexican Cement).) Therefore, the petitioners assert that no change to the Department's arm's-length methodology is warranted.

Department's Position:

The Department's application of the arm's-length test is in accordance with our regulations and our recent practice. See, e.g., Mexican Cement at Comment 6 and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (Aug. 11, 2000) and accompanying Issues and Decision memorandum at Comment 25. The Department's regulations at 19 CFR 351.403(c) state that:

> If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

The preamble to the regulations states that:

> The Department's current policy is to treat prices to an affiliated purchaser as 'arm's length' prices if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers.

See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27355 (May 19, 1997). Thus, pursuant to the regulations and our practice as explained in the preamble, we interpret the term "comparable" to mean that the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers. USIMINAS/COSIPA has not shown that the test is unreasonable in this case. In addition, the Department's 99.5 percent arm's-length test methodology is well-established and the CIT has sustained the methodology repeatedly. As we stated in Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999), an agency's interpretation of the statute it administers must be accorded substantial weight. Thus, the Department's well-established practice can be sustained as long as it is "sufficiently reasonable." See American Lamb Co. v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986). Furthermore, the CIT has upheld the validity of our arm's-length test on numerous occasions. For example, in Usinor Sacilor v. United States, 872 F. Supp. at 1000, 1004 (CIT 1996), the CIT stated that it would uphold the Department's 99.5 percent test unless it was shown to be unreasonable. USIMINAS/COSIPA has not demonstrated that the Department's current arm's-length test is unreasonable. Therefore, for those USIMINAS/COSIPA sales to affiliates which failed the arm’s-length test, we have continued to use the downstream sales made by USIMINAS/COSIPA’s affiliates in the margin calculations performed for the final determination.

With regard to USIMINAS/COSIPA's reliance on the WTO Dispute Resolution Panel's determination, U.S. law is consistent with our WTO obligations. With respect to Hot-Rolled Steel from Japan, the United States is in the process of implementing the WTO's decision as provided for under U.S. law. Additionally, the CIT in Timken Company v. United States, Consol. Court No. 01-00127, Slip Op. 02-106 (CIT 2002) (Timken Company) recently ruled that the Department’s arm’s-length methodology was consistent with U.S. law. In that case the court considered the WTO reports in Hot-Rolled Steel from Japan a secondary source and did not find the reports persuasive.

Comment 5: *Calculation of the Overall Dumping Margin*

USIMINAS/COSIPA argues that the Department should not set negative dumping margins to zero when calculating the overall dumping margin. According to USIMINAS/COSIPA, this practice violates U.S. international obligations and U.S. law, which require the Department to make a fair comparison between export price or constructed export price (CEP) and normal value.

Specifically, USIMINAS/COSIPA contends that the Department’s calculation methodology, in setting negative dumping margins to zero does not reflect a true weighted-average dumping margin, as required by the WTO. USIMINAS/COSIPA notes that the WTO has ruled that those products with negative dumping margins must offset those products with positive dumping margins in order to achieve a fair comparison. See WTO Appellate Body in European Communities Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, at page 15 (Mar. 1, 2001) (Bed Linen). USIMINAS/COSIPA alleges that the United States is obliged to implement the WTO ruling in the Bed Linen case, citing the U.S. Supreme Court case of Murry v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804) (Charming Betsy), which provides that, where possible, a United States statute is to be construed so as not to conflict with international law or with an international agreement of the United States.

USIMINAS/COSIPA argues that section 771(35)(B) of the Act requires only that dumping margins be calculated in investigations by comparing the weighted average of the normal values to the weighted average of the export prices for comparable merchandise, but does not require that the term “comparable” be interpreted to mean that the Department must make product-specific comparisons. Therefore, according to USIMINAS/COSIPA, the CIT’s ruling in Charming Betsy compels the Department to implement the Bed Linen decision and calculate offset positive dumping margins with negative ones.

Both Bethlehem and Nucor contend that the Department's practice of zeroing negative dumping margins is not only correct, but also mandated by U.S. antidumping law. Specifically, the petitioners note that the antidumping law requires the Department to determine an estimated weighted-average dumping margin, which is defined under section 771(35)(B) of the Act as the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer. The petitioners further note that section 771(35)(A) of the Act defines the term "dumping margin" as the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise. Thus, the petitioners conclude that the antidumping law expressly prohibits the Department from either calculating a negative dumping margin or including negative dumping margins in the calculation of the weighted-average dumping margin.

According to the petitioners, USIMINAS/COSIPA's approach has been squarely rejected in several recent determinations. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (Apr. 2, 2002) and accompanying Issues and Decision memorandum at Comment 12 (Lumber from Canada); Final Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields From The People's Republic of China, 67 FR 6482 (Feb. 12, 2002) and accompanying Issues and Decision memorandum at Comment 34 (Windshields from the PRC); Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 50408 (Oct. 4, 2001) and accompanying Issues and Decision memorandum at Comment 1 (Hot-Rolled Steel from the Netherlands); and Steel Beams from Luxembourg at Comment 13.

Finally, the petitioners maintain that the WTO decision in Bed Linen has no impact on U.S. law or the Department's practice. The petitioners note that the SAA explicitly states that the reports issued by the WTO Appellate Body have no binding effect under U.S. law, nor do they provide legal authority for federal agencies to change their regulations or procedures. See the SAA at 1032. Thus, the petitioners contend that the Bed Linen decision applies only to the European Community, and consequently, provides no basis for changing either U.S. law or practice.

Department's Position:

We disagree with USIMINAS/COSIPA. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. See, e.g., Hot-Rolled Steel from the Netherlands at Comment 1 and Windshields from the PRC at Comment 34. Additionally the CIT continues to uphold the Department's method of calculating weighted-average margins. See Timken Company, Slip Op. 02-106 at 30.

The Department's methodology does not allow sales that do not fall below normal value to cancel out dumping found on other sales. Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or CEP, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level and does not itself apply on an aggregate basis. At no stage in this process is the amount by which export price or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales.

Further, with respect to the respondent's WTO-specific arguments, U.S. law is fully consistent with our WTO obligations. See the SAA at 669.

Comment 6: *Upward Billing Adjustments*

At verification, we found that all of USIMINAS's reported home market upward billing adjustments were incorrect. Because the company had only issued a handful of debit notes during the POI, we obtained and verified revised billing adjustment data for the affected transactions. Bethlehem argues that, given that all of the originally-reported upward billing adjustments were incorrect, the application of adverse facts available is warranted here. According to Bethlehem, USIMINAS has been uncooperative in this proceeding, and should not be allowed to benefit from this lack of cooperation. As adverse facts available, Bethlehem argues that the Department should assign the highest upward billing adjustment reported in USIMINAS's home market sales listing to all sales for which USIMINAS reported an upward billing adjustment.

USIMINAS/COSIPA argues that there is no basis for applying adverse facts available with respect to USIMINAS's upward billing adjustments, because all errors found in these adjustments were corrected at verification. Therefore, USIMINAS contends that the Department should use the revised upward billing adjustments provided at verification in its margin calculations for the final determination.

Department's Position:

We agree with the respondent that it would be inappropriate to base the amount of USIMINAS's upward billing adjustments on adverse facts available. Although we found at verification that USIMINAS had incorrectly reported all of these adjustments, we were able to obtain the corrected amount for every upward price adjustment made during the POI. Moreover, when we tied these revised amounts to source documents, we noted no discrepancies. See USIMINAS sales verification exhibits 7 and 30. Because actual adjustment information for every applicable transaction exists on the record of this investigation, we have accepted this information for purposes of our final analysis. Consequently, there is no need to make adverse inferences here.

Comment 7: *Downward Billing Adjustments*

Nucor contends that at verification the Department discovered numerous significant errors in the billing adjustments reported in USIMINAS's home market sales listing. Specifically, Nucor notes that the Department was able to verify only two out of the eight adjustments examined at verification, a failure rate of 75 percent. Therefore, Nucor contends that the Department should either disallow these adjustments in their entirety or use the lowest billing adjustment reported on a per-ton basis for sales where a downward adjustment was reported.

Moreover, both Bethlehem and Nucor contend that the Department should disallow the downward billing adjustments reported in COSIPA's home market sales listing because COSIPA was unable to substantiate these adjustments at verification.[13] For example, Nucor notes that the figures reported included adjustments associated with extra-POI and non-subject merchandise. The petitioners note that, although the Department allowed COSIPA an opportunity to rectify its errors, the company was unable to do so by the end of verification. According to the petitioners, where the Department cannot verify the accuracy of the information submitted for a given adjustment, it must apply partial facts available. As support for this assertion, Nucor cites Certain Cut-to-Length Carbon Steel Plate From Finland; Final Results of Antidumping Duty Administrative Review, 63 FR 2952, 2953 (Jan. 20, 1998); Carbon Steel Plate from South Africa, 62 FR at 61739; and Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; Certain Pasta From Italy, 64 FR 43152, 43156 (Aug. 9, 1999). The petitioners argue that since the Department gave COSIPA an opportunity to correct the error in its methodology and it failed to do so, the Department should not accept these adjustments for purposes of the final determination.

USIMINAS/COSIPA argues that there is no basis for applying facts available to its reported billing adjustments. According to USIMINAS/COSIPA, these billing adjustments are more appropriately treated as warranty expenses because they related to customer complaints about defective merchandise. As such, USIMINAS/COSIPA claims these warranty expenses are properly allocated over all sales to all customers.[14] Indeed, USIMINAS/COSIPA asserts that neither the law nor the Department's own practice requires billing adjustments (i.e., warranty expenses) to be applied to individual sales. Further, USIMINAS/COSIPA alleges that it has provided sufficient information for the Department to calculate these home market downward billing adjustments as a percentage of the sales price and this is all it is required to do by law.

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[13] In the alternative, Nucor argues that the Department should use the lowest billing adjustment reported on a per-ton basis for sales where a downward adjustment was reported.

[14] We note that USIMINAS/COSIPA raised a similar issue with respect to certain U.S. adjustments. See Comment 16, below.

Therefore, USIMINAS/COSIPA maintains that the Department should not apply facts available to these home market downward billing adjustments, but rather should use the amounts reported for them in its margin calculations for the final determination.

Department's Position:

We agree with the petitioners that adverse facts available is warranted with regard to the adjustments in question. Regarding USIMINAS, we found at verification that the vast majority of the downward billing adjustments examined were reported incorrectly.[15] See footnote 9 of the USIMINAS sales verification report. Similarly, we found that COSIPA was unable to substantiate its reporting methodology at verification. Although we gave COSIPA an opportunity to provide either transaction- or customer-specific adjustment information using the information available in its accounting system, it did not do so by the end of verification. See page 14 of the COSIPA sales verification report.

We note that there is no evidence on the record to demonstrate that USIMINAS/COSIPA's home market downward billing adjustments are indeed warranty expenses. Nonetheless, even were we to agree with USIMINAS/COSIPA that these expenses should be classified as warranties, this decision would not affect our use of adverse facts available here because we have determined that it is appropriate to treat warranty expenses as transaction-specific direct expenses. For further discussion, see Comment 16.

Section 776(a) of the Act provides that the Department may use facts available in a determination if an interested party either withholds requested information or supplies information which cannot be verified. Section 776(b) of the Act permits the Department to make adverse inferences in cases where it finds that the interested party failed to cooperate by not acting to the best of its ability. We note that the documents reflecting the correct billing adjustments were available at both USIMINAS and COSIPA. Therefore, we conclude that USIMINAS/COSIPA could have provided the necessary data but chose not to, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we have based the home market downward billing adjustments for USIMINAS/COSIPA on adverse facts available. As adverse facts available for USIMINAS, we have disallowed all of USIMINAS's downward billing adjustments. As adverse facts available for COSIPA, we have disallowed COSIPA's downward billing adjustments in their entirety.

Comment 8: *ICMS and IPI Taxes*

Nucor contends that USIMINAS/COSIPA has provided contradictory information related to the IPI and ICMS taxes reported in its home market sales listings. To support this statement, Nucor provides the following three examples: 1) USIMINAS/COSIPA reported IPI taxes for certain

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[15] We note that Nucor did not cite all of the discrepancies identified in the verification report; we actually found that 10 out of the 13 adjustments reviewed were inaccurate.

sales to particular customers with tax-exempt status, but not for other sales to the same companies; 2) there are several instances in COSIPA's home market sales listing where COSIPA reported both downward billing adjustments and IPI taxes in the complementary IPI tax field when no IPI tax was originally reported;[16] and 3) there are also several instances in the COSIPA home market sales listing where COSIPA reported an amount for ICMS taxes in the complementary ICMS tax field when no ICMS tax was originally reported. Nucor maintains that if the IPI-tax exemption is customer-specific, then USIMINAS/COSIPA should not have reported IPI taxes on any sales to IPI-tax exempt customers. Moreover, Nucor claims that there is no reason why a sale on which no taxes were initially charged should have taxes reported in the complementary tax field.

Because of these inconsistencies, Nucor argues that the Department should disallow the reported IPI taxes for those USIMINAS/COSIPA customer codes Nucor identified in its case brief. Further, Nucor alleges that the Department should disallow all reported complementary IPI tax and complementary ICMS tax expense amounts where there was no corresponding IPI tax or ICMS tax reported for the sale.

USIMINAS/COSIPA did not comment on this issue.

Department's Position:

At verification, we discussed the procedures for collection of IPI and ICMS taxes with USIMINAS/COSIPA officials. We then selected certain home market sales transactions (including several for which USIMINAS/COSIPA had reported no tax in the relevant tax field but a tax amount in the complementary tax field) and examined supporting documentation. We noted no discrepancies in the amounts reported by the company.[17] See the COSIPA sales verification report at pages 14 and 15 and the USIMINAS sales verification report at pages 18 and 19.

Regarding Nucor's allegation that USIMINAS/COSIPA reported inconsistent tax information for certain customers, we note that we did not examine this specific issue at verification. However, we did review supporting documentation at verification for several of the tax-exempt sales

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[16] In its January 7, 2002, questionnaire response, USIMINAS/COSIPA explained that the complementary tax fields contain information on tax payments associated with "complementary" nota fiscais (or debit notes).

[17] Specifically, at verification we found instances where USIMINAS/COSIPA included a tax amount in the complementary tax field because this tax amount had been erroneously omitted from the original nota fiscal. Moreover, we found that, on occasion, USIMINAS/COSIPA did not refund IPI or ICMS taxes on credits issued by the company. Thus, we do not find it surprising that USIMINAS/COSIPA reported both downward billing adjustments and complementary IPI tax amounts.

reported in the home market sales listings and we similarly found no discrepancies in the information provided by USIMINAS/COSIPA.[18] Thus, there is no information on the record of this investigation which would lead us to conclude that there are errors in the IPI taxes reported by USIMINAS/COSIPA. Therefore, we have continued to use USIMINAS/COSIPA's reported IPI and ICMS tax amounts in the calculations performed for the final determination.

Comment 9: *Discounts*

USIMINAS reported both quantity discounts and "other" discounts in its home market sales listing. In its January 8, 2002, response, USIMINAS stated that it calculated its customer-specific quantity discount amounts by dividing the total quantity discounts granted to a particular customer by the total sales of all products to that customer for the POI, while it calculated its "other" discount amounts by totaling the remaining discounts that were not included in the calculation of total quantity discounts and allocating them over the sales of all products to the remaining home market customers for the POI.[19] In the Department's February 21, 2002, supplemental questionnaire, we asked USIMINAS to revise its calculation of "other" discounts to report customer-specific discounts by month. However, in both its March 19 and May 2, 2002, supplemental responses, USIMINAS argued that revising its calculation as the Department requested would be unduly burdensome to the company. Consequently, we disallowed the "other" discounts in the preliminary determination because USIMINAS failed to report these discounts on a customer-specific basis by month.

Nucor agrees with the Department's approach in the preliminary determination with respect to "other" discounts. However, for the final determination, Nucor argues that the Department should disallow quantity discounts as well, because USIMINAS neither reported them on a transaction-specific basis nor demonstrated that they were provided to the customer as a fixed and constant percentage of the sales price. Nucor asserts that this action would be in accordance

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[18] We note that the USIMINAS verification report at page 18 contains an error with respect to the IPI information provided for one transaction. Specifically, the report indicates that IPI taxes were reported in error for a sale to a tax-exempt customer. However, as can be seen from the documents in the associated verification exhibit, the error was not in the data reported in the sales listing for IPI taxes, but rather in the fact that USIMINAS charged the customer for IPI taxes on the invoice. Thus, it was correct for USIMINAS to report IPI taxes for this transaction (even though the customer was tax-exempt) because these taxes were included in the gross unit price paid by the customer. Indeed, to the extent that the sales listing contained an error with respect to this transaction, it is that USIMINAS/COSIPA reported the tax amounts both in the IPI tax and billing adjustment fields, thereby double-counting these taxes. Because we have disallowed all downward billing adjustments for the final determination (see Comment 7), no further adjustment is necessary to the home market sales listing to account for this.

[19] USIMINAS revised its calculation of both quantity discounts and "other" discounts to report these discounts on a monthly basis in its March 19, 2002, supplemental response.

with the CIT's holding in Koyo Seiko v. United States, 186 F. Supp. 2d 1332, 1354-55 (CIT 2002) (Koyo Seiko), where the CIT ruled that discounts not reported in this manner do not satisfy the Department's reporting requirements.

USIMINAS/COSIPA argues that there is no reason for the Department to disallow its reported home market quantity and "other" discounts. USIMINAS/COSIPA contends that Nucor's reliance on Koyo Seiko is misplaced, because in that case the CIT was interpreting the statute as it existed before it was changed by the URAA. According to USIMINAS/COSIPA, however, the URAA explicitly allows the Department to select averages in determining normal value. Moreover, USIMINAS/COSIPA notes that the Department's current regulations at 19 CFR 351.401(c) direct the Department to use price adjustments that are "reasonably attributable" to the subject merchandise or the foreign like product. While USIMINAS/COSIPA concedes that the Department requires sales- or customer-specific discounts when a respondent can identify them as such, it argues that when the company is unable to provide discounts on this basis using its books and records, the Department may accept a reasonable allocation methodology. USIMINAS/COSIPA states that, because it was unable to tie its "other" discounts to specific sales or customers, the only reasonable methodology available was to allocate total discounts as a percentage of total sales. Further, USIMINAS/COSIPA contends that, since it is undisputed that it granted the "other" discounts, not to apply them to home market sales would overstate the home market sales value. Therefore, USIMINAS/COSIPA maintains that the Department should accept the quantity and "other" discounts reported in its home market sales listing for purposes of the final determination.

Department's Position:

The Department does not always require that discounts be reported on a transaction-specific basis. The standard set forth in 19 CFR 351.401(c) merely requires the Department to use price adjustments that are "reasonably attributable" to the subject merchandise or the foreign like product. Based on this standard, we normally require companies to report price adjustments and expenses in as close to a transaction-specific manner as possible. However, the Department's regulations at 19 CFR 351.401(g)(1) state that the Department "may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions." See also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy, 64 FR 30750, 30768 (June 8, 1999).

In this case, we examined this issue in detail at verification. As part of the verification process, we confirmed that USIMINAS/COSIPA was unable to report either its quantity or "other" discounts on a transaction-specific basis. In addition, we confirmed that the company's record-keeping system did not contain sufficient information to tie the "other" discounts to sales to particular customers. See the USIMINAS sales verification report at page 20. Thus, we find USIMINAS/COSIPA's allocation methodologies for quantity and "other" discounts to be reasonable, because each methodology linked the discounts to the associated sales on a basis which was as close to transaction-specific as possible given the limitations of the company's books and records. Moreover, because we noted no errors in the amounts reported at verification, we have accepted these discounts for purposes of our final analysis.

Comment 10: *Home Market Inland Freight Expenses for COSIPA*

According to Bethlehem and Nucor, the Department found at verification that COSIPA either failed to report correct amounts for inland freight to its home market customers or failed to substantiate the amounts reported for the vast majority of the transactions reviewed. Moreover, Nucor notes that COSIPA was unable to tie payment for specific invoices from its freight suppliers to specific shipments reported in the home market sales listing. Indeed, Nucor notes that COSIPA was unable to identify whether the payments to its freight supplier even pertained to shipments of subject merchandise at all (rather than to shipments of other products produced by the company).

In addition, the petitioners argues that COSIPA failed to substantiate any of the freight amounts charged by its affiliated company Rios Unidos. Specifically, Bethlehem states that at verification, company officials provided only one contract between COSIPA and Rios Unidos which did not: 1) cover a majority of the transactions reported in the home market sales listing; or 2) reconcile to the amounts reported which corresponded to the destinations referenced in the contract. Finally, Nucor contends that COSIPA failed to demonstrate that the transactions between COSIPA and its affiliated freight providers were conducted at arm's length.

Accordingly, the petitioners contend that the Department should apply adverse facts available to COSIPA's home market inland freight expenses because COSIPA failed to act to the best of its ability with respect to these expenses and because it stands to benefit from its lack of cooperation. As facts available, Bethlehem argues that the Department must disallow COSIPA's reported freight expenses in their entirety.

USIMINAS/COSIPA argues that there is no basis for applying facts available to its reported home market inland freight expenses because: 1) many of the discrepancies noted by the petitioners were of one *centavo* per ton; and 2) COSIPA was able to provide an electronic record of the freight amount paid. COSIPA argues it is unreasonable to expect a company of its size to maintain each freight invoice issued in the normal course of business or to provide an additional paper copy of each invoice when it was able to provide electronic records of the amounts incurred. Further, COSIPA argues that, while it provided most of the freight invoices requested at verification, it was not able to provide four of the requested invoices because they were not requested in advance of verification and are: 1) difficult to locate because of the number of invoices issued in the normal course of business; and 2) maintained at the freight company according to the contract between COSIPA and the freight company.

Department’s Position:

Section 776(a) of the Act provides that the Department may use facts available in a determination if an interested party either withholds requested information or supplies information which cannot be verified. Section 776(b) of the Act permits the Department to make adverse inferences in cases where it finds that the interested party failed to cooperate by not acting to the best of its ability. In its questionnaire responses, COSIPA indicated that it reported transaction-specific freight expenses. At the COSIPA verification, although COSIPA confirmed that it in fact had reported these expenses in this manner, we found that COSIPA was unable to: 1) provide invoices for certain freight expenses reported in its home market sales listing; 2) demonstrate that the expenses were correctly reported for various other sales; 3) demonstrate that freight services provided by affiliated companies were at arm’s length; or 4) link the payment documentation for any of the transactions selected for review to specific invoices. Thus, while we agree with USIMINAS/COSIPA that certain of the discrepancies found at verification with respect to these expenses were minor, we find that this fact does not overcome the problems observed at verification.

As a consequence, we find that the use of facts available is appropriate for COSIPA’s home market freight expenses, in accordance with section 776(a) of the Act. Moreover, because we conclude that COSIPA could have provided the necessary data but did not, it failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we have based the inland freight expenses on adverse facts available. As adverse facts available, we have disallowed inland freight expenses to COSIPA’s home market customers for purposes of the final determination.

Comment 11: *COSIPA’s Foreign Inland Freight Expenses*

USIMINAS/COSIPA reported foreign inland freight expenses provided by affiliated parties for COSIPA’s U.S. sales in its January 7, 2002, response. We requested in a supplemental questionnaire that USIMINAS/COSIPA demonstrate that the the transactions between COSIPA and this affiliated party were at arm's length. See the March 1 supplemental questionnaire at page 3. USIMINAS/COSIPA responded on March 19 that COSIPA conducts a public auction requesting proposals for transport from various transportation companies. Based on these responses, COSIPA selects the lowest bid, regardless of whether the company is affiliated. See page 53 of USIMINAS/COSIPA’s March 19 supplemental response.

At verification, COSIPA stated that it was not able to provide specific documentation to demonstrate that its transactions with all but one affiliated freight provider were conducted at arm’s length. Instead, COSIPA provided a portion of Brazilian corporate law which stated that the sale or provision of services between affiliated parties at prices less than those charged to unaffiliated parties is prohibited.

According to Nucor, COSIPA's submission of this portion of Brazilian corporate law does not prove that its transactions with the two affiliated companies in question were at arm's length. As support for its position, Nucor cites Hot-Rolled Steel from Brazil, 64 FR at 38782, where the Department stated that "USIMINAS's assertion that it has no preferential arrangements with {two affiliates} does not constitute proof that it has no arrangement or contract with these affiliated rail companies or that transactions were at arm's length." Accordingly, Nucor asserts that COSIPA has failed to demonstrate that these expenses were incurred at arm's-length prices. In addition, regarding the services provided by a third affiliated party, USIFAST, Nucor notes that, while COSIPA was able to demonstrate that the prices charged by this company were at arm's length, COSIPA did not provide the Department with any method of distinguishing the transactions shipped by USIFAST from any other transactions. Consequently, Nucor argues that the Department should continue to use adverse facts available with respect to COSIPA's foreign inland freight expenses.

USIMINAS/COSIPA did not comment on this issue.

Department's Position:

The use of adverse facts available is warranted with respect to COSIPA's reported foreign inland freight expenses because the respondent was not able to demonstrate that the majority of transactions conducted with affiliated freight providers were at arm's length. Moreover, regarding USIFAST, while COSIPA was able to provide evidence that the freight services provided by this company were at arm's length, we note that COSIPA did not provide any information to allow the Department to identify the freight provider used for a given U.S. sale. Therefore, we were unable to distinguish the merchandise shipped by USIFAST from the remainder of the merchandise sold to the United States.

Section 776(a) of the act provides that the Department may use facts available in a determination if an interested party either withholds requested information or supplies information which cannot be verified. Section 776(b) of the Act permits the Department to make adverse inferences in cases where it finds that the interested party failed to cooperate by not acting to the best of its ability. Because COSIPA was unable to demonstrate that transactions conducted with its affiliated freight providers were at arm's length, we find that the use of facts available is appropriate for COSIPA's foreign inland freight expenses, in accordance with section 776(a) of the Act. Moreover, because COSIPA is affiliated with these companies, we conclude that COSIPA could have provided the necessary data but did not, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we have continued to base the foreign inland freight expenses for COSIPA on adverse facts available. As adverse available, we have assigned the highest foreign inland freight expense amount reported by COSIPA to all of COSIPA's U.S. sales, in accordance with our practice. See, e.g., Hot-Rolled Steel from Brazil, 64 FR at 38782. For a discussion of the calculation of this amount, see the Final Sales Calculation Memo.

<u>Comment 12</u>: *USIMINAS' s Home Market Inland Freight Expenses and Foreign Inland Freight Expenses*

In the preliminary determination, we assigned the lowest reported freight cost to USIMINAS's home market sales and the highest reported freight cost by mill to all of USIMINAS/COSIPA's U.S. sales because the respondent did not demonstrate that these expenses were incurred at arm's length. According to Nucor, USIMINAS made no attempt at verification to provide information regarding the arm's-length nature of its transportation costs that would cause the Department to alter its position regarding these expenses. Therefore, Nucor asserts that we should not revise our treatment of these expenses for purposes of the final determination. As support for its position, Nucor cites to <u>Hot-Rolled Steel from Brazil</u>.

USIMINAS/COSIPA contends that USIMINAS's errors with respect to the reported home market inland freight expenses were not deliberate, as evidenced by the fact that all of the discrepancies found at verification with regard to these expenses resulted in the under-reporting of freight costs. Therefore, USIMINAS/COSIPA argues that facts available is not warranted with respect to USIMINAS's home market freight expenses.

<u>Department's Position</u>:

We agree that USIMINAS did not demonstrate that its freight expenses provided by affiliated parties were at arm's length, as requested in our March 1 supplemental questionnaire. Because USIMINAS did not provide any additional information at verification which would cause us to reconsider this position with respect to two of these affiliates, and it did not provide any method of identifying shipments demonstrated at verification to be at arm's length for a third, we have continued to assign the lowest reported freight cost to USIMINAS's home market sales and the highest reported freight cost to all of USIMINAS's U.S. sales, as adverse facts available, for purposes of the final determination.

Finally, we find that USIMINAS's argument regarding the errors found at verification is irrelevant because we cannot determine whether or not these charges were incurred at arm's length.

<u>Comment 13</u>: *Foreign Brokerage and Handling Expenses*

At verification, USIMINAS stated that it had inadvertently reported the same per-unit foreign brokerage and handling expense amount for all sales in the U.S. sales listing, rather than reporting this expense on a vessel-specific basis. Bethlehem asserts that, for the final determination, the Department should revise its margin calculations to use the vessel-specific expense amounts as corrected at verification.

USIMINAS/COSIPA did not comment on this issue.

Department's Position:

At verification, we confirmed that USIMINAS incurred foreign brokerage and handling expenses on a vessel-specific basis. Because we have the actual vessel-specific expenses on the record of this proceeding, we have used them in the margin calculations performed for the final determination.

Comment 14: *Credit Expenses for USIMINAS*

Bethlehem asserts that at verification the Department discovered pervasive problems with the payment dates reported in USIMINAS's home market sales listing. According to Bethlehem, USIMINAS reported the payment date incorrectly for eight out of 13 of the sales examined at verification. Bethlehem argues that, because the date of payment is essential to calculating home market credit costs accurately and because USIMINAS has failed to accurately report the date of payment for the majority of the transactions examined at verification, the Department should find that USIMINAS failed verification with regard to home market credit expenses. Therefore, Bethlehem contends that the Department should base these expenses on adverse facts available because USIMINAS failed to act to the best of its ability and stands to benefit from its lack of cooperation. As adverse facts available, Bethlehem states that the Department should assign the lowest credit expense amount reported in the USIMINAS home market sales listing to all of USIMINAS's home market sales (including those for which the Department obtained accurate information at verification).

Nucor's argument, on the other hand, is limited to those home market sales for which USIMINAS reported a payment date of November 30, 2001. According to Nucor, at verification the Department obtained the actual payment dates for two of these sales and found that both of them had actual payment dates well before November 30. As facts available, Nucor contends that the Department should either: 1) disallow home market credit expenses for these sales; or 2) use the average credit period for all other home market sales to calculate credit expenses for them.

USIMINAS/COSIPA disagrees that there is any basis for applying facts available to USIMINAS's home market credit expenses. Specifically, USIMINAS/COSIPA notes that many of the incorrect payment dates involved a discrepancy of only one day. Consequently, USIMINAS/COSIPA argues that the Department should continue to use USIMINAS's reported home market credit expenses.

Department's Position:

We agree that the use of facts available with regard to certain of USIMINAS's home market credit expenses is warranted. In its questionnaire response, USIMINAS explained that it had assigned a date of payment of November 30, 2001, for all sales which remained unpaid as of its January 9, 2002, submission. At verification, we selected two of these transactions and attempted to verify that USIMINAS had not yet received payment for them. However, we found that USIMINAS had received payment for both more than a year prior to November 30, 2001.

Section 776(a) of the Act provides that the Department may use facts available in a determination if an interested party either withholds requested information or supplies information which cannot be verified. At verification, we were unable to verify the payment dates for those sales reported as paid on November 30, 2001. Therefore, we find that the use of facts available is appropriate to calculate credit expenses for these sales, in accordance with section 776(a) of the Act. As facts available, we have used the average credit period for all home market sales not reported as paid on November 30, 2001.

Regarding the payment dates for the remaining sales reported in USIMINAS's home market sales listing, we disagree with Bethlehem that the errors identified at verification were significant. Indeed, of the six transactions for which USIMINAS reported an inaccurate payment date, the reported date was earlier by only a single day for five of these transactions. Thus, we find that, to the extent that USIMINAS's credit period was misstated, it was done so in a conservative manner. As a consequence, we have accepted the payment dates as reported for the remainder of USIMINAS's home market transactions.

Comment 15: *Credit Expenses for COSIPA*

Bethlehem and Nucor assert that at verification the Department discovered pervasive problems with the payment dates reported in COSIPA's sales listings. For example, Bethlehem notes that the Department found discrepancies with almost 80 percent of the payment dates examined at verification, while Nucor asserts that the Department found significant discrepancies in the amounts reported for sales paid in multiple installments. Moreover, the petitioners note that not only was COSIPA unable to provide bank statements to support the majority of the reported payment dates for the sales examined at verification, but the information shown on the one bank statement that COSIPA did provide did not match the information in COSIPA's accounting system or response. Consequently, the petitioners contend that the Department should base COSIPA's credit expenses on adverse facts available. As adverse facts available, Bethlehem states that the Department should assign the lowest credit expense amount reported in the home market sales listing to all of COSIPA's home market sales (including those for which the Department obtained accurate information at verification) and the highest credit expense reported in the U.S. sales listing to all of COSIPA's U.S. sales. Nucor, on the other hand, asserts that the Department should set credit expenses to zero for all home market sales that involve multiple payments.

USIMINAS/COSIPA asserts that there is no basis for applying facts available to COSIPA's credit expenses. According to USIMINAS/COSIPA, many of errors alleged by the petitioners are not errors at all; rather, they are simply the fact that COSIPA did not have bank payment slips to substantiate all of the payment records. USIMINAS/COSIPA argues that this fact should not be fatal, because like many large companies throughout the world, it is moving away from paper-based accounting systems into electronic systems. Indeed, USIMINAS/COSIPA notes that it does not even use the bank payment slip as the date for registering payment in its accounting system, but rather the date when the funds become available electronically.

USIMINAS/COSIPA asserts that, to the extent that there were errors in the reported payment dates on home market sales, these errors relate largely to sales with multiple payment dates. USIMINAS/COSIPA alleges that the problems found at verification arose because COSIPA does not use the Department's methodology for multiple payment dates in its normal accounting system. In any event, USIMINAS/COSIPA asserts that the problems found with these sales are either minor or explicable in accordance with normal business practices (e.g., clerical errors). Moreover, USIMINAS/COSIPA notes that these sales represent less than three percent of COSIPA's database, hardly making any errors related to them a prevalent problem. Finally, USIMINAS/COSIPA asserts that, if the verification report is read as a whole, it its clear that COSIPA cooperated fully with the Department. Consequently, USIMINAS/COSIPA argues that the Department should continue to rely on COSIPA's reported home market and U.S. credit expenses for purposes of the final determination.

Department's Position:

At verification, COSIPA presented a list of revised payment dates for those transactions for which it received payment in multiple installments. COSIPA officials explained that this list was compiled from a database outside of its normal accounting system (known as the "SAP system"), but that it should correspond to the actual payment dates of the home market invoices paid in multiple installments. When we attempted to tie the dates and payment amounts on this list to the SAP system, however, we were unable to do so in a number of instances. In fact, we found that most of the transactions examined at verification were recorded in a single installment in the SAP system. Moreover, COSIPA was unable to explain: 1) the significance of the SAP payment dates; 2) why they differed from the dates on the company's bank statements; or 3) any correlation between the dates. See the COSIPA sales verification report at pages 20 and 21.

Section 776(a) of the Act provides that the Department may use facts available in a determination if an interested party either withholds requested information or supplies information which cannot be verified. At verification we found that COSIPA reported unreliable payment dates for its home market sales paid in multiple installments. Therefore, we find that the use of facts available is appropriate to calculate credit expenses for these sales, in accordance with 776(a) of the Act. Moreover, COSIPA also did not provide an adequate explanation as to why the payment dates reported for home market sales paid in multiple installments tied to neither the SAP system nor the date when the bank made funds available to COSIPA. Accordingly, we find that USIMINAS/COSIPA did not act to the best of its ability in reporting the payment dates for home market sales paid in multiple installments and, as a consequence, we have disallowed credit expenses for these sales, as adverse facts available, in accordance with section 776(b) of the Act.

Regarding the payment dates for the remainder of COSIPA's home market, and all of its U.S. sales, we disagree that the discrepancies noted in the verification report were either extensive or significant. In fact, in all but one instance where we found discrepancies with COSIPA's home market payment dates, COSIPA had reported payment dates which were earlier than the actual dates. Similarly, we found no discrepancies at all for five of the eight U.S. transactions examined, and the only problem with the remaining three was that COSIPA was unable to provide the relevant bank statements. Consequently, we do not find that facts available is warranted with regard to COSIPA's remaining home market credit expenses or to its U.S. credit expenses.

<u>Comment 16</u>: *Warranties vs. Rebates for USIMINAS*

At verification, we found that USIMINAS had issued a credit note related to several sales which had not been accounted for in the U.S. sales listing. According to the respondent, the Department's verification report improperly characterizes these credits as rebates, when in fact they are warranty expenses related to irregularities in material shipped to a particular customer. USIMINAS/COSIPA contends that this misunderstanding arose because the Department mistranslated the Portuguese term *abatimento* as "rebate," when it should in fact be translated as reduction or allowance.

In any event, USIMINAS/COSIPA claims that the credit note at issue in this case cannot be considered a rebate because it was issued after the date the petition was filed in this case. According to USIMINAS/COSIPA, the Department's Antidumping Manual states that the Department does not allow rebates which are instituted retroactively after the filing of a petition. Furthermore, USIMINAS/COSIPA contends that to be considered a rebate, a credit must be known or knowable in advance of the sale. In support of this assertion, USIMINAS/COSIPA cites <u>Final Determination of Sales at Less than Fair Value; Brass Sheet and Strip from Canada</u>, 51 FR 44319, 44321 (Dec. 9, 1986), where the Department allowed home market rebate expenses reported at year end because these expenses were provided for in the sales terms and were directly related to the sales under consideration.

Instead, USIMINAS/COSIPA argues that the credit note found at verification should properly be treated as a warranty expense, and it should be reallocated over all U.S. sales given that it is a general cost of doing business. In support of this assertion, USIMINAS/COSIPA cites <u>Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From Argentina</u>, 66 FR 24108, 24112 (May 11, 2001), where the Department stated:

> Because warranty expenses are normally incurred after the sale is made, and are not incurred until a warranty claim has been received from a customer, we believe that in cases where warranty services are provided by the producer/exporter, all sales are subject to warranty expenses. Therefore, ...we have recalculated ...warranty expenses by allocating the total reported expenses for warranty claims in each market over the total quantity of sales made ... in each market.

See also Circular Welded Non-Alloy Steel Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review, 65 FR 37518 (June 15, 2001) and accompanying Issues and Decision memorandum at Comment 8. Further, USIMINAS/COSIPA maintains that such an allocation of warranty expenses has been upheld by the CAFC, citing NSK v. United States, 190 F. 3d 1321 (Fed. Cir. 1999) (NSK). Therefore, USIMINAS/COSIPA maintains that the Department should follow its practice regarding warranty expenses and allocate the total amount of the U.S. credit note over all of USIMINAS's U.S. sales.

Bethlehem contends that the Department should base the amount of these credits on adverse facts available because USIMINAS/COSIPA failed to report them despite explicit instructions in the initial and supplemental questionnaires that it do so. Indeed, Bethlehem notes that not only did the Department discover these omissions during the course of verification, but it is unclear how many other credit adjustments may have gone similarly unreported. Finally, Bethlehem notes that USIMINAS/COSIPA refused to correct its U.S. sales database after verification to report the actual amounts of the credits, stating that it would rather brief the issue. Thus, Bethlehem concludes that USIMINAS/COSIPA has failed to cooperate to the best of its ability in this investigation. Bethlehem asserts that because the statute permits the Department to draw an adverse inference in such instances, it should do so here. As adverse facts available, Bethlehem contends that the Department should assign the highest credit adjustment discovered at verification.

Nucor, on the other hand, agrees that the expenses in question are warranty expenses. However, Nucor disagrees that these expenses should be allocated over all U.S. sales, but instead argues that they should be assigned on a transaction-specific basis. Specifically, Nucor argues that, because these warranty expenses can be tied to particular sales and are not part of a general program based on all sales or sales to a particular set of customers, they must be transaction-specific. Furthermore, Nucor contends that these warranty expenses are direct expenses because they were only incurred because of the sale of subject merchandise, unlike indirect expenses which cannot be tied directly to particular sales.

According to Nucor, the federal courts have permitted the Department to determine a reasonable method for allocating warranty expenses, including accepting such data on a transaction-specific basis. Nucor cites NSK, where the CAFC held that, because the statue provides no specific guidelines for the treatment of warranty expenses, the Department's interpretation of the statute with respect to circumstance-of-sale adjustments for warranty expenses cannot be disturbed if reasonable. Moreover, Nucor maintains that, since the CAFC's decision in NSK, the Department has held that warranty expenses are direct selling expenses that can be tied to particular sales.

According to Nucor, USIMINAS/COSIPA has selectively cited precedent regarding the Department's practice on the allocation of warranty expenses. Specifically, Nucor cites the final results in the most recently completed administrative review on hot-rolled steel products from Brazil, a case which also involved USIMINAS/COSIPA, where the Department found that warranty expenses which can be tied to particular sales are, in fact, direct expenses. See Certain

Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Final Results of Antidumping Duty Administrative Review and Termination of the Suspension Agreement, 67 FR 6226 (Feb. 11, 2002) and accompanying Issues and Decision memorandum at Comment 9 (2002 Hot-Rolled Steel from Brazil). Nucor also cites Steel Beams From Luxembourg at Comment 6,[20] where the Department accepted warranties reported on a transaction-specific basis after it found that the respondent was able to report them in such a manner. Accordingly, Nucor argues that, because the Department can tie the USIMINAS U.S. credit note in question to specific sales, it should use this information to calculate transaction-specific U.S. warranty expenses for USIMINAS.

Department's Position:

We do not agree that the use of adverse facts available is appropriate here. Although these credit notes were identified for the first time at verification, they were not "discovered" by the Department but rather disclosed by USIMINAS. See the USIMINAS sales verification report at page 14. Moreover, we reviewed USIMINAS's discount/rebate account (i.e., the account in which the credits at issue were recorded) at verification and confirmed that there were no additional credit notes which had been improperly omitted from the sales listing. See the USIMINAS sales verification report at pages 22 and 23. Therefore, we have accepted the expenses provided at verification for purposes of the final determination.

Regarding whether it is appropriate to treat these expenses as rebates or warranties, we note that the Department addressed the identical issue in a recent case involving the same respondent companies and the same fact pattern. In that case, we found that these expenses were most appropriately classified as direct warranty expenses, stating:

> The Department recognizes that warranty expenses can be direct or indirect expenses. For instance, in the September 2001 Questionnaire that was sent to respondents, the Department states, at page C-25 for field number 42.0 (WARRU or warranty expense), that "{w}arranty expense should include only the direct expense less any reimbursement received from the customer or unaffiliated parts supplier." Additionally, the Department states that the respondents should, "{r}eport indirect warranty expenses as part of indirect selling expenses." Accordingly, warranty costs may be a direct expense, and, in their Supplemental Questionnaire response, respondents provided a list of sales that had warranty claims and the Department was able to verify this information.
>
> According to section 351.410(c) of the Department's regulations, direct selling expenses are expenses that result from, and bear a direct relationship to, the particular sale in question. USIMINAS's and COSIPA's warranty expenses are expenses that are a direct and unavoidable consequence of the sale (i.e., in the absence of sales to the customers, the

[20] We note that Nucor incorrectly cited to Comment 6 of this Issues and Decision memorandum. The relevant comment is found at Comment 1.

> corresponding warranty claims would not have been incurred) . . . Therefore, we have continued to classify USIMINAS' and COSIPA's warranty expenses as direct selling expenses.

See 2002 Hot-Rolled Steel from Brazil at Comment 9.

In this proceeding, there is no question that the credit note relates to specific U.S. sales based on our findings at verification. Further, the Department has treated USIMINAS's warranty expenses as transaction-specific direct expenses in other proceedings. See 2002 Hot-Rolled Steel from Brazil at Comment 9 and Steel Beams from Luxembourg at Comment 1. Therefore, we find that it is appropriate to treat these warranty expenses as such in this case, in accordance with our practice, and we have used the amounts reflected in the USIMINAS sales verification report in the calculations performed for the final determination.

Finally, we note that USIMINAS also reported home market warranty expenses as a percentage of total sales. Because we obtained transaction-specific data at verification, we have used this information as well for purposes of the final determination.

Comment 17: *Warranty Expenses for COSIPA*

According to Bethlehem, the Department found at verification that COSIPA was unprepared to substantiate the warranty expenses reported for its home market and U.S. sales. Consequently, Bethlehem contends that the Department should disallow COSIPA's reported home market warranty expenses and base U.S. warranty expenses on adverse facts available. As adverse facts available, Bethlehem argues that the Department should assign the highest reported U.S. warranty expense amount to all of COSIPA's U.S. sales.

USIMINAS/COSIPA did not comment on this issue.

Department's Position:

In our May 6, 2002, COSIPA sales verification outline, we notified COSIPA that we intended to review source documentation related to the warranty expenses incurred on both its home market and U.S. sales, and to tie these documents to its general ledger, financial statements, and the home market and U.S. sales listings. See the COSIPA sales verification outline at pages 10 and 12. At verification, however, COSIPA officials stated that they were unprepared to verify either home market or U.S. warranty expenses and that the documentation related to the calculation of these expenses was not available. See the COSIPA sales verification report at pages 22 and 27.

Section 776(a) of the Act provides that the Department may use facts available in a determination if an interested party either withholds requested information or supplies information which cannot be verified. Because COSIPA was unprepared to verify these expenses, we find that the use of facts available is appropriate for them, in accordance with section 776(a) of the Act.

Further, because COSIPA was notified that the Department would verify its warranty expense documentation and because COSIPA could have provided the documentation related to these warranty expenses but did not do so, we conclude that COSIPA failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we have based COSIPA's home market and U.S. warranty expenses on adverse facts available. As adverse facts available, we have disallowed COSIPA's reported home market warranty expenses and have assigned COSIPA's highest reported U.S. warranty expense to all of COSIPA's U.S. sales.

Comment 18: *Technical Service Expenses*

According to Bethlehem, the Department should not continue to make a circumstance-of-sale adjustment for COSIPA's reported home market technical services expenses, because it found at verification that these expenses related to COP, rather than sales. Bethlehem notes that these expenses were double counted in the preliminary determination because they were also included in COSIPA's reported G&A expenses.

USIMINAS/COSIPA did not comment on this issue.

Department's Position:

We agree that we inadvertently double counted these expenses in the preliminary determination. See page 23 of the COSIPA sales verification report. Accordingly, we have not made a circumstance-of-sale adjustment for them for purposes of the final determination.

Comment 19: *Use of Facts Available to Determine USIMINAS's Cost of Production*

In the preliminary determination, we found that USIMINAS/COSIPA did not report cost data for certain home market products, and it reported incomplete cost data for others. Therefore, we based the preliminary dumping margin for all U.S. sales that matched to these products on adverse facts available. However, we also afforded USIMINAS/COSIPA an opportunity to report the necessary data, which the company did on May 9, 2002.

USIMINAS/COSIPA contends that the Department should not continue to apply facts available for the sales in question for purposes of the final determination. USIMINAS/COSIPA claims that the basis for the use of facts available no longer exists because it has now provided complete COP data for all home market products. Furthermore, USIMINAS/COSIPA asserts that the Department has not identified any deficiencies in the information provided.

The petitioners did not comment on this issue.

Department's Position:

In the preliminary determination, we applied adverse facts available to those products for which USIMINAS/COSIPA failed to report costs and to those products for which USIMINAS/COSIPA did not report usable costs prior to the date of that determination. Because USIMINAS/COSIPA remedied this deficiency at our request subsequent to the preliminary determination and we verified the information in question, there is no longer any basis to apply adverse facts available. Instead, we have used the COP reported by USIMINAS/COSIPA for the purposes of this final determination.

Comment 20: *Inclusion of Non-POI Costs in the Cost of Production*

For purposes of the preliminary determination, we applied adverse facts available to USIMINAS's reported costs because USIMINAS disregarded the Department's instructions to report its costs based on the POI. Specifically, we increased the COM of certain products produced by USIMINAS using the highest percentage difference between USIMINAS's product-specific COMs and COSIPA's product-specific COMs.

USIMINAS/COSIPA contends that the Department had no basis to disregard USIMINAS's submitted costs in the preliminary determination and it implies that the Department should use these costs in the final analysis. USIMINAS/COSIPA asserts that it calculated its original costs in direct response to the Department's requirement that it provide cost data for all sales made during the POI. According to USIMINAS/COSIPA, because: 1) USIMINAS does not assign a cost to merchandise until it is registered as a sale; and 2) USIMINAS does not register a sale until such merchandise is loaded on board ship for export,[21] in order to comply with the Department's reporting requests, it was necessary for USIMINAS to provide the cost for sales of merchandise shipped from the factory during the POI but exported afterwards (as late as November 2001). This resulted in a 16-month cost-reporting period (i.e., July 2000 to November 2001).

Nonetheless, USIMINAS/COSIPA notes that USIMINAS provided cost information limited to the POI at the Department's request (despite the fact that certain products were not produced then, which initially resulted in missing cost data). Thus, USIMINAS/COSIPA asserts that the Department has sufficient cost information to perform its analysis, regardless of which database is used.

The petitioners did not comment on this issue.

[21] For purposes of this final determination, the Department defines date of sale for U.S. exports as the date the merchandise leaves the mill.

Department's Position:

The Department's antidumping questionnaire provides that COP data should be calculated based on the actual costs incurred during the POI, and it is the Department's normal practice to require respondents to report their costs on this basis. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996) citing Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain, 59 FR 66931 (Dec. 28, 1994) and Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy, 59 FR 66921 (Dec. 28, 1994). Therefore, we have accepted USIMINAS/COSIPA's cost information limited to the POI for the purposes of this final determination. Finally, we note that the respondent's concern regarding its missing cost data is unfounded, given that the Department's analysis for this final determination did not identify any products without reported costs.

Comment 21: *Reported Scrap Credit Values*

Nucor contends that, based on its knowledge of the steel industry, certain credit values reported by COSIPA[22] are "improbable" in comparison to the company's total material costs, which results in a gross understatement of the company's total material costs. Nucor alleges that the validity of its conclusion is illustrated by: 1) COSIPA's reported information concerning the company's yield losses; and 2) a comparison of the reported scrap credits and the market price of such scrap during the POI, based on import and export data. Nucor contends that, for these reasons, and because the respondent was purportedly unable to report scrap credit values for a significant period of time, the Department should disallow COSIPA's reported scrap credits.

The respondent disagrees, stating that the Department verified that the credits reported in COSIPA's cost database represent not only scrap offsets, but all cost reductions recognized by COSIPA. Specifically, USIMINAS/COSIPA notes that these credits represent cost reductions for scrap, coke oven gas, and sales of other by-products. Therefore, USIMINAS/COSIPA maintains that Nucor's analysis is flawed, given that it based its analysis on the total values reported in COSIPA's TOTSCRAP data field rather than the values for scrap alone. Moreover, USIMINAS/COSIPA notes that the Department confirmed at verification that the reported credits accurately reflected COSIPA's production costs, as recorded in the company's books and records. Accordingly, USIMINAS/COSIPA contends that the Department should accept these credits for purposes of the final determination.

Department's Position:

During the cost verification, we confirmed that the credit field in question included all cost reductions recognized by COSIPA, including sales of scrap, coke oven gas, blast furnace gas and other by-products. See cost verification report at page 23. Therefore, we agree that Nucor's

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[22] These values are reported in the data field entitled "TOTSCRAP."

analysis of yields and scrap prices is flawed because it assumes that the amounts reported in the TOTSCRAP data field are for scrap only and do not include the values of the other by-products (e.g., coke oven gas). Furthermore, as noted in the cost verification report at page 23, we verified that the items included in this field are valued in the same manner on a per-unit basis when used in production and when generated from production, and that these values are reflected in COSIPA's normal books and records. As such, for purposes of this final determination, we have accepted COSIPA's reported TOTSCRAP values.

Comment 22: *Depreciation of Temporarily Idled Assets*

During the POI, COSIPA temporarily idled one of its blast furnaces for repairs. We calculated the depreciation associated with this idled asset and included it in COSIPA's costs for the preliminary determination.

USIMINAS/COSIPA contends that the Department was not justified in including in COP any depreciation expenses on the furnace while it was idled. According to USIMINAS/COSIPA, because the asset was idled, the company was not incurring a cost nor was it generating any revenue. USIMINAS/COSIPA asserts that depreciating this asset during the period in which it was idled violates the accounting principle that costs should match the revenues generated by the asset, to the extent possible. More importantly, USIMINAS/COSIPA states that the suspension of depreciation, as reflected in COSIPA's normal books and records, is required by Brazilian generally accepted accounting principles (GAAP). Furthermore, COSIPA notes that the suspension of depreciation while the asset was idled, and subsequent resumption of depreciation[23] after the asset was placed back into operation, is shown in COSIPA's financial statements which were certified by outside auditors as being in accordance with Brazilian GAAP and accurately reflecting the costs of the company.

USIMINAS/COSIPA cites 19 U.S.C. § 1677b(f)(1)(A), which states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. USIMINAS/COSIPA contends that, because its suspension of depreciation is both in accordance with GAAP and reasonably reflects actual costs associated with the production and sale of the merchandise in question, the Department should not add an imputed cost of depreciation to COSIPA's COP. Moreover, USIMINAS/COSIPA notes that, when the Department adjusted COSIPA's COP in the preliminary determination by adding depreciation while the asset was idled, and at the same time accepted COSIPA's higher costs of depreciation once the asset resumed operation, it effectively overstated the depreciation of the blast furnace. As a result, the respondent contends, the Department distorted COSIPA's COP.

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[23] USIMINAS/COSIPA claims that the depreciation after the asset was placed into operation was based on the higher asset value incorporating all repairs and renovations.

Both Bethlehem and Nucor maintain that the Department's long standing practice is to include depreciation on idled assets in a respondent's reported costs. In support of this assertion, Nucor cites Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531 (Apr. 2, 2002) and accompanying Issues and Decision memorandum at Comment 13 (Silicomanganese from India) (where the Department stated that even though an asset may be idled, the expenses associated with that asset are part of the general expense burden of the company which is attributable to all sales of the company), as well as Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan, 63 FR 40461, 40468-9 (July 29, 1998) (SSWR from Taiwan); See also 2002 SSB from Italy at Comment 47; and Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64720, 64728 (Dec. 9, 1993).

According to the petitioners, USIMINAS/COSIPA's argument that the suspension of depreciation of the asset in question is in accordance with Brazilian GAAP is unavailing. Specifically, the petitioners cite 2000 Cold-Rolled Steel from Brazil, where the Department states that its normal practice is to include in COP the depreciation of equipment not in use or temporarily idled, notwithstanding home market accounting standards which may allow companies to refrain from doing so. Moreover, Nucor notes that the CIT upheld this practice in NTN Bearing Corp v. United States, Slip Op. 93- 129 (CIT 1993), when it ruled that the fact that costs were incurred in connection with the idling of an asset is paramount to the local rule which permits a company to omit such costs from its normal books and records. Finally, the petitioners assert that the inclusion of the depreciation cost of the idled asset in the reported costs will not result in an overstatement of depreciation costs for the blast furnace. Rather, they argue, the exclusion of such costs would result in a gap in depreciation expense, resulting in an understatement of the depreciation cost of the asset.

Department's Position:

At verification, we confirmed that the asset in question, COSIPA's No. 1 blast furnace, was idled during repairs for a portion of the POI. The repairs made to the asset during the time period in question were capitalized by COSIPA. Upon completion of the repairs, the asset was placed back into operation and COSIPA resumed depreciating the asset at the new capitalized value. Because the asset was idled for repairs during the POI rather than being idled for other purposes (e.g., discontinued use of the asset due to decreased production capacity) and because the asset's depreciation costs will be properly matched to the revenue of those products which it produced subsequent to the completion of the repairs, we believe that the depreciation for this asset while it was idled is not a period expense of COSIPA and should therefore not be included in COSIPA's G&A expenses.

We agree with Bethlehem that the Department's standard practice is to include the depreciation on idled assets in G&A expenses. However, we note that this practice relates to those assets that are idled for purposes other than repairs (see, e.g., Silicomanganese from India and SSWR from Taiwan). Accordingly, we have not included depreciation costs for those months of the POI that COSIPA's No. 1 blast furnace was idled for repairs in USIMINAS/COSIPA's COP and CV.

Comment 23: *Amortization of Goodwill*

USIMINAS/COSIPA claims that the Department should not include the goodwill amortized by USIMINAS in fiscal year 2000 as part of G&A expenses. USIMINAS/COSIPA argues that the Department's long-standing policy is to include as G&A expenses only those items that bear some relationship to the manufacture of the subject merchandise and to exclude those items that relate entirely to non-subject merchandise. As support for this assertion, USIMINAS/COSIPA cites Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002) and accompanying Issues and Decision memorandum at Comment 6 (Steel Beams from South Africa); and Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 58 FR 37154, 37166 (July 9, 1993). In the instant case, USIMINAS/COSIPA asserts that virtually all of the goodwill amortization in question relates to USIMINAS's purchase of companies that do not manufacture subject merchandise (rather than productive assets). According to USIMINAS/COSIPA, the amortization of these costs therefore has nothing to do with the production costs of the purchasing company. Furthermore, USIMINAS/COSIPA asserts that, in accordance with U.S. and Brazilian GAAP, goodwill affects the assets of the purchased company, not the balance sheet or profit and loss statement of the purchasing company. USIMINAS/COSIPA concludes that, because the statute requires the Department to accept the books and records of the respondent if they follow GAAP and reasonably reflect costs, the Department should not continue to include the goodwill amortization in USIMINAS's G&A expenses.

Bethlehem disagrees, noting that the argument raised here is similar to one raised in Lumber from Canada, at Comment 16. According to Bethlehem, in Lumber from Canada, the Department rejected the argument that goodwill associated with the acquisition of entities not involved in the production or sale of subject merchandise should not be taken into consideration when calculating G&A expenses. Furthermore, Bethlehem contends that the respondent's citation to Steel Beams from South Africa is not on point as it neither relates to goodwill, nor contradicts the Department's actions in the preliminary determination in this case or in Lumber from Canada. Finally, Bethlehem contends that the respondent's argument that goodwill does not affect either the balance sheet or the profit and loss statement of the purchasing company cannot be true because the amortization of goodwill was listed on USIMINAS's unconsolidated income statement for fiscal year 2000. Thus, Bethlehem contends that the Department should continue to adjust G&A expenses for the amortization of goodwill.

Department's Position:

As we stated in Lumber from Canada, goodwill is recognized when a company purchases another company for an amount in excess of the acquired company's market value. The amortization of goodwill recognized by USIMINAS reflects the current year's portion of the decrease in value of the acquired assets. The Department's general practice is to consider goodwill as related to the general operations of the company as a whole. Therefore, because the amortization of goodwill in this case relates to the overall operations of USIMINAS, we have included these costs in the respondent's G&A expense ratio calculation.

Regarding Steel Beams from South Africa, the Department stated in that case that it normally computes the G&A expense ratio of a company based on its unconsolidated operations and includes a portion of G&A expenses from affiliated companies which pertains to the product under investigation. In the instant case, the amortization of goodwill was recognized by USIMINAS on its unconsolidated financial statements, rather than the financial statements of the purchased companies. Therefore, this case differs from Steel Beams from South Africa, because the amortization costs recognized by USIMINAS related to its purchase of other entities (i.e., overall operations of the company), rather than to expenses recognized by the purchased entities (i.e., G&A expenses incurred by the purchased entities). Finally, we agree with USIMINAS/COSIPA's argument that the Department accepts data recorded in the books and records of the respondent if they follow home country GAAP and reasonably reflect costs. In this case, we note that USIMINAS did in fact recognize the amortization of goodwill in accordance with Brazilian GAAP, as shown in its fiscal year 2000 unconsolidated financial statements under "Operating Expenses." Therefore, because USIMINAS recognized these costs in its normal books and records and because we find that these costs are not distortive, we have included these costs in the calculation of USIMINAS/COSIPA's G&A expense ratio.

Comment 24: *Exclusion of Financial Gains and Losses on Receivables from Financial Expenses*

At verification, we found that USIMINAS/COSIPA had included income received on accounts receivable in its calculation of the financial expense ratio. USIMINAS/COSIPA argues that the Department should continue to allow this offset to financing expenses because the Department's policy of excluding gains and losses[24] on accounts receivable is fundamentally wrong, violates the language of the statute, and contradicts the Department's overall policy regarding financial income and expenses. According to USIMINAS/COSIPA, the Department's policy regarding financial income and expenses is based on the fungibility of money and, for that reason, the Department requires financial expense to be calculated using consolidated financial statements. As such, USIMINAS/COSIPA asserts that the financial expenses of all affiliates, even those

[24] The respondent notes that the cost verification report only discusses USIMINAS/COSIPA's treatment of income on its receivables. According to USIMINAS/COSIPA, if the Department were to exclude only income related to accounts receivable and not expenses, it would be a violation of the fundamental principle of fairness.

which do not produce the subject merchandise or engage purely in selling functions, are included in COP. In contrast USIMINAS/COSIPA asserts that the Department's policy related to income and expenses incurred on accounts receivable is to treat these monies as if they were not fungible and somehow related only to sales and not manufacturing. The respondent argues that money cannot be fungible for some purposes and not for others.

USIMINAS/COSIPA notes that it does not differentiate between short-term financial income and expenses on receivables and payables in its books and records, in accordance with U.S. and Brazilian GAAP. According to USIMINAS/COSIPA, when the Department includes financial income and expenses on payables, but not receivables, as part of COP, it thereby disregards the company's books of account in violation of the statute. See, 19 U.S.C. § 1677b(f)(1)(A). Moreover, USIMINAS/COSIPA asserts that the statute clearly states that the Department is not only to consider costs reflecting production but also costs associated with the sale of the merchandise. Thus, USIMINAS/COSIPA argues that all gains and losses should be included in determining USIMINAS/COSIPA's net financial expenses.

Bethlehem counters that the Department's clearly established practice with regard to interest income on accounts receivable is to exclude this type of income from the calculation of a company's net financing expenses. As support for this assertion, Bethlehem cites Notice of Final Results of Antidumping Duty Administrative Review; Granular Polytetrafluoroethylene Resin from Italy, 67 FR 1960 (Jan. 15, 2002) and accompanying Issues and Decision memorandum at Comment 1; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (Jan. 23, 2002) and accompanying Issues and Decision memorandum at Comment 18; 2002 SSB from Italy at Comment 23; Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Korea, 65 FR 41437 (July 5, 2000); Hot-Rolled Steel from Brazil, 64 FR at 38786; and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17334 (Apr. 9, 1999) (Steel Round Wire from Canada).

According to Bethlehem, income received on accounts receivable is attributable to sales, rather than to manufacturing. Bethlehem asserts that the respondent's fungibility argument is misplaced, as the income at issue is unlike other types of short-term income (e.g., interest-bearing accounts) because it does not relate to production costs. Therefore, Bethlehem asserts that the Department should adjust USIMINAS/COSIPA's financial expense ratio to exclude this income for purposes of the final determination.

Department's Position:

It is the Department's well-established practice to distinguish between exchange gains and losses realized and incurred in connection with sales transactions and those associated with purchase transactions. See, e.g., Hot-Rolled Steel from Brazil, 64 FR at 38786; Steel Round Wire from Canada, 64 FR at 17334; Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea, 64 FR 14865, 14871 (Mar. 29, 1999); Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31429 (June 9, 1998) (Salmon from Chile); and Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9182 (Feb. 24, 1998) (Steel Rod from Trinidad and Tobago). We normally include in the calculation of COP and constructed value the foreign exchange gains and losses that result from transactions related to a company's manufacturing activities (e.g., purchase of inputs). We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. See, e.g., Steel Rod from Trinidad and Tobago and Salmon from Chile. Accordingly, for purposes of this final determination, we have excluded the foreign exchange gains and losses arising from accounts receivable from the calculation of USIMINAS/COSIPA's COP.

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 in the Federal Register.

Agree____ Disagree ____

____
Faryar Shirzad
Assistant Secretary for
Import Administration

____
(Date)