UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-351-856
Investigation
POI: 07/01/2019-06/30/2020
Public Document
AD/CVD OVI: GM

September 16, 2021

MEMORANDUM TO: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Dana S. Mermelstein
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Aluminum Foil from Brazil

---

I. SUMMARY

The Department of Commerce (Commerce) determines that certain aluminum foil (aluminum foil) from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2019, through June 30, 2020. The mandatory respondents subject to this investigation are Companhia Brasileira de Alumínio[1] (CBA Alumínio) and CBA Itapissuma Ltda. (CBA Itapissuma) (collectively, CBA) and Arconic Ind. E Com de Metias LTDA (Arconic).[2]

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.[3] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

Comment 1: CBA's Financial Expense Rate
Comment 2: CBA's Scrap Offsets

[1] Counsel for this respondent clarified that the correct spelling of the company's name is Companhia Brasileira de Alumínio. *See* CBA's Letter, "Aluminum Foil from Brazil: Case Brief," dated July 9, 2021 (CBA's Case Brief) at 1.
[2] The petitioners include the Aluminum Association Trade Enforcement Working Group and its individual members, Granges Americas Inc.; JW Aluminum Company; and Novelis Corporation (collectively, the petitioners).
[3] *See Certain Aluminum Foil from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures* (*Preliminary Determination*), 86 FR 23678 (May 4, 2021), and accompanying Preliminary Decision Memorandum (PDM).

Comment 3: Market Price of Electricity
Comment 4: Cost for Services
Comment 5: Correction of Ministerial Errors
Comment 6: Date of Sale

II. BACKGROUND

On May 4, 2021, Commerce published in the *Federal Register* its *Preliminary*.[4]

During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting on-site verification. In the *Preliminary Determination*, Commerce notified interested parties that it was unable to conduct on-site verification.[5] In lieu of on-site verification, Commerce issued a verification questionnaire to CBA to collect additional or supporting documentation related to information that CBA had already submitted to the record.[6] On June 24, 2021, we received an in-lieu of on-site Verification Questionnaire Response (QR) from CBA.[7] We used the in lieu of on-site Verification QR to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.

On July 9, 2021, we received case briefs from the petitioners and CBA.[8] On July 20, 2021, we received rebuttal briefs from the petitioners and CBA.[9] On July 9, 2021, we received a letter in lieu of a case brief from ProAmpac[10] and from MAHLE,[11] two U.S. importers of merchandise subject to this investigation, indicating their agreement with the arguments made by CBA in its case brief.[12] The petitioners filed a request for a hearing on June 3, 2021,[13] and withdrew their request on August 2, 2021.[14] As a result, we did not hold a hearing for this investigation. On August 31, 2021, we held a meeting with the counsel for the petitioners in which the petitioners discussed certain issues raised in their July 9, 2021, case brief.[15] We received no scope

---

[4] *Id*.
[5] *See Preliminary Determination*, 86 FR at 23679, 23680.
[6] *See* Commerce's Letter, "Remote Verification – Request for Documentation," dated June 15, 2021 (Verification Questionnaire).
[7] *See* CBA's Letter, "Aluminum Foil from Brazil: Response to the Questionnaire in Lieu of On-Site Verification," dated June 24, 2021 (in-lieu of on-site Verification QR).
[8] *See* Petitioners' Letter, "Certain Aluminum Foil from Brazil: Petitioner's Case Brief," dated July 9, 2021 (Petitioners' Case Brief); *see also* CBA's Case Brief.
[9] *See* Petitioners' Letter, "Certain Aluminum Foil from Brazil: Petitioner's Rebuttal Brief," dated July 20, 2021 (Petitioners' Rebuttal Brief); *see also* CBA's Letter, "Aluminum Foil from Brazil: Rebuttal Brief," dated July 20, 2021 (CBA's Rebuttal Brief).
[10] The importer is comprised of ProAmpac Intermediate, Inc.; Ampac Holdings, LLC; and Jen-Coat, Inc., DBA Prolamina (collectively, ProAmpac).
[11] The importer is comprised of MAHLE Behr USA Inc.; MAHLE Behr Dayton L.L.C.; and MAHLE Behr Charleston Inc. (collectively MAHLE).
[12] *See* ProAmpac and MAHLE's Letter, "Certain Aluminum Foil from Brazil: Letter in Lieu of Case Brief," dated July 9, 2021.
[13] *See* Petitioners' Letter, "Aluminum Foil from Brazil − Petitioners' Request for Hearing," dated June 3, 2021.
[14] *See* Petitioners' Letter, "Aluminum Foil from Brazil – Petitioners' Withdrawal of Hearing Request," dated August 2, 2021.
[15] *See* Memorandum, "Less-than-Fair-Value Investigation of Certain Aluminum Foil from Brazil: Meeting with Counsel for the Petitioners," dated September 1, 2021.

comments from interested parties in response to the Preliminary Scope Decision Memorandum,[16] other than the petitioners' comment that Commerce should adopt the preliminary scope decision for the final determination.[17]

III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Based on the review of the record and comments received from interested parties, we have revised the *Preliminary Determination* as follows:

- We revised our adjustment for electricity purchased from affiliated parties made in the *Preliminary Determination* and added an adjustment for services CBA Alumínio obtained from its affiliate, Votorantim Geracao de Energia S.A. (VGE).[18]
- We revised the margin calculations to treat CBA's reported late payment revenue differently. *See* Comment 5.
- We revised CBA's margin calculations to properly account for our finding in the *Preliminary Determination* that CBA Alumínio and CBA Itapissuma should be collapsed.[19] *See* Comment 5.
- We revised CBA Alumínio's indirect selling expense ratio for home market and U.S. sales using the corrected ratio reported in CBA's in-lieu of on-site Verification QR.[20]

IV. DISCUSSION OF THE ISSUES

Comment 1: CBA's Financial Expense Rate

CBA's Brief:[21]

- While the highest level of consolidation for CBA is the audited financial statement of Votorantim S.A. (Votorantim), CBA demonstrated that it had no intercompany borrowings from Votorantim during fiscal year (FY) 2019. As such, Commerce should revise the financial expense rate used in the *Preliminary Determination* to reflect CBA Alumínio's FY 2019 consolidated financial statements, rather than Votorantim's FY 2019 consolidated financial statements.
- In *AIMCOR*, the U.S. Court of International Trade (CIT) found that Commerce's normal practice of calculating a financial expense rate based on the consolidated audited fiscal year

[16] *See* Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Preliminary Scope Decision Memorandum," dated April 27, 2021 (Preliminary Scope Decision Memorandum).
[17] *See* Petitioners' Letter, "Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey – Petitioners' Final Scope Comments," dated September 8, 2021.
[18] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Companhia Brasileira de Alumínio and CBA Itapissuma Ltda.," dated September 16, 2021 (CBA Final Cost Memorandum).
[19] Due to the business proprietary nature of this issue, it is discussed more fully in "Analysis Memorandum for the Final Determination of the Less-than-Fair-Value Investigation of Certain Aluminum Foil from Brazil: Companhia Brasileira de Alumínio (CB Alumínio) and CBA Itapissuma," dated September 16, 2021 (CBA Final Sales Analysis Memorandum).
[20] *See* CBA's In-Lieu of On-Site Verification QR at 10, Exhibit VQ-8.
[21] *See* CBA's Case Brief at 2-4.

financial statements at the highest level of consolidation available is not appropriate if a respondent does not borrow from the parent company with which it is consolidated.[22]

- Specifically, the CIT found that the use of consolidated financial data in such circumstances was "unreasonable and not supported by substantial evidence" because "there is no evidence of intercompany borrowing or other indicia that {the respondent's 100% owner} determined {the respondent's} cost of money."
- The CIT also found in *AIMCOR* that if "there is evidence on the record from which to determine the actual ratio of financial expenses for COP and CV purposes, Commerce may not ignore that ratio in favor of a ratio found from consolidated statements {and} is statutorily mandated to utilize the ratio which will more accurately reflect actual costs incurred -- especially {...} where there is no evidence of intercompany borrowing {...}."
- In *E.I. Dupont De Nemours*, the U.S. Court of Appeals for the Federal Circuit (CAFC) confirmed the CIT on this point, stating that "{a}n absence of intercompany borrowing within a particular group of companies shows that the group does not treat debt and equity as fungible. As such, Commerce's reason for using consolidated financial statements does not apply to such groups."[23]

Petitioners' Rebuttal:[24]

- Commerce should continue to rely on Votorantim's financial statements to calculate CBA's financial expenses for the final determination because the record establishes that Votorantim borrowed on behalf of CBA Alumínio in FY 2019. As such, reliance on Votorantim's financial statements is appropriate and consistent with Commerce's practice and judicial precedent.
- CBA fails to consider that the CAFC in *E.I. Dupont de Nemours*, in distinguishing that case from *AIMCOR*, also considered whether the controlling entity "borrows money on behalf of {the respondent}" in affirming Commerce's decision to rely on the controlling entity's consolidated financial statements for purposes of calculating the respondent's INTEX.
- Inter-company borrowing contemplates borrowing between subsidiaries and parents; parents and subsidiaries; and, between and among subsidiaries that fall under the control of a larger parent company.
- When capital resources within a consolidated group are fungible, the controlling member of the group may dictate the capital structure of each member of the group. Using consolidated financial statements prevents the controlling member from shifting interest expenses away from the calculated cost of production.
- The record demonstrates that Votorantim made substantial borrowings on behalf of CBA Alumínio, in the form of NCE-Export Credit Notes, and that Votorantim acted as the "guarantor" for several of CBA Alumínio's loans in 2019, thereby demonstrating that Votorantim views capital resources as fungible within the companies under its control.

Commerce's Position: Section 773(b)(3)(B) of the Act, provides that, for purposes of calculating cost of production (COP), Commerce shall include an amount for general expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in

[22] *See* CBA's Case Brief at 3 (citing *AIMCOR v. United States*, 69 F. Supp. 2d 1345, 1354 (CIT 1999) (*AIMCOR*)).
[23] *Id.* (citing *E.I. DuPont de Nemours & Co. v. United States*, 4 F. App'x 929, 933 (Fed. Cir. 2001) (*E.I. DuPont de Nemours*)).
[24] *See* Petitioners' Rebuttal Brief at 2-5.

question. When the statute is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to Commerce's discretion. Although the Act does not specify a particular method for calculating financial expenses, Commerce's long-standing practice is to calculate a respondent's financial expense ratio based on the audited financial statements of the highest level of consolidation available.[25] Therefore, we continue to calculate CBA's financial expense ratio for the final determination based on the consolidated financial statements of its parent, Votorantim, in accordance with this established practice.

Commerce's methodology recognizes the fungible nature of invested capital resources (*i.e.*, debt and equity) within a consolidated group of companies.[26] It also recognizes that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member within the group.[27] There is a presumption that consolidated financial statements are more meaningful than separate and unconsolidated financial statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has controlling financial interest in another entity.[28] As Commerce stated in *Low Enriched Uranium from France*:

> Companies finance operations through various forms of debt transactions, stock transactions, cost sharing and reimbursement schemes, and even corporate operating transactions. These financing activities are conducted both with internal and external parties. In such circumstances, the controlling management of the group coordinates these activities in order to maximize the benefit to the group as a whole. A few examples of these types of activities include, but are not limited to, debt moved to specific companies in order to shield assets in other companies from creditors; monies moved through manipulated transfer prices to avoid tax liabilities or currency restrictions; sharing or undertaking strategic costs such as research and development; or conversions of debt into equities (or vice versa) to present a group member in a more favorable financial position. The important point here is that the corporate control on the financing operations of individual group member companies may exist even in the apparent absence of specific inter-company financing transactions.[29]

As such, the consolidated financial statements of CBA's parent group are more meaningful than CBA's own separate financial statements, and the consolidated financial statements are necessary for a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity. We find in this case that Votorantim has a controlling interest in

---

[25] *See, e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007) (*Certain Frozen Warmwater Shrimp from India*), and accompanying Issues and Decision Memorandum (IDM) at Comment 25; *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002) (*Steel Wire Rod from Mexico*), and accompanying IDM at Comments 21-22.

[26] *See Steel Wire Rod from Mexico* IDM at Comments 21-22.

[27] *Id*.

[28] *See Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016) (*Hot-Rolled Steel from Brazil*), and accompanying IDM at Comment 6.

[29] *See Notice of Final Determination of Sales at Less than Fair Value: Low Enriched Uranium from France*, 66 FR 65877 (December 21, 2001) (*Low Enriched Uranium from France*), and accompanying IDM at Comment 14.

CBA.[30] As Commerce stated in *Certain Frozen Warmwater Shrimp from India*:

> Financial expenses recorded on a respondent's own financial statements, or a lower-level consolidation, only reflect the financial position that the management of the group wishes to present for that particular subsidiary. Because the majority of the board of directors, and by extension management, of each group member is ultimately controlled by each successive board of directors, up to the highest-level board of directors and management, it is reasonable to conclude that the overall strategic operations are guided from above. Commerce recognizes that the very purpose of creating a corporate group is to leverage the strategic and competitive advantages of individual group companies for the betterment of the whole. Thus, the financial position of one group member will not properly reflect the actual financial position of that company. It cannot be ignored that the company is operating as a member of a larger entity, with the support (direct or indirect) to which it is entitled from the group.[31]

Commerce explained in *Hot-Rolled Steel Products from Brazil*:

> The true economic picture of the consolidated group can only be seen when all inter-company holdings (*i.e.*, shares in affiliates and debts between affiliates) and inter-company transactions (*i.e.*, inter-company sales, receivables, payables, *etc.*) have been eliminated (*i.e.*, removal of the double-counting effect of inter-company transactions) in the consolidated financial statements of the parent company. Only after such eliminations does the debt structure of the group become apparent and does the actual cost of borrowing of group companies become visible. Such eliminations also derive a COGS figure free of inter-company transactions. The consolidated COGS is used to allocate the true financial expense to the products produced within the group.[32]

The CAFC has sustained "as reasonable Commerce's well-established practice of basing interest expenses and income on fully consolidated financial statements."[33] Moreover, the CAFC affirmed "Commerce's well-established practice of acknowledging the role of consolidated statements."[34] We note that the CAFC in *American Silicon Technologies* determined that Commerce reasonably calculated interest expenses based on the consolidated financial statements of the parent.[35]

> In the first place, this court notes that standard accounting principles acknowledge consolidated financial statements as a fair presentation of the financial position of a group. Following those practices, Commerce has adopted and followed a standard policy for assessing finance costs of a producer based on the consolidated financial statements of a parent because the cost of capital is fungible. Commerce's policy recognizes that consolidated financial statements indicate that a corporate parent controls a subsidiary.

---

[30] *See* CBA's Letter, "Aluminum Foil from Brazil: Section A Response," dated December 14, 2020 (CBA's AR) at A-8.
[31] *See Certain Frozen Warmwater Shrimp from India* and accompanying IDM at Comment 26.
[32] *See Hot-Rolled Steel from Brazil* and accompanying IDM at Comment 6
[33] *See American Silicon Technologies v. United States*, 334 F.3d 1033, 1038 (Fed. Cir. 2003) (*American Silicon Technologies*).
[34] *Id*.
[35] *Id*. at 1037-38.

> These consolidated statements represent the financial health of parent company operations in view of subsidiary operations. In addition, fungible financial assets invite manipulation. In other words, if Commerce only used a single division of a group as the source of financing costs, the controlling entity could shift borrowings from one division to another division to defeat accurate accounting.[36]

Citing *AIMCOR* and *E.I. Dupont de Nemours*, CBA argues that because CBA had no intercompany borrowings from Votorantim, Commerce cannot assume parent company control and resort to using consolidated financial statements.[37] As Commerce noted in *Hot-Rolled Steel from Brazil*, subsequent CAFC decisions have made it clear that evidence of intercompany borrowing is not a requirement for using the financial statements of the ultimate corporate parent.[38] As the CAFC stated in *American Silicon Technologies*, it is unnecessary for Commerce to assess intercompany financial transactions in calculating finance expenses in a dumping margin because this would create "a new kind of test {which} would impose significant new administrative burdens on Commerce and invite potential manipulation {which} {…} might take the form of a controlling company selecting a financial cost ratio by directing one of its subsidiaries with a low ratio to lend to the exporter."[39] As such, we find CBA's arguments regarding intercompany borrowing to be unpersuasive.

For these reasons, for the purposes of this final determination, we continue to rely on Votorantim's consolidated financial statements as the basis for CBA's financial expense rate.

Comment 2: CBA's Scrap Offsets

Petitioners' Brief:[40]

- Commerce should disallow CBA's reported offsets for scrap and dross generated during production because including the offsets results in material costs that do not reasonably reflect CBA's production costs.

A. CBA's Offset for Scrap Generated During Production

- CBA claims that these offsets are reasonable because they are less than CBA Alumínio's and CBA Itapissuma's yielded scrap quantity percentages. These yields, however, refer to the total quantity of scrap generated during production and have no bearing as a reality check on the reasonableness of the total value CBA has assigned to generated scrap, let alone the reasonableness of that value in relation to the cost of finished production.
- CBA's assertions regarding reasonableness are based on an apples-to-oranges comparison of the scrap rates to the total cost of manufacturing.
- A comparison of the per-unit values reported by CBA for consumed and generated scrap shows that CBA's per-unit values for generated scrap are not reasonable in comparison to the

[36] *Id.* at 1037 (internal citations omitted).
[37] *See* CBA's Case Brief at 3 (citing *AIMCOR*, 69 F. Supp. 2d 1345; *E.I. DuPont de Nemours*, 4 F. App'x at 933).
[38] *See American Silicon Technologies*, 334 F.3d at 1038; *see also Hot-Rolled Steel from Brazil* IDM at Comment 6.
[39] *Id*.
[40] *See* Petitioners' Case Brief at 4-15.

per-unit values reported for consumed scrap.[41] This is particularly noteworthy considering CBA's claim that scrap reintroduced into production (*i.e.*, scrap consumed) is a "significant" raw material input for merchandise under consideration (MUC) production.

- The record also shows that CBA Itapissuma has wrongly included certain scrap costs for scrap generated from the production of certain MUC.[42] On this basis alone, CBA Itapissuma's claimed scrap offset should be denied.
- Alternatively, if Commerce determines not to deny CBA's scrap offset, it should cap the offset to the value of the input costs. Commerce has recognized distortions that are caused by offsets in comparison to the value of the inputs.

B. CBA's Offset for Scrap Dross

- CBA has failed to meet the burden of reasonably linking the amount of dross sold during the POI to the amount of dross generated during the POI.
- Although CBA appears to track its production of dross, it relied on allocation methodologies to determine the per-unit dross offsets reported in its cost databases.
- CBA did not provide any documentation generated in the normal course of business to substantiate its reported POI dross sales revenue and production quantities.
- The total claimed dross offset according to CBA's original and revised dross offset allocation worksheets does not agree with CBA Alumínio's original cost database and most recent cost database.
- Moreover, the "links" between CBA's dross sales and dross generation from the production of MUC specific to the POI are tenuous, at best.[43]
    - CBA Alumínio's dross inventory movement schedule shows that CBA Alumínio may have included dross sales that shouldn't have been included.
    - CBA Itapissuma's record data also included certain dross sales that shouldn't be included.
    - CBA Alumínio has reported conflicting dross sales quantities for a certain month.
- CBA Alumínio has also reported conflicting total sales revenue amounts for its POI sales of dross scrap in its inventory movement schedule and its dross allocation worksheet.
- Commerce has disallowed scrap offsets under similar fact patterns (*see e.g.*, *Wind Towers*), and Commerce should do so here.[44]

CBA's Rebuttal: [45]

- For the final determination, Commerce should continue to allow CBA's reported scrap offsets because the petitioners' allegations are without merit.

[41] *See* Petitioners' Case Brief at Tables 1 and 2.
[42] *See* Petitioners' Case Brief at 9-10.
[43] *See* Petitioners' Case Brief at 12-14.
[44] *See* Petitioners' Case Brief (citing *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) (*Wind Towers*), and accompanying IDM at Comment 5).
[45] *See* CBA's Rebuttal Brief at 2-16.

A. CBA's Offset for Scrap Generated During Production

- CBA's scrap offset for scrap generated during production is reasonable, because it reflects the actual cost of scrap generated at each stage of production, as recorded in the normal course of business, and CBA has demonstrated that these amounts tie to CBA's audited financial statements that are kept in accordance with Brazilian generally accepted accounting principles (GAAP).
- The petitioners' claims regarding CBA Alumínio are based on erroneous comparisons between the monthly per-unit values of scrap generated at a single production stage (*i.e.*, continuous casting coil stage) and scrap consumed at the molten metal semi-finished good stage.
- Because scrap is consumed mainly at one production stage but generated primarily in CBA Alumínio's subsequent production stages, the amount of scrap consumed in the molten alloy metal stage may be more or less than the amount of scrap generated in subsequent processes for any given production order.
- The per-unit value of scrap generated by CBA Alumínio in each month will not exactly match the per-unit value of scrap consumed in the same month, because scrap generated is valued based on the cost of liquid aluminum and weight averaged with other scrap in inventory when it is placed in inventory, whereas scrap consumed is valued as the weighted-average value of scrap in inventory when it is removed from inventory.
- The petitioners' comparison in Table 1 of their case brief shows that the per-unit value of scrap generated by CBA Alumínio in May 2020 differs from the per-unit value of scrap consumed based on scrap generated in the continuous casting stage. However, the amount of scrap generated is reasonable in that month if a different production stage (*e.g.*, the rolled foil stock semi-finished good stage) is used for the comparison.
- CBA Alumínio has demonstrated in its submissions that, on a POI basis, the total value of scrap generated, and the total value of scrap consumed, are nearly the same.
- Similarly, the petitioners' comparisons in Table 2 of their case brief compare the monthly per-unit values of scrap generated by CBA Itapissuma versus the monthly per-unit values of scrap consumed by CBA Itapissuma. However, because CBA Itapissuma values scrap on a monthly basis, if the scrap consumed during a particular month was not generated during that month, the value of the scrap consumed may not be the same as value of scrap generated.
- CBA Itapissuma did not wrongly include certain scrap costs and Commerce should not deny CBA Itapissuma's entire scrap offset as alleged by petitioners. The petitioners' claim is inaccurate because CBA Itapissuma incorporated these costs where production was completed between February 2020 – June 2020.
- The spreadsheets referred to by the petitioners in their case brief at pages 8 and 9 provide a reference to intermediate production, not to completed production. Moreover, the unit scrap costs in question carry a similar cost to February 2020, illustrating that the inclusion of these costs in CBA Itapissuma's COP database is not distortive.
- CBA Itapissuma's inclusion of production costs for orders that were ultimately completed after CBA Itapissuma assumed control of Arconic facilities in February 2020 is shown in CBA Itapissuma's submission of its cost build-up worksheets and Commerce did not ask CBA Itapissuma to adjust this reporting methodology.

B. CBA's Offset for Scrap Dross

- CBA properly reported its dross offsets based on the dross sales recorded in its normal books and records. As demonstrated in the dross inventory movement schedules submitted by each company the total quantity of dross sold during the POI was less than the total quantity of dross generated during the POI.
- Regarding the petitioners' assertion that CBA Alumínio's total amount of dross offset reported in the dross offset calculation worksheet "does not agree with" CBA Alumínio's COP database, the petitioners are comparing apples and oranges. The calculation worksheet reflects the offset for all aluminum foil (some of which is not MUC) while the COP database includes only MUC. [37]
- The petitioners claim that there is "conflicting" information between CBA Alumínio's dross inventory movement schedule and dross revenue calculation worksheet with respect to: (1) the POI total dross sales value; and (2) the dross sales quantities for April 2020 is incorrect because the petitioners do not take into account the different nature of the two reports: the sales values provided in the inventory movement schedule are based on cost, whereas the sales values provided in the dross revenue calculation worksheet are based on invoices issued to CBA Alumínio's customers for sales of dross.
- As for the dross sales quantities for April 2020, the quantity difference is also attributed to the fact that the inventory movement schedule reflects CBA Alumínio's cost and inventory data, whereas the dross revenue calculation worksheet is based on CBA Alumínio's invoice records. Some returns of dross from its buyers may be reflected in the inventory movement schedule but not in the dross revenue calculation worksheet. The minor difference in April 2020 does not undermine the reasonableness of the dross offset that CBA Alumínio reported based on its normal books and records.
- The petitioners claim that CBA Alumínio's dross sales may include sales of purchased dross, rather than only dross generated during the production of MUC. The petitioners do not substantiate this speculation. The inventory movement schedule is clear that the POI total quantity of dross sold is smaller than the POI total quantity of dross generated, which supports the reasonability of the dross offset reported by CBA Alumínio.
- The petitioners claim regarding scrap dross sales made by CBA Alumínio reflected in the inventory movement schedule is misplaced. The quantities of dross sold and generated in an individual month (*e.g.,* August 2019) are irrelevant to the reasonableness of the dross offset. The petitioners do not offer any reason for their focus on August 2019; focusing on any single month to the exclusion of total POI data is distortive.
- The reported dross offset is reasonable and conservative because the POI total quantity of dross sold is the POI total quantity of dross generated.
- CBA Itapissuma explained that it does not account for dross offset as part of its direct material costs in the ordinary course of business nor does it assign dross a cost in its inventory; CBA Itapissuma calculated a ratio based on its sales of dross to approximate the offset of dross production in its COP database.
- CBA Itapissuma's proposed calculation methodology was reasonable – taking the sales of dross for each month and dividing it by the total production per month to calculate a BRL/KG ratio, which was applied to the COP database based on the month of production for each MUC product.

- The petitioners take issue with the fact that CBA Itapissuma sold more dross than it generated in February 2020. The amount of dross offset is reasonable and conservative because the total quantity of dross sold was less than the total quantity of dross generated for the POI for CBA Itapissuma (February 2020 – June 2020).
- The facts in *Wind Towers* differ from the facts in this case. In *Wind Towers,* Commerce denied the claimed aluminum scrap offset because Commerce did not have sufficient data "to rely on as a basis of determining the quantity of aluminum scrap associated with the production of the subject merchandise."
- Unlike in *Wind Towers*, CBA Alumínio's dross allocations are calculated on a product-specific level in that:
    - CBA Itapissuma calculated the portion of the POI total dross sales revenue attributed to aluminum foil production by calculating the yield ratio of each semi-finished product stage (liquid aluminum to caster to foil).
    - Further, using the POI average yield of foil from liquid aluminum for each product family, CBA Alumínio calculated the amount of liquid aluminum used to produce each product code for each month of the POI.
    - The POI total dross sales revenue allocated to aluminum foil products was further allocated according to each product code's monthly share of total POI consumption of liquid aluminum for aluminum foil product codes.
    - Similarly, CBA Itapissuma calculated the portion of the POI total dross sales revenue attributed to the production of MUC by dividing the sales of dross for each month by the total production per month to calculate a ratio, which was applied to the COP database based on the month of production for each MUC product. Unlike the respondent in *Wind Towers*, CBA Itapissuma produces only aluminum foil, aluminum sheet, and certain corrugated roofing products.

Commerce's Position: We continue to grant CBA's scrap offsets for the final determination because the scrap offsets are based on CBA's normal books and records and reasonably reflect the cost of producing MUC. Section 773(f) of the Act 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 the GAAP of the exporting or producing country and reasonably reflect the cost associated with the production of the merchandise. In this case, CBA Alumínio's and CBA Itapissuma's reported scrap and dross offsets are based on the companies' normal books and records which tie to the companies' financial statements prepared in accordance with Brazilian GAAP.[46] The question raised by the petitioners is whether CBA Alumínio's and CBA Itapissuma's reported scrap and dross offsets reasonably reflect the cost of producing MUC.

A. CBA's Offset for Scrap Generated During Production

Commerce's practice with respect to scrap offsets is to allow such offsets based on the amount of scrap generated, once the generated scrap has been demonstrated to have commercial value, through evidence of sales or reintroduction into the production process.[47] CBA explained in its

[46] *See, e.g.*, CBA's AR at Exhibit A-15 and CBA's Letter, "Aluminum Foil from Brazil: Responses to Sections B, C, and D," dated January 25, 2021 (CBA's BCDR) at Exhibits D-48, D-53, and D-54.
[47] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of the Antidumping Duty*

submissions that all scrap generated during production is reintroduced into the production process.[48] Scrap is consumed only at the molten alloy metal production stage where it is commingled with primary liquid aluminum and alloys to yield the metal that is used in the subsequent production stages to produce MUC.[49] Scrap is generated at each subsequent stage, from the casting stage through the finished goods stage.[50] CBA provided a detailed explanation, supporting calculations and documentation from its accounting system that show how scrap generated at each production stage is valued in the normal course of business.[51]

To determine whether CBA's reported scrap offsets are reasonable, we examined the quantity of scrap generated during production of MUC as well as the per-unit value assigned to the generated scrap. Regarding the quantity of scrap generated, the comparison of CBA Alumínio's and CBA Itapissuma's cumulative production yield rates (*i.e.*, percentage of output quantity at the final production stage to input quantity at the molten metal stage) to the reported quantities of scrap generated show that the quantity of scrap generated is reasonable.[52] The petitioners' arguments center on CBA's valuation of generated scrap and, in Table 1 of their case brief, the petitioners point to differences in the per-unit value of generated scrap in comparison to the per-unit value of scrap consumed.[53] We find the information presented in Table 1 to be inapposite because it shows the per-unit value of scrap generated for a particular production stage (rather than all production stages) while presenting the per-unit value of scrap consumed by the melt shop (*i.e.*, scrap generated from all production stages, commingled and then consumed).[54] As reported by CBA, scrap is generated and valued at each major stage of the production process of MUC.[55] We find that because scrap generated at all production stages is consumed only at the molten metal production stage, a more meaningful analysis is the comparison of the per-unit value of scrap generated from all production stages to the per-unit value of scrap consumed.[56] We analyzed the POI scrap inventory movement schedules provided in exhibits D-26 and D-27 for CBA Alumínio and CBA Itapissuma, respectively, by comparing the weighted-average POI per-unit value of scrap generated to the weighted-average POI per-unit value of scrap consumed.[57] For CBA Alumínio, we found that the per-unit value of scrap generated was identical to the per-unit value of scrap consumed.[58] For CBA Itapissuma, we found that the POI

Administrative Review: 2017-2018, 85 FR 41949 (July 13, 2020), and accompanying IDM at Comment 9; and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value,* 82 FR 16360 (April 4, 2017) (*CTL Plate from Germany*), and accompanying IDM at Comment 18.

[48] *See* CBA's BCDR at D-9.

[49] *See* CBA's Letter, "Aluminum Foil from Brazil: Response to Supplemental D Questionnaire," dated March 9, 2021 (SDR) at 7.

[50] *Id*. and Exhibits SD-4 and SD-5.

[51] *See* CBA's BCDR at Exhibit D-7.

[52] *See, e.g.*, SD-7 where the input and output quantities for certain CONNUMs tie to production and inventory records and support the yield rates by production stage as shown in Exhibit SD-5.

[53] *See* Petitioners' Case Brief at 6-7.

[54] A comparison of the scrap generated per-unit values in Table 1 of the petitioners' case brief to Exhibit SD-6 of the SDR shows that the petitioners did not include the per-unit values of scrap generated in the production processes after the casting production stage.

[55] *See* CBA's BCDR at D-9.

[56] *See e.g.*, CBA's SDR at Exhibit SD-5.

[57] *See* CBA's BCDR. We calculated the POI weighted-average per-unit values by dividing the sum of the monthly values by the sum of the monthly quantities.

[58] *Id*. at Exhibit D-26.

weighted-average per-unit value of scrap generated was less than the per-unit value of scrap consumed.[59] As such, we find that the reported quantities and values of CBA's generated scrap are reasonable. Accordingly, we also find CBA's total scrap offset in relation to the cost of finished production to be reasonable.

B. CBA's Offset for Scrap Dross

As noted above, Commerce's practice with respect to scrap offsets is to allow such offsets based on the amount of scrap generated, once the generated scrap has been demonstrated to have commercial value, through evidence of sales or reintroduction into the production process.[60] Commerce's practice recognizes that, in certain situations, a respondent's normal accounting system does not track scrap generated, and tracks only the quantities of scrap sold.[61] In such instances, Commerce normally allows the offset for scrap sold if a respondent could show a reasonable link between the quantities of scrap sold and scrap generated.[62] The burden rests with the respondent to demonstrate that the quantity of scrap sold is a reasonable proxy for the actual quantity of scrap generated.[63] Furthermore, where a respondent does not keep track of scrap generated, Commerce has found it reasonable to grant the offset based on scrap sales if the respondent can show that the amount of scrap sold is less than the amount that could have reasonably been generated.[64]

Here, CBA sells all scrap dross generated during production to unaffiliated customers.[65] While CBA does not offset production costs from the sale of dross in the normal course of business, revenue earned from the sale of dross is reported in a revenue account.[66] CBA Alumínio records dross in its inventory records; CBA Itapissuma does not maintain inventory records for dross.[67]

CBA Alumínio provided monthly inventory movement schedules for dross in exhibit D-34.[68] CBA Itapissuma provided a schedule of the monthly dross sales revenues for the POI in exhibit D-35.[69] For reporting purposes, CBA allocated the total POI sales revenue for dross to MUC based on the proportion of liquid aluminum used for production of aluminum foil.[70] CBA then allocated the dross offset among products as defined by product matching control numbers

[59] *Id*. at Exhibit D-27.
[60] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review: 2017-2018,* 85 FR 41949 (July 13, 2020), and accompanying IDM at Comment 9; and *CTL Plate from Germany* IDM at Comment 18.
[61] *Id*.
[62] *See, e.g.*, *Prestressed Concrete Steel Wire Strand from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 18502 (April 9, 2021) (*PC Strand from Malaysia*), and accompanying IDM at Comment 6.
[63] *See Finished Carbon Steel Flanges from Spain: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 7919 (February 12, 2020), and accompanying IDM at Comment 1.
[64] *See, e.g.*, *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 83 FR 58231 (December 27, 2019), and accompanying IDM at Comment 4.
[65] *See* CBA's BCDR at D-9.
[66] *See* CBA's BCDR at D-9 and D-10.
[67] *Id*.
[68] *See* CBA's BCDR.
[69] *Id*.
[70] *Id.* at Exhibit D-34.

(CONNUMs) based on production quantities.[71]

We disagree with the petitioners' claim that CBA has not substantiated its sales of dross. Evidence of CBA's scrap sales revenues is reflected in CBA's financial records.[72] Moreover, we find that the yield loss information submitted by CBA allows us to calculate the quantity of dross that CBA Alumínio and CBA Itapissuma could have reasonably produced.[73] Because the quantity of dross produced exceeds the quantity of dross sold for both CBA Alumínio and CB Itapissuma, consistent with our practice, we find that the quantity of scrap sold is reasonably linked to the quantity of scrap generated.[74]

We disagree with the petitioners' arguments that CBA's dross offsets include certain sales that should be excluded. Commerce's practice is to allow an offset of the sale of scrap if there is a reasonable link between the quantity of scrap sold and the quantity of scrap generated.[75] Here, the dross inventory movement schedules provided by CBA Alumínio and CBA Itapissuma show that the total quantity of dross reasonably produced for the POI exceeds the total POI quantity of dross sold.[76] Therefore, because the POI production quantity of dross exceeds the sales quantities, consistent with our practice, we find it reasonable to include the sales questioned by the petitioners and allow the dross offset.

Regarding the petitioners' claim that CBA Alumínio's dross allocation worksheets do not tie to CBA Alumínio's most recent cost datafile, we find that the difference between the total offset in the allocation worksheet and the summation of the extended dross offsets in the cost datafile is not only insignificant, the value of the summation of the extended dross offsets in the cost datafile is less than the total revenue reflected in the dross allocation worksheets.[77]

While the petitioners are correct that for one month of the POI, the sales quantity shown in CBA Alumínio's inventory movement schedule differs from the sales quantity shown in the dross allocation worksheet, we find that the difference in the quantities is insignificant in comparison to the total POI sales quantity of dross.[78] In addition, we note that the quantity of dross generated during the POI exceeds the quantity of dross sales shown either in the inventory movement schedule or the dross revenue allocation worksheet.[79]

We agree with CBA that the facts in this case differ from *Wind Towers*. In *Wind Towers*, Commerce denied the respondent's aluminum scrap offset which was calculated by dividing the company's total aluminum scrap sales for the POI by the total quantity of aluminum consumed

[71] *See, e.g.*, CBA's BCDR at Exhibits D-46 and D-55.
[72] *See, e.g.*, CBA Alumínio's trial balance submitted in CBA's BCDR at Exhibit D-47 and CBA Itapissuma's trial balance submitted in CBA's BCDR at Exhibit D-49.
[73] For CBA Alumínio, the quantity of dross that could reasonably be produced is comparable to the inventory movement schedule for dross. *See* CBA's BCDR at Exhibits D-26 and D-29 for CBA Aluminio). *See* BCDR at Exhibits D-11, D-26, D-27, D-29, and D-30 for CBA Itapissuma.
[74] *See, e.g.*, *PC Strand from Malaysia* IDM at Comment 6.
[75] *Id*.
[76] *See* CBA's BCDR at Exhibits D26 and D-27, respectively.
[77] *See* SDR at Exhibit SD-53 and CBA Alumínio's cost datafile "CBA_cop04_al."
[78] *See* CBA's BCDR at Exhibits D-26 and D-34.
[79] *Id*.

for all products.[80] In effect, the respondent's methodology in *Wind Towers* spread the total aluminum scrap sold over all aluminum consumed as if all the hundreds of aluminum components and subassemblies produced generated the same proportion of aluminum scrap.[81] Here, the allocation of scrap revenue is based on the specific yield factor of each product family.[82] As such, we find the allocation of scrap revenue in this case is unlike the allocation rejected by Commerce in *Wind Towers*.[83]

Comment 3: Market Price of Electricity

Petitioners' Brief: [84]

- Commerce should disregard CBA's electricity purchases from Furnas, an unaffiliated party, as market prices for the purpose of determining whether CBA's purchases from affiliated suppliers were made at arm's length (the transactions disregarded analysis) because the purchases are not representative of market prices.
- Despite CBA's claims that the prices at which it purchased electricity from Furnas are market prices, Commerce previously found in *CAAS Brazil CVD* that the auctions through which CBA Alumínio purchases electricity from Furnas are not open to everyone (companies must be qualified to participate) and, as such, do not reflect market prices.[85]
- Commerce's findings in *CAAS Brazil CVD* are relevant here because the purchases in *CAAS Brazil CVD* overlap the POI of this case.
- Instead, Commerce should rely on the average price at which CBA Alumínio resold electricity to the grid and to an affiliated party.
- According to CBA's books and records, the difference between purchases and consumption of electricity represents the electricity sold back onto the grid (market), and the prices at which the electricity is resold reflect normal supply and demand conditions.
- As such, Commerce should rely on the price of electricity that CBA Alumínio resold to Votener, an affiliated party, during the POI as the market price for purposes of the transactions disregarded analysis. Certain reported adjustments to that gross unit price made by CBA Alumínio should not be included in the market price for purposes of the transactions disregarded analysis.

CBA's Rebuttal: [86]

- Commerce should continue to rely on CBA's purchases of electricity from Furnas, an unaffiliated supplier, as the market value for testing the arm's-length nature of the electricity purchases, as done in the *Preliminary Determination*.
- In the application of the transactions disregarded rule, Commerce has expressed its preference for market value as a respondent's own purchases of the input from unaffiliated suppliers. When no such purchases are available, Commerce looks to the affiliated supplier's

[80] *See Wind Towers* IDM at Comment 5.
[81] *Id.*
[82] *See* CBA's BCDR at Exhibit D-46 for allocation methodology and definition of product family.
[83] *See Wind Towers* IDM at Comment 5.
[84] *See* Petitioners' Case Brief at 16-22.
[85] *Id.* at 17 (citing *Common Alloy Aluminum Sheet from Brazil: Final Negative Countervailing Duty Determination*, 86 FR 43 (March 8, 2021) (*CAAS Brazil CVD*), and accompanying IDM at Comment 4).
[86] *See* CBA's Rebuttal Brief at 16-22.

sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.

- Purchases from Furnas, an unaffiliated supplier, clearly fall into the first (preferred) category and, therefore, should be adopted as the market value for testing the arm's-length nature of CBA Alumínio's affiliated electricity transactions.
- Contrary to the petitioners' arguments, the purchase volume from Furnas is not insignificant and, notably, CBA purchased electricity from Furnas consistently throughout the POI. The petitioners cite no precedent for a percentage threshold.
- Commerce has clarified that it is not the aggregate volume of the transactions, nor the significance of the unaffiliated purchases to the affiliated purchases that is determinative of whether the purchases are a reasonable reflection of market value but rather whether the purchases are at quantities "usually reflected" in the market (*i.e.*, commercial quantities).
- The record evidence shows that for several months during the POI, the quantity of electricity that CBA Alumínio purchased from Furnas was comparable to the quantity of electricity that CBA purchased from other suppliers, demonstrating that the volume in question was a meaningful, commercial quantity.
- The petitioners' allegation that an auction needs to be "open to everyone" to serve as a basis for a market price in applying the transactions disregarded provision has no basis in precedent.
    - The fact that buyers were required to satisfy certain conditions (*e.g.*, to be in certain industries or certain geographical locations) to participate in the auctions does not negate the fact the auctions were open to the public and were competitive processes to reflect market price.
    - The petitioners' misplaced allegation that an auction needs to be "open to everyone" relies on the preamble to Commerce's CVD regulations, which the petitioners have not demonstrated is relevant to application of the transactions disregarded provision in an antidumping duty investigation.
  - Commerce's finding in *CAAS Brazil CVD* regarding auctions held by Furnas, as quoted by the petitioners in their case brief, demonstrates that the auctions are legally required to be open to a wide range of industries and users.
  - The fact that Commerce found electricity supplied by Furnas to include subsidies in *CAAS Brazil CVD* is irrelevant to the assessment of Furnas' price as an appropriate market price to determine whether CBA Alumínio's electricity purchases from affiliates were made at arm's length.
    - CBA purchased the electricity from Furnas pursuant to a public auction. As such, the price is set by competition in the market and is therefore, by definition, a market rate.
    - *CAAS Brazil CVD* concerned a different product and a different period of investigation – and so is not relevant to foil and its POI.
    - Even if the subsidy finding in *CAAS Brazil CVD* were relevant, *quod non*, the amount of the subsidy was merely 0.04 percent and *de minimis* and, thus, too small to have any effect in terms of determining a market price in this investigation.
  - Using CBA Alumínio's sales prices to its affiliated party (*i.e.*, Votener) as suggested by the petitioners would be directly inconsistent with the transactions disregarded rule and Commerce's practice which require that the amount that is to be determined as a market

price be based on a transaction between unaffiliated parties.

Commerce's Position: Commerce may disregard the reported value of an input (*i.e.*, the transfer price) in favor of the market price, pursuant to section 773(f)(2) of the Act (transactions disregarded rule), if Commerce determines that a transaction between affiliated parties "does not fairly reflect" the market value of the input. Further, where a market price is not available, Commerce has developed a consistent and predictable approach whereby it may use an affiliate's total cost of providing the service as information available for a market price.[87] Here, we would normally use CBA's purchase transactions with Furnas in our dumping calculation. Although petitioners have alleged that these transactions are not representative of market prices, all pertinent facts surrounding CBA's purchase transactions with Furnas are not on the case record of this proceeding. As a result, we are unable to determine whether the transactions between CBA and Furnas fairly reflect market prices, in response to petitioners' argument. In light of the lack of record information to evaluate these purchases, because alternative market price information is available on the record, we relied on the viable, alternative market price information for purposes of our transactions disregarded analysis, consistent with our practice, to avoid any potential distortion which could result from using the Furnas purchases.[88]

Under section 773(f)(2) of the Act (transactions disregarded), transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the transactions disregarded rule, Commerce normally compares the transfer price paid by the respondent to affiliated parties for production inputs or services to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration.[89] If the affiliated supplier made no such sales during the POI, we may use the supplier's COP as a surrogate market price.[90]

Here, CBA reported the transfer prices and COP of the electricity purchased from its affiliates.[91] Consistent with our practice, we relied on the affiliated suppliers' COP as a surrogate market price to conduct our transactions disregarded analysis and we adjusted CBA's reported costs in those instances where the alternative market price exceeded the transfer price.[92]

We find that relying on the transfer prices paid by CBA to its affiliate Votener as market prices, as suggested by the petitioners, contradicts the meaning of the transactions disregarded rule, and, thus, is not an appropriate alternative. The petitioners' suggestion would result in a comparison

---

[87] *See, e.g.*, *CTL Plate from Germany* IDM at Comment 33.

[88] Commerce's *CAAS Brazil CVD* final determination was published March 8, 2021. On April 16, 2021, the petitioners filed pre-preliminary comments in this case. While the petitioners cited to *CAAS CVD* in the pre-preliminary comments and stated that Commerce found Furnas was a "GBR entity," the petitioners did not raise the issue of whether the auctions (*i.e.*, the purchasing mechanism used by CBA to obtain electricity from Furnas) were open to all participants. The issue regarding the auctions was raised for the first time in the petitioners' case brief.

[89] *See, e.g.*, *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019) (*HWRW Pipe and Tube*), and accompanying IDM at Comment 7.

[90] *Id*.

[91] *See* CBA's 2nd SDR at Exhibit S2D-12.

[92] *See* CBA Final Cost Memorandum where we calculated the alternative market price as the weighted-average COP across affiliated suppliers.

of transfer prices between affiliated parties which would not permit the determination of whether the transfer prices fairly reflect the amount usually reflected in the market under consideration.

Comment 4: Cost for Services

Petitioners' Brief: [93]

- Commerce should increase CBA Alumínio's reported costs for services provided by Votorantim Geracao de Energia S.A. (VGE), an affiliated party.
- *Welded Line Pipe from the Republic of Korea*[94] serves as a basis for excluding certain income items from VGE's net income.
- Although the financial statements of VGE appear to show that VGE was profitable, certain income items should be excluded from that analysis in accordance with Commerce's practice.

CBA's Rebuttal: [95]

- Commerce should not increase CBA Alumínio's costs for alleged amounts incurred by VGE, a holding company of subsidiaries and affiliates that are in the energy sector, which provided services to CBA Alumínio during the POI.
- Contrary to the petitioners' claim, VGE was profitable for FY 2019.
- The petitioners' reliance on *WLP from Korea* as the basis for excluding certain income from VGE's net income is misplaced.
- Even if Commerce's finding in *WLP from Korea* was "instructive" here as claimed by the petitioners' claim, there is no reason to exclude the income at issue because it is income derived from VGE's normal course of business.
- Because such income is closely related to the services that VGE provided to CBA Alumínio, assessment of the arm's-length nature of the services at issue would be distorted without taking such income into account.
- The petitioners made the same claim before the *Preliminary Determination*, but Commerce did not accept it.

Commerce's Position: We agree with the petitioners. Commerce may disregard the reported value of an input (*i.e.*, the transfer price) in favor of the market price, pursuant to section 773(f)(2) of the Act (transactions disregarded rule), if Commerce determines that a transaction between affiliated parties "does not fairly reflect" the market value of the input. Further, where a market price is not available, Commerce has developed a consistent and predictable approach whereby it may use an affiliate's total cost of providing the service as information available for a market price.[96] In this case, CBA Alumínio did not obtain the services in question from unaffiliated parties, nor did VGE provide such services to unaffiliated parties.[97] Therefore, because VGE did not provide services to unaffiliated parties, we consider it reasonable to

[93] *See* Petitioners' Case Brief at 22-23.
[94] *See Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*WLP from Korea*), and accompanying IDM at Comment 24.
[95] *See* CBA's Rebuttal Brief at 22-23.
[96] *See, e.g.*, *CTL Plate from Germany* IDM at Comment 33.
[97] *See, e.g.*, CBA's AR at Exhibit A-15.

examine whether VGE's audited financial statements reflect a profit in determining the arm's-length nature of services provided by affiliated parties.[98]

We disagree with CBA that VGE's normal business operations are investment activities.[99] Gains and losses on investment activity are not relevant to the determination of an arm's-length price for the services provided by VGE to CBA and accordingly do not factor into the analysis. We agree with the petitioners that *WLP from Korea* applies here.[100] It is Commerce's practice to exclude investment-related gains and losses from the calculation of the COP.[101] Investment activities are a separate profit-making activity not related to the company's normal operations.[102] Therefore, for the final determination, we excluded any investment-related activities from the calculation of VGE's net profit/loss.[103] We reviewed VGE's revised profit/loss to determine whether the services provided by VGE to CBA Alumínio occurred at arm's-length prices and, as necessary, adjusted the transfer prices accordingly.[104]

Comment 5: Correction of Ministerial Errors

Petitioners' Brief: [105]

- Commerce should correct ministerial errors in its preliminary calculation of CBA's dumping margin. Specifically, Commerce should make the following corrections:
  - Revise Commerce's treatment[106] of late payment revenue that CBA collected from its home market customers during the POI, which CBA reported in the data field, LATEPAYH.[107]
  - Revise the programming used in Commerce's margin calculations to properly account for Commerce's collapsing determination with regard to treatment of CBA Alumínio and CBA Itapissuma as a single entity for dumping purposes.[108]
  - Revise CBA Alumínio's indirect selling expense ratio for home market and U.S. sales using the corrected ratio reported in CBA's in-lieu of on-site Verification QR.[109]

No other parties commented on these issues.

---

[98] *See, e.g.*, *HWRW Pipe and Tube* and accompanying IDM at Comment 7.
[99] *See e.g.*, CBA's AQR at Exhibit A-15, footnote 1 to VGE's 2019 financial statements, which states that the company implements, explores, operates, and maintains projects aimed at generating energy and providing operating and maintenance services related to the sales of energy.
[100] *See WLP from Korea* and accompanying IDM at Comment 24.
[101] *See, e.g.*, *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*LDWP from Korea*), and accompanying IDM at Comment 16; and *CTL Plate from Germany* IDM at Comment 33.
[102] *See, e.g.*, *LDWP from Korea* IDM at Comment 16; and *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49950 (July 29, 2016), and accompanying IDM at Comments 6 and 10.
[103] *See* CBA Final Cost Calculation Memo.
[104] *Id*.
[105] *See* Petitioners' Case Brief at 25-29.
[106] The discussion of this issue includes certain business proprietary information. *See* Petitioner's Case Brief at 25-26.
[107] *See* Petitioners' Case Brief at 25-26 (citing CBA's BCDR at B-43).
[108] The discussion of this issue includes certain business proprietary information. *See* Petitioner's Case Brief at 26-27.
[109] *See* Petitioners' Case Brief at 28 (citing CBA's in-lieu of on-site Verification QR at 10, Exhibit VQ-8).

Commerce's Position: We agree with the petitioners that Commerce's margin calculations for CBA should be revised to correct these three items. Specifically, for the final determination, Commerce is correcting its treatment of CBA's home market late payment revenue, correcting the programming to properly account for Commerce's collapsing determination and treatment of CBA Alumínio and CBA Itapissuma as a single entity for dumping purposes, and revising CBA Alumínio's indirect selling expense ratio for home market and U.S. sales using the corrected ratio as reported in CBA's in-lieu of on-site Verification QR.[110]

Comment 6: Date of Sale

Petitioners' Brief:[111]

- In the *Preliminary Determination*, Commerce used the date of the tax invoice as the date of sale for CBA's U.S. sales.[112] In its final determination, Commerce should base the date of sale for U.S. sales on CBA's (international) commercial invoice reported in the data field SALINDT2U, rather than the tax invoice.
- Commerce's normal practice is to rely on the date of the invoice issued to the U.S. customer as the date of sale.[113] Consistent with Commerce's practice of relying on the commercial invoice as the presumptive date of sale, the date of the commercial invoice is the appropriate date of CBA's U.S. sales.

CBA's Rebuttal: [114]

- Commerce should continue to rely on the date of the tax invoice to establish the date of sale for CBA's sales to customers in both the home market and U.S. market.
- Commerce's practice is to select a uniform date of sale across markets.[115] Commerce's reliance on the date of the tax invoice for date of sale achieves this objective, because CBA issues a tax invoice for sales in both markets, whereas it issues an international commercial invoice only for export (*i.e.*, U.S.) sales.
- The petitioners have failed to demonstrate any basis for revising Commerce's decision in the *Preliminary Determination* that the tax invoice establishes the material terms of sale.
- The petitioners' argument to rely on the international commercial invoice for the date of sale for U.S. sales only is inconsistent with Commerce's practice, which requires that Commerce base the date of sale on the earliest date on which the material terms of sale are established.
- The petitioners' argument amounts to claiming that, because the U.S. customer did not receive the tax invoice, CBA did not "issue" it. Yet, record evidence, including the sales trace included in CBA's response to Commerce's Verification Questionnaire, demonstrates that CBA issued tax invoices for all U.S. sales, even if the U.S. customer did not receive it.[116]

---

[110] *See* CBA Final Sales Analysis Memorandum.
[111] *See* Petitioners' Case Brief at 23-25.
[112] *Id.* at 23(citing PDM at 13-14).
[113] *Id.* (citing 19 CFR 351.401(i); *Mittal Steel Point Lisas Ltd. v. United States*, 491 F. Supp. 2d 1222, 1231 (CIT 2007)).
[114] *See* CBA's Rebuttal Brief at 24-27.
[115] *Id.* at 24, citing *Carbon and Alloy Steel Wire Rod from Spain*, 83 FR 13233 (March 28, 2018), and accompanying IDM at 15.
[116] *Id.* at 25 (citing CBA's AR at Exhibit A-12; CBA's In-Lieu of On-Site Verification QR at Exhibit VQ-4).

Moreover, the question of whether the customer received the tax invoice has no bearing on the question of whether the tax invoice establishes the material terms of sale.

- Currency conversion, in and of itself, is not a material term of sale, and the petitioners have not cited to any case where Commerce found currency conversion to constitute a material term of sale. Furthermore, the petitioners have not demonstrated that the prices themselves, aside from conversion, actually changed between the *nota fiscal* and the international commercial invoice. Thus, there is no basis to conclude that the material terms of sale actually changed between the issuance of the two invoices. Accordingly, there is no reason to revise Commerce's finding that the tax invoice establishes the material terms of sale.
- Commerce's practice is to use the earlier of invoice date or shipment date.[117] Here, the earlier date is that of the tax invoice; the international commercial invoice is later, and either close to or identical to, the later shipment date. Thus, the tax invoice remains the correct date of sale because it precedes all shipment dates (*i.e.*, from the plant, reported in the data field SHIPDAT1U, as well as from the port, reported in the data field SHIPDAT2U).[118]
- Reliance on the tax invoice date as the correct date of sale was confirmed in the recently completed antidumping duty investigation of wood mouldings and millwork products from Brazil.[119]

Commerce's Position: We agree with CBA, based on the information on this record, that the appropriate date of sale is the tax invoice date (also known as "*nota fiscal*"). CBA stated that "{t}he material terms of sale are first established when a customer issues a purchase order to CBA. Thereafter, and prior to issuance of the nota fiscal {(tax invoice)}, changes to the material terms of sale can take place."[120] CBA reported that in the home market, the tax invoice serves also as the commercial invoice.[121] For U.S. sales, CBA indicated that an international commercial invoice is issued subsequent to the tax invoice, when the merchandise is loaded at the port for shipment to the customer.[122] CBA also stated that, "{a}side from conversion of the price to the export currency, the material terms of sale on the international commercial invoice are identical to those on the nota fiscal {(tax invoice)}."[123]

According to 19 CFR 351.401(i), in identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Commerce's regulations further state that Commerce may use a date other than the date of invoice if Commerce is satisfied that a different

[117] *Id.* at 27 (citing *Citric Acid and Certain Citrate Salts from Colombia: Affirmative Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 26002 (June 5, 2018), and accompanying IDM at 5).
[118] *Id.* at 27 (citing CBA's January 25, 2021 Section C Questionnaire Response (CBA's CQR) at C-18; *Wood Mouldings and Millwork Products from Brazil: Final Negative Determination of Sales at Less Than Fair Value*, 86 FR 70 (January 4, 2021) (*Millwork Products from Brazil*), accompanying IDM at 53-54).
[119] *Id.* at 27 (citing *Millwork Products from Brazil*, and accompanying IDM at 53-54).
[120] *See* CBA's AQR at A-20.
[121] *Id.*
[122] *Id.*
[123] *Id*.

date better reflects the date on which the exporter or producer establishes the material terms of sale.[124]

The petitioners assert that currency conversion involved in CBA's issuance of the commercial invoice for its U.S. sales results in a change to the material term of sale, which warrants identifying the commercial invoice date, rather than the tax invoice date, as the date of sale for U.S. sales. The petitioners also argue that the tax invoice is not considered "issued" by CBA, because it is not issued to the U.S. customer, and the U.S. customer does not actually receive it. We disagree that these two factors warrant a change from the date of sale determined in the *Preliminary Determination*. First, the price stated on the tax invoice represents a material term of sale and there is no evidence demonstrating a change between the tax invoice and the commercial invoice.[125] The conversion of the price to the export currency of the sale represents the only difference between the tax invoice and the commercial invoice; this does not alter either the terms of sale or the sales price that was agreed upon between CBA and its U.S. customer. Second, we find that the actual conveyance of the tax invoice by CBA to the U.S. customer is not a relevant factor in this instance, as CBA and its U.S. customer had already agreed upon the price, which is a key material term of sale.[126] Accordingly, for the reasons outlined above, Commerce will continue to use, for this final determination, CBA's tax invoice date as the date of sale for both the home market sales and U.S. sales.

V. RECOMMENDATION

We recommend applying the above methodology for this final determination.

☒	☐
Agree	Disagree

9/16/2021

X James Maeder

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

[124] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).
[125] *See, e.g.*, CBA's AR at Exhibit A-12; *see also* CBA's in-lieu of on-site Verification QR at Exhibit VQ-4.
[126] *See* CBA's IQR at A-20.