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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: October 24, 2002

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey -- April 1, 2000, through March 31, 2001

Summary

We have analyzed the comments of the interested parties in the 2000-2001 administrative review of the antidumping duty order covering certain steel concrete reinforcing bars from Turkey. As a result of our analysis of the comments received from interested parties, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

1. Model Matching Hierarchy
2. Clerical Errors in the Preliminary Results
3. Treatment of Ekinciler's U.S. Sales
4. Financing Expenses for Ekinciler
5. Depreciation Expenses for Ekinciler

Background

On May 1, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review, 67 FR 21634 (May 1, 2002) (Preliminary Results). The product covered by this order is rebar. The petitioner, AmeriSteel

Corporation, requested a hearing, which was held at the Department on July 10, 2002. The period of review (POR) is April 1, 2000, through March 31, 2001.

We invited parties to comment on our preliminary results of review. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results.

Margin Calculations

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

- We corrected two clerical errors in the calculation of the final margin for Colakoglu Metalurji A.S. (Colakoglu). See Comment 2.

- We revised the calculation of depreciation expenses for Ekinciler Demir Celik A.S. (Ekinciler) to take into account the information contained in the company's June 26, August 2, and September 9, 2002, submissions. See Comment 5.

Discussion of the Issues

Comment 1: *Model Matching Hierarchy*

In all previous segments of this proceeding, we compared rebar sold in the United States to rebar sold in the home market in the ordinary course of trade that were identical or most similar with respect to the following physical characteristics: grade, size, ASTM specification, and form. In this administrative review, Habas requested that the Department revise this matching hierarchy by placing the criterion "form" (i.e., straight rebar vs. rebar in coils) before size. For purposes of the preliminary results, we agreed that revising the hierarchy in this way would result in more similar matches, and we altered the matching hierarchy accordingly.

In its case brief, the petitioner argues that the Department should reconsider this position and continue to rely on the hierarchy established in the less-than-fair-value (LTFV) investigation. The petitioner argues that the Department should not now second guess its model matching methodology simply because one respondent has argued that a new hierarchy could sometimes result in the selection of a more similar foreign like product for comparison to U.S. sales.[1]

[1] According to the petitioner, the courts have recognized that the Department, rather than individual respondents, is responsible for determining what constitutes most similar merchandise. See Timken Co. v. United States, 630 F. Supp. 1327, 1338 (CIT 1986) (Timken). See also 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; Final Results of Antidumping Duty Administrative Reviews, 66 FR 15078 (Mar. 15, 2001) and accompanying decision memorandum at Model Match Comment 1 (TRBs from

Indeed, the petitioner asserts that the Tariff Act of 1930, as amended (the Act), does not require the Department to determine the best comparisons during each review, but merely requires that the comparisons be fair. According to the petitioner, in the absence of clear errors, revising established methodologies will only lead to the depletion of administrative resources and confuse administrative consistency.

For this reason, the petitioner asserts that it is the Department's normal practice to retain its established hierarchy from review to review unless a respondent can establish that it does not capture meaningful commercial differences. As support for this contention, the petitioner cites Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part; Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada, 66 FR 3543 (Jan.16, 2001) and accompanying decision memorandum at Comment 1 (Carbon Steel Flat Products from Canada), which stated that, for the sake of consistency, the Department does not reconsider its matching criteria *ab initio* in each review.

Regarding the established hierarchy in this proceeding, the petitioner argues that this hierarchy captures meaningful commercial differences by addressing all four factors necessary to ascertain products that are similar to the subject merchandise. According to the petitioner, use of this hierarchy has proven to be a reasonable methodology for the previous four segments of the case, has produced non-distortive margin calculations, and has been devised in accordance with law. Thus, the petitioner concludes that this methodology would be upheld by the courts. See Koyo Seiko Co. v. United States, 796 F. Supp. 1526, 1529 (1992), citing Koyo Seiko Co. v. United States, 796 F. Supp. 517, 523 (1992). Moreover, the petitioner notes that the respondents did not object to this methodology in any previous segment, a fact pattern that the petitioner implies is similar to that found in Porcelain-on-Steel Cookware From Mexico; Final Results of Antidumping Duty Administrative Review, 65 FR 30068 (May 10, 2000) and accompanying decision memorandum at Comment 8 (Mexican Cookware).[2]

In any event, the petitioner argues that it is inappropriate to alter the model matching hierarchy based on differences in the cost of production of the merchandise. According to the petitioner, this issue was addressed directly in Hussey Copper, Ltd. et al. v. United States, 895 F. Supp. 311, 314 (CIT 1995) (Hussey), where the Court of International Trade (CIT) directed the Department to determine the most similar home market merchandise based upon similarity in physical characteristics, rather than differences in costs, between products. The petitioner notes that this requirement is also codified in 19 CFR 351.411(a), which sets forth the methodology for determining difference-in-merchandise (difmer) adjustments. Thus, the petitioner contends that

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Japan).

[2] In Mexican Cookware, the Department revised the established model matching hierarchy in the tenth administrative review, and it upheld these revisions when the respondents objected to them several segments later.

any concerns regarding cost differences should be addressed via difmer adjustments, not by a reorganization of the established hierarchy.

Finally, the petitioner argues that the Department's practice is to devise a hierarchy based on the totality of the physical characteristics in question, rather than basing it on one factor alone. As support for this assertion, the petitioner cites Circular Welded Non-Alloy Steel Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review, 65 FR 37518 (June 15, 2000) and accompanying decision memorandum at Comment 11 (Pipe and Tube from Mexico). According to the petitioner, the Department departed from this practice in this case when it failed to consider how altering the hierarchy with respect to form and size impacted the differences in the comparisons resulting from the remaining characteristics (i.e., grade and ASTM specification). Specifically, the petitioner asserts that the Department did not address how elevating form over size in importance affected comparisons of products of similar form but different grades or ASTM specifications. The petitioner argues that, because this change potentially creates distortive margin calculations, the Department should reexamine its position and return to the model match hierarchy used in previous segments of this proceeding.

Habas disagrees with the petitioner's basic premise that the Department is not required to match the most similar merchandise. According to Habas, the purpose of allowing the Department broad discretion in deciding upon the appropriate model matching hierarchy is to ensure that the Department compares the most similar merchandise.[3] See Timken, 630 F.Supp at 1338. According to Habas, the Department appropriately exercised this discretion when it modified the hierarchy in the preliminary results after Habas made a compelling demonstration that applying the then-existing hierarchy would result in a distortion.

Habas maintains that, contrary to the petitioner's assertions, Carbon Steel Flat Products from Canada actually supports its position. Specifically, Habas notes that the relevant principle set forth in that case is that the Department will reconsider its matching methodology where a respondent establishes that meaningful commercial differences exist which are not captured by the hierarchy. In this case, Habas asserts that it has demonstrated that the existing hierarchy does not, in fact, capture meaningful commercial differences. Habas maintains that the Department correctly found that rebar in coils and straight lengths have different applications and uses which make them different products. Habas notes that the domestic industry itself recognized the commercial distinction between coiled and straight rebar so explicitly as to exclude coiled rebar from the scope of the June 2000 antidumping petitions on rebar. Thus, Habas concludes that matching coiled and straight rebar produces distortive results.

Moreover, while Habas agrees with the goals of consistency and predictability, it notes that the petitioner was unable to cite any case law elevating either of these over accuracy. Habas notes that each review stands on its own record; thus, when the record in a particular review

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[3] Habas equates comparing the "most similar" merchandise with making the "best" comparison.

demonstrates the need to update a particular methodology, Habas argues that it is appropriate to implement such an update. Habas states that it was not necessary to raise the issue until the instant review[4] because the other Turkish rebar producers, unlike Habas: 1) have large home markets and therefore always have an identical match for their export products; and 2) do not operate a wire rod mill in addition to a rebar mill and therefore, would have no possibility of having coiled rebar match to a U.S. sale because they do not produce this product.

According to Habas, the petitioner mischaracterizes the Department's reasoning for altering the hierarchy in this review. Habas notes that, contrary to the petitioner's assertion, the Department did not base its decision on the fact that cost differences exist between different forms of rebar, but rather on the fact that the different forms have different uses. Thus, Habas argues that the petitioner's reliance on Hussey is misplaced. Moreover, Habas disagrees with the petitioner's assertion that the Department devised its hierarchy by considering only a single factor. Habas contends that the concurrence memorandum clearly shows that the Department considered all the factors adduced by the parties and made its judgment on the full record.

Finally, Habas dismisses the petitioner's argument that the Department should not address this issue simply because it has been raised by a sole respondent and is thus potentially self-serving. Habas notes that in other cases where respondents have raised similar issues (e.g., Carbon Steel Flat Products from Canada), the Department has properly considered these issues on their merits. Habas maintains that, in this case, it raised the issue squarely, and as in other cases, the Department made a reasoned determination based on the submissions of record.[5] Further, Habas contends that the Department's consideration of this issue did not deplete administrative resources, but rather merely demonstrated that the administrative process worked as it should (i.e., when issues are raised, they are considered and resolved). Consequently, Habas maintains that the Department should continue to use the revised model matching hierarchy for purposes of the final results.

Department's Position:

For purposes of the final results, we continue to find that form is the most important criterion in the model matching hierarchy. As we stated in our preliminary concurrence memorandum, we believe that this change results in more-similar product comparisons.

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[4] Habas has not been involved in any segment of this proceeding since the LTFV investigation.

[5] Indeed, Habas notes that it raised this issue early in the proceeding, giving all parties ample time to comment. Habas further notes that, in making this decision, the Department did not cede its decision-making authority to an interested party, but rather exercised this authority in a proper manner.

In analyzing this issue, we considered the discussion contained in the petition of certain non-concurrent investigations involving rebar, as well as the sales data submitted by each respondent in this review. Regarding the other rebar proceedings, we note that their scope is specifically limited to straight rebar and explicitly excludes coiled rebar for the following reasons: 1) most rebar manufacturers lack production facilities to produce coiled rebar; 2) coiled rebar is a very small percentage of the total U.S. rebar market; and 3) coiled rebar is used in very specific applications and does not generally compete with straight length rebar. (See the Petition on Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Poland, Moldova, Russia, Ukraine, and Venezuela dated June 28, 2000 and the October 24, 2002, memorandum from Elizabeth Eastwood to the file entitled "Placing Information on the Record in the 2000-2001 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey" (the record memo).)

Our analysis of the data submitted by the respondents in this review indicated that two of the three respondents sold coiled rebar in the home market during this POR. In addition, one of these companies sold a small amount of coiled rebar to the United States. We noted that the coiled rebar contained in the sales listings ranged in size from eight to 14 millimeters, while the straight rebar ranged in size from eight to greater than 32 millimeters.

We agree with both parties that form and size are extremely important characteristics. However, the issue is not whether we should compare coiled rebar to straight or six millimeter rebar to 60 millimeter. Rather, it is which comparison would yield a more similar match, or, conversely, which would yield a more distorted result. Reduced to its simplest terms, the issue is whether an eight millimeter straight rebar sold in the United States is more similar to an eight millimeter coiled rebar or a nine millimeter straight model sold in the home market. Given that there is information on the record indicating that straight and coiled rebar have different applications and uses, we believe that the more appropriate comparison in this scenario would be to compare straight products of like diameters rather than straight and coiled products of identical sizes. Therefore, we find that the treatment of "form" as the most important product characteristic would yield more-similar comparisons.

Regarding the petitioner's argument that the Department's practice is merely to make comparisons that are reasonable, without considering whether the comparisons result in the best matches, we disagree. Indeed, we find that it would be unfair to refuse to make better comparisons which capture differences that are meaningful on a commercial level.[6] In this case, we examined the data on the record, as well as the arguments made by the parties. Because we found that coiled and straight rebar have such different applications and uses that they do not normally compete with each other in the marketplace, we concluded that changing the existing hierarchy would better reflect the commercial differences between the various models of rebar.

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[6] See, e.g., Carbon Steel Flat Products from Canada, at Comment 1.

Accordingly, we concluded that with respect to coiled versus straight rebar, a comparison of more similar products could be made.[7]

We disagree with the petitioner that we are precluded from considering this issue anew in this administrative review. While it is not our practice to reexamine an established model matching hierarchy in each segment of a proceeding, we will reexamine it if a valid issue is raised by one or more of interested parties.[8] See Mexican Cookware at Comment 8.[9] Moreover, if we find that a revision is warranted after reviewing the merits of the arguments presented, we have the discretion to revise the hierarchy in order to make fair comparisons as required by the Act.

Moreover, we disagree that the Department is constrained under the CIT's ruling in Timken from entertaining arguments raised by a single respondent. In Timken, the Department allowed the respondent to identify the most similar match without collecting sufficient data to determine independently whether this match was indeed the most appropriate one available. In that context, the CIT held that "[i]t is of particular importance that the administering agency itself make the required determination of what constitutes most similar merchandise, rather than delegating that responsibility to an interested party."[10] See Timken, 630 F. Supp. at 1338. In contrast, here all of the data necessary to identify what constitutes the most similar merchandise exists on the record

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[7] In order to implement this determination, it was necessary to move the form criterion to the first position in the hierarchy. While we did not explicitly address the relative significance of form and the additional matching criteria of grade and ASTM specification, we note that the existing hierarchy placed these criteria after size. Because no interested party has disputed this placement, we have not reexamined it here. Nonetheless, we note that, if these criteria were of less importance than size and form is more important than size, it logically follows that these criteria are of less importance than form as well.

[8] The fact that this issue was raised by only one party does not render the issue invalid; to decide otherwise would lead to the untenable conclusion that the Department would be unwilling to address any issues raised by a single respondent.

[9] We disagree with the petitioner that Mexican Cookware stands for the proposition the Department will not consider issues relating to model matching which are raised in post-LTFV segments of a proceeding. (In that case, the Department's decision not to revise its model matching criteria was based on a different rationale.) Rather, the relevant portion of this decision relates to the Department's willingness to revise the model matching hierarchy upon determining that a legitimate need to do so exists.

[10] The CIT goes on to say that "by accepting a foreign manufacturer's assertions as to what constitutes most similar merchandise without obtaining the complete data needed to determine the appropriateness of those assertions, the ITA in this action violated the spirit of the statutory requirement that it verify the data relied upon in proceedings involving revocation of antidumping orders."

of this proceeding, and we analyzed this data before reaching the conclusion that rebar of the same form and different sizes is more comparable than rebar of different forms and similar sizes.

Finally, we disagree with the petitioner's claim that we based our revision to the model matching hierarchy on differences in the cost of production between coiled and straight rebar. As we stated in the concurrence memorandum for the preliminary results, we based our decision on the fact that coiled and straight rebar have different applications and uses. Therefore, the petitioner's reliance on Hussey is misplaced.

Comment 2: *Clerical Errors in the Preliminary Results*

Colakoglu contends that the Department made two clerical errors in the margin calculations performed for the preliminary results. First, Colakoglu argues that the Department failed to deduct credit expenses from the gross unit price for home market sales that were denominated in U.S. dollars. Second, Colakoglu maintains that the Department incorrectly used the date of invoice as the date of sale for U.S. transactions where the date of shipment preceded the invoice date. According to Colakoglu, the Department's normal practice regarding date of sale is to use the earlier of the invoice or shipment date. In support of this assertion, Colakoglu cites 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 decision memorandum at Comment 12; Stainless Steel Bar from Italy: Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 3155 (Jan. 23, 2002), and accompanying decision memorandum at Comment 26; Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706 (May 3, 2000), and accompanying decision memorandum at Comment 11; Final Results of Antidumping Administrative Review; Stainless Steel Bar From Japan, 65 FR 13717 (Mar. 14, 2000), and accompanying decision memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38767 - 38768 (July 19, 1999). Colakoglu asserts that the Department should revise the margin calculations for the final results to correct these errors.

The petitioner did not comment on this issue.

Department's Position:

We agree with Colakoglu that we inadvertently failed to deduct credit expenses from the gross unit price for home market sales denominated in U.S. dollars. Moreover, we agree that we inadvertently used the date of invoice as the date of sale for those U.S. sales with a date of shipment which precedes the date of invoice, contrary to our normal practice. Accordingly, we have revised the margin calculations for Colakoglu to correct these errors for the final results.

Comment 3: *Treatment of Ekinciler's U.S. Sales*

For the preliminary results, the Department treated all of Ekinciler's U.S. sales as export price (EP) transactions because these sales were made by the group's affiliated rebar producer in Turkey directly to the first unaffiliated customer in the United States.

The petitioner contends that the Department should reclassify these sales as constructed export price (CEP) transactions, in light of the facts that: 1) Ekinciler's U.S. sales affiliate, Ferromin, was involved in the sales process; and 2) the sales in question appeared to have been made in the United States. Specifically, the petitioner maintains that Ferromin had extensive involvement in the conclusion of a contract between Ekinciler and one of its U.S. customers, alleging that the contract was drafted, negotiated, and executed in the United States. Furthermore, the petitioner contends that the company official who signed the contract in question was domiciled in the United States when the contract was signed, despite Ekinciler's assertion in its April 10, 2002, supplemental response that this contract was signed by Ekinciler in Turkey after being faxed there by Ferromin.[11] Finally, the petitioner asserts that the fact that Ferromin's financial statements reflect various commission expenses establishes that the sales were made inside the United States.

According to the petitioner, the treatment of these sales as CEP transactions is consistent with a ruling by the Court of Appeals for the Federal Circuit (CAFC), in which the court held that a U.S. sale is considered a CEP transaction if: 1) the sale is made "inside the United States"; and 2) the foreign producer is affiliated with the U.S. importer. See AK Steel Corp. v. United States, 226 F.3d 1361 (CAFC 2000) (AK Steel). As a consequence, the petitioner argues that the Department should reclassify these sales as CEP transactions and deduct from the U.S. price the selling expenses related to the activity which takes place in the United States.

Ekinciler contends that the petitioner's reliance on AK Steel is misplaced. Specifically, Ekinciler notes that in AK Steel the first customer in the United States was an affiliated U.S. importer who then made a sale to an unaffiliated U.S. customer; in contrast, all of Ekinciler's sales to the United States during the POR were invoiced and shipped directly to an unaffiliated U.S. customer. Furthermore, Ekinciler notes that the customer made payment for these sales directly to Ekinciler.

Moreover, Ekinciler disagrees with the petitioner's claim that Ferromin was extensively involved in the sales process. Rather, Ekinciler asserts that Ferromin merely served as a communication link between Ekinciler and the U.S. customer, with all of the final decisions regarding price, quantity, and other terms of sale made in Turkey. Furthermore, Ekinciler claims that the petitioner misunderstood the sales contract contained in Ekinciler's April 10 submission.

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[11] As proof of this assertion, the petitioner cites correspondence from the U.S. customer in question to Ferromin, in which the attention line references a Ferromin employee and a person with the same first name as the Deputy General Manager of Ekinciler.

Ekinciler points out that this contract was signed by the Deputy Manager of Ekinciler, who was resident in Turkey rather than in the United States, and who acted on behalf of Ekinciler, rather than Ferromin. Therefore, Ekinciler maintains that the Department properly treated these sales as EP transactions in the preliminary results.

Department's Position:

We have continued to treat the sales in question as EP transactions for purposes of the final results because these sales were made pursuant to an agreement negotiated and concluded directly between Ekinciler in Turkey and its unaffiliated U.S. customer. In its February 2002 supplemental response, Ekinciler described the sales process for these transactions as follows:

> As explained on page A-13 of the original response, Ferromin served as a communication link between the customers in the U.S. and Ekdemir. The sales were, of course, invoiced directly by Ekinciler to the unaffiliated customer in the United States and all final decisions as to price, quantity, product breakdown, financing and shipment were made in Turkey. Due to Ferromin's location in New York, most of the U.S. buyers got in touch with Ferromin by telephone or e-mail to indicate their interest of buying rebar from Ekinciler. Ferromin passed the inquiries back to Turkey and served as a communication link while the terms of the sale were discussed. When the final terms were agreed, a copy of the proposed contract was sent by Ferromin to Ekinciler for approval.... Title of the goods passes to the unaffiliated U.S. customer after the goods are loaded on the vessel at the port of exportation and the bill of lading is issued.

See Ekinciler's February 19, 2002, submission at pages 2 and 3.

Based on the above description, we disagree with the petitioner's characterization of Ferromin's involvement in the sales process. Ferromin's role appears to be limited to faxing documents from U.S. customers to Ekinciler's offices in Turkey. Moreover, we disagree that the record demonstrates that the terms of sale were set by an employee of Ekinciler who was physically domiciled in the United States. Although certain correspondence cited by the petitioner seems to reference Ekinciler's Deputy General Manager, this reference does not prove that the employee in question was "inside the United States." Indeed, given Ferromin's role as an information conduit, it is more likely that this letter was faxed to Turkey to the attention of the individual in question in the same manner as other documents.

In addition, we disagree that the existence of commission expenses on Ferromin's profit and loss statement demonstrates that sales of rebar were made inside the United States. There is no evidence on the record to link Ferromin's sales agents with Ekinciler's U.S. customers of rebar, and no party to this proceeding has argued that Ferromin's commission expenses are directly related to the sales under consideration and thus should be treated as a CEP deduction. Rather, the petitioner appears to have confused commission expenses (where a company pays a sales

agent for locating customers) with commission income (where a company receives money for acting as a sales agent). In any case, however, these commissions do not appear to relate to rebar.

Finally, we disagree with the petitioner that the circumstances in AK Steel are similar to those present here. Specifically, in AK Steel the court held the following:

> [I]f the contract for sale was between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale. Stated in terms of the EP definition: if the sales contract is between two entities in the United States and executed in the United States and title will pass in the United States, it cannot be said to have been a sale "outside the United States"; therefore the sale cannot be an EP sale. Similarly, a sale made by a U.S. affiliate or another party other than the producer or exporter cannot be an EP sale.

See AK Steel, 226 F.3d at 1371.

While it is undisputed that Ferromin is affiliated with Ekinciler, this fact alone does not require a finding that the sales in question are CEP transactions. The salient issue is which party made the U.S. sale (i.e., the producer/exporter or the U.S. affiliate). In this case, the sales contract was between an entity in Turkey (i.e., the producer/exporter) and an entity in the United States (i.e., the U.S. customer), it was executed outside the United States, and title passed outside the United States. Thus, consistent with the court's ruling in AK Steel, we have continued to treat the sales made pursuant to this contact as EP transactions.

Comment 4: *Financing Expenses for Ekinciler*

Ekinciler is affiliated with a group of companies, collectively known as the Ekinciler Group. This group is headed by a holding company named Ekinciler Holding A.S. Although each company within the group prepares its own financial statements, the group as a whole does not prepare consolidated financial statements.

In its original questionnaire response, Ekinciler reported its financing expenses on a consolidated basis by aggregating the interest expenses incurred by each of the group members, as well as the cost of sales of each of these companies. Ekinciler stated that it eliminated all inter-company sales from the total cost of sales before calculating its group-wide financing expense ratio. At the Department's request, Ekinciler also provided its own financing expense ratio, and we used this ratio in our calculations for purposes of the preliminary results.

Ekinciler argues that the Department should base the calculation of its financing expenses on the consolidated financial experience of the entire Ekinciler Group, rather than on its own experience. According to Ekinciler, it is the Department's long-standing practice to base interest expenses for an affiliated group of companies on the group's consolidated financial expenses. As support for this assertion, Ekinciler cites Notice of Final Determination of Sales at Less Than

Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia, 66 FR 12759 (Feb. 28, 2001) and accompanying decision memorandum for Malaysia at Comment 1 (Steel Wire Rope from Malaysia) and Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 11256 (Feb. 23, 2001) and accompanying decision memorandum at Comment 6. Moreover, Ekinciler asserts that the Department ordinarily calculates a consolidated financial expense ratio even in those cases where an affiliated group of companies does not prepare a consolidated financial statement. See Final Results of Antidumping Duty Administrative Review; Silicon Metal From Brazil, 65 FR 7497, 7499 (Feb. 15, 2000) (Silicon Metal from Brazil). Finally, Ekinciler asserts that the Department's practice in this area has been repeatedly sustained by the CIT. See, e.g., Camargo Correa Metais, S.A. v. United States, 17 CIT 897, 902 (CIT 1993).

Ekinciler notes that the Department based Ekinciler's financing expenses in the first administrative review on the consolidated expenses of the Ekinciler Group. Moreover, while Ekinciler concedes that the Department reconsidered this position in the most recently completed segment of this proceeding, it asserts that the Department did so only because the calculation of the consolidated ratio in the previous review contained significant flaws which are no longer present here. Specifically, Ekinciler notes that, in its previous calculations, it: 1) failed to eliminate inter-company sales from the denominator of the calculation; and 2) did not include all companies in the Ekinciler Group in its consolidation. According to Ekinciler, both of these problems no longer exist because Ekinciler deducted all inter-company transactions from the cost of sales in its calculations and it excluded only companies which either had no financing expenses or ceased operations during the POR.

Ekinciler contends that it is especially appropriate to use the group's consolidated financial expenses in this case because group companies borrow from each other interest-free. As a consequence, Ekinciler contends that allocating its financing expenses over only its own cost of sales would fail to take into account the fact that a good part of the financial burden assumed by Ekinciler was incurred to finance the goods and services sold by other group companies.

The petitioner did not comment on this issue.

Department's Position:

The Department's long-standing practice with regard to financing expenses is to base net financing expenses on the full-year net interest expense and cost of sales from the audited fiscal year financial statements at the highest level of consolidation which correspond most closely to the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152 (Dec. 29, 1999). This practice has been upheld by the CIT. See Gulf States Tube Division of Quanex Corporation v. United States, 981 F. Supp. 630, 647-48 (CIT 1997).

During the POR, the Ekinciler Group did not prepare consolidated financial statements in the ordinary course of business. Thus, we have continued to rely on Ekinciler's company-specific financial statements for purposes of calculating financing expenses.

Consolidated financial statements are not merely summations of account balances of the affiliated corporations. Reciprocal amounts are eliminated in the process of consolidation, and only nonreciprocal accounts are combined and included. Sales, borrowing, and leasing transactions between parent and subsidiaries also give rise to reciprocal amounts that must be eliminated in the consolidating process. Inter-company purchases and sales balances are reciprocals that must be eliminated in preparing consolidated income statements because they do not represent purchases and sales to parties outside the consolidated entity. Adjustments for inter-company sales and purchases reduce revenue (sales) and expenses (cost of goods sold) by the same amount and therefore have no effect upon consolidated net income. Reciprocal rent income and expense amounts are likewise eliminated without effecting consolidated net income. Floyd A. Beams, Advanced Accounting 74, 77, 91, 102-3 (5th ed., Prentice Hall 1992). See also the record memo.

The preparation of consolidated financial statements is a complex task which is rendered even more complicated in cases where (as here) there are numerous affiliated parties. Generally, this task is completed at the direction of an outside auditing firm which certifies that the proper procedures have been performed. For this reason, in calculating financial expense at the highest level of consolidation, our preference is to rely on audited financial statements, as such statements provide reasonable assurance that the data have not been manipulated.

While we sometimes do accept financial statements which are not audited by outside accountants in certain situations, we will only do so when the respondent is able to demonstrate that such financial statements historically have been and currently are prepared by the employees of a group company in the normal course of business. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, 67 FR 55800 (Aug. 30, 2002), and accompanying decision memorandum at Comment 8. In such situations, we find that the preparation and use of these statements in the normal course of business (outside the context of a dumping proceeding) provides reasonable assurance that the data have not been manipulated for purposes of the dumping proceeding.

Absent either a discrete level of independent review or the existence of a system from which consolidated financial statements are actually prepared in the ordinary course of business, we have no assurance that the proper eliminations have been made or the correct procedures followed. In this case, while Ekinciler did remedy certain significant deficiencies in its self-performed consolidation, we are unable to assess whether the result represented a true consolidation because no independent party reviewed the underlying data or the company's computations and because the company did not prepare these statements as part of its normal operating procedures. Consequently, we have continued to base Ekinciler's financing expense ratio on its own company-specific data for purposes of the final results.

As noted by Ekinciler, we recognize that we accepted unaudited "consolidated" financing expenses prepared solely for dumping purposes in a past segment of this proceeding, as well as in at least one other case before the Department. See Silicon Metal from Brazil. Since the final results in those cases, however, we have reconsidered this position and now find that it is not appropriate to rely on data from financial statements which were not prepared in the ordinary course of business. As noted above, absent a discrete level of independent review or the existence of a system from which consolidated financial statements are actually prepared in the ordinary course of business, such information is not reliable.

Comment 5: *Depreciation Expenses for Ekinciler*

Throughout the course of this review, the petitioner has alleged that Ekinciler's depreciation expenses are significantly understated. In order to demonstrate that this was the case, the petitioner calculated a theoretical amount of depreciation using both the asset values shown on the company's financial statements and the average useful life for each category of assets reported in the company's section D response. The petitioner then compared its estimated amount with the amount shown on the financial statements.

In its case brief, the petitioner again pointed out the apparent discrepancy between its estimated depreciation expense and the actual amount reported. The petitioner also highlighted a number of possible errors in the calculation of depreciation expenses related to specific assets in Ekinciler's fixed asset ledger.[12] Because we were unable to duplicate Ekinciler's calculations related to these assets, we requested that the company explain them in a supplemental submission.

On June 26, 2002, Ekinciler submitted its response to our questions. In this submission, Ekinciler noted that certain of the errors identified by the petitioner were indeed mistakes, while the remainder related to the company's methodology for recognizing depreciation expenses on buildings and other structures. Regarding the former item, Ekinciler stated that, due to a computer error, the fixed asset ledger misstated depreciation expenses for all assets acquired in 1996. Regarding the latter item, Ekinciler noted that, under Turkish tax law (i.e., the equivalent to Turkish Generally Accepted Accounting Principles), companies are required to compute depreciation on buildings and other structures on the historical cost of the asset, rather than the

[12] In its rebuttal brief, Ekinciler argues that the petitioner's theoretical calculation was based upon a faulty application of information in the narrative of Ekinciler's section D response. Specifically, Ekinciler asserts that the petitioner relied upon the average useful life of the company's assets (and equipment in particular). However, Ekinciler states that use of this figure yields a distorted result because: 1) the company actually has many useful lives for equipment; and 2) the petitioner did not properly account for fully-depreciated assets in its equation. Finally, Ekinciler asserts that the petitioner failed to adjust its calculation for certain capitalized financing expenses which are not relevant to this review (see below).

revalued amount.[13] As part of its response, Ekinciler provided the amount of understatement for each of these categories.

Because Ekinciler's June 26, 2002, submission contained new factual information, we afforded the petitioner an additional opportunity to comment on it. In response, the petitioner again argued that Ekinciler's depreciation expense was significantly understated, based on a comparison of the revised figure and the estimate contained in the petitioner's case brief.[14] The petitioner also maintained that it would be impossible to confirm the accuracy of Ekinciler's calculations without obtaining the entire fixed asset ledger, and it requested that the Department require Ekinciler to place this document on the record. We agreed that the entire fixed asset ledger was necessary to our analysis of this issue, and thus we requested that Ekinciler provide it. Ekinciler did so on July 31, 2002.[15]

On August 27, 2002, we notified Ekinciler that the sum of the asset values in its fixed asset ledger did not reconcile to the total asset value shown on its financial statements. Therefore, we requested that Ekinciler reconcile these two values, as well as provide certain additional information. In its response, submitted on September 9, 2002, Ekinciler stated that: 1) the summary figures in the fixed asset ledger were not, in fact, line totals of the asset values; rather, they were the amounts that appeared in Ekinciler's books (i.e., general ledger system); and 2) the asset values in the fixed asset ledger and the values in the books differed due to the company's methodology for revaluing its assets in 1997 (i.e., for book purposes, the assets were revalued at the maximum rate allowed by the government of Turkey, whereas for fixed asset ledger purposes the assets were revalued at a lower rate). Regarding the latter point, Ekinciler notes that the government rate is a ceiling rate, not a floor rate. As such, the government of Turkey permits, but does not require, companies to revalue their fixed assets at the government rate. To demonstrate that it applied two different rates in its books and records, Ekinciler provided a number of examples showing how the values in the fixed asset ledger for specific assets related to the global figure in the company's financial statements.

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[13] In Turkey, companies are required to restate the value of (or "revalue") their assets each year to account for the effects of inflation. Ekinciler revalues its assets at the end of the year using an index published by the Turkish Ministry of Finance.

[14] In this letter, the petitioner also presented the following additional arguments: 1) Ekinciler "self-selected" the submitted pages and thus must be concealing something; and 2) Ekinciler completed the large task of researching the Department's questions in very little time with a minimal staff, and thus must have done an incomplete job.

[15] In this submission, Ekinciler also revised its updated depreciation figure to include several assets inadvertently omitted from its June 26 submission. Because this recalculation was illegible, Ekinciler resubmitted it on August 2, 2002.

As part of its September 9 submission, Ekinciler also discussed the relationship between certain non-depreciated assets labeled "Yatirim Finansman Devri" and the total asset value noted above. According to Ekinciler, these assets represent capitalized finance expenses incurred prior to 1996. Ekinciler stated that, because the company recognized these expenses for tax purposes in the year in which they were incurred, it could not depreciate them in subsequent years. Nonetheless, Ekinciler asserted that, had it depreciated these expenses instead of capitalizing them, it would have done so over a five-year period.[16]

Finally, in its September 9 submission Ekinciler reconciled the accumulated depreciation figure shown in the fixed asset ledger to the amount recorded in the company's general ledger (to within three thousandths of a percent).

On August 21 and September 9, 2002, the petitioner submitted letters in which it claimed that Ekinciler's responses on this topic raised more questions than answers. First, the petitioner speculates that Ekinciler may have omitted certain of the pages in its fixed asset ledger when submitting it to the Department. The petitioner bases this claim on the fact that Ekinciler's narrative descriptions of its fixed asset ledger differed between certain submissions,[17] and on the observation that the page numbers on the entire fixed asset ledger are hand written. In addition, the petitioner argues that certain portions of the fixed asset leger previously submitted and the entire fixed asset ledger do not correspond in all respects (e.g., the formatting differs in one instance).

More importantly, the petitioner argues that the Department cannot rely on the fixed asset ledger at all given that: 1) all of the company's assets do not appear to be included in this document, based on the facts that there are gaps in the asset numbering sequence and certain financing expenses are not consistently recorded; 2) it does not appear to capture a sizeable value of the assets actually reflected in the ledger, and their associated depreciation expenses; and 3) Ekinciler's explanation for the difference in the asset values in the fixed asset ledger and those in its financial statements does not make sense (i.e., the financial statement figure comes from Ekinciler's books rather than the ledger), because the fixed asset ledger is, in fact, one of Ekinciler's books.

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[16] Ekinciler notes that it also disclosed this issue in the most recent segment of the proceeding. For further discussion, see Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (Nov. 7, 2001) and accompanying decision memorandum at Comment 24.

[17] For example, in one submission, Ekinciler described the fixed asset ledger as having more than 75 pages, whereas its submission of the entire ledger totaled only 72 pages.

Based on these discrepancies, the petitioner argues that the Department treat Ekinciler as an uncooperative respondent and base its margin for the final results on adverse facts available.[18] As adverse facts available, the petitioner asserts that the Department should assign a margin of 41.8 percent, which was the highest rate applied in the less-than-fair-value investigation.

Department's Position:

We disagree with the petitioner that we should base Ekinciler's dumping margin on adverse facts available. Section 776(b) of the Act only authorizes the Department to use adverse facts available if "an interested party has failed to cooperate by not acting to the best of its ability" to comply with information requests. Contrary to the petitioner's assertions, we find that Ekinciler has cooperated to the best of its ability in this administrative review. Ekinciler has responded to numerous requests related to this issue in an adequate and timely manner. Moreover, it has provided a full copy of its fixed asset ledger, and it demonstrated how both the depreciation expenses and the corresponding asset values tied to the company's books and records and, ultimately, to the financial statements. Consequently, we find no basis to apply adverse facts available to Ekinciler's depreciation expenses in this proceeding, nor do we find any basis to reject Ekinciler's response.

We note that the starting point for the petitioner's argument is that its estimation of Ekinciler's depreciation expenses differs significantly from the amount actually recorded in the company's accounting system. However, after analyzing the data in Ekinciler's responses on this topic, we disagree that any significant discrepancy exists. Rather, we find that Ekinciler has adequately demonstrated the link between the depreciation expenses reflected in this ledger and the depreciation expenses shown on the company's financial statements.[19] See the October 24, 2002, memorandum to the file from Irina Itkin entitled "Relationship Between Ekinciler's Current-Year Depreciation Expenses and Fixed Asset Values" (the depreciation memo). Because we find that the depreciation expenses recorded in the company's fixed asset ledger is consistent with the

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[18] The petitioner also claims that Ekinciler has been uncooperative because it did not: 1) fully respond to certain questions in the last supplemental questionnaire on this topic; 2) submit its entire fixed asset ledger before it was requested to do so by the Department; or 3) provide an electronic version of this ledger.

[19] Regarding the petitioner's allegation that Ekinciler's fixed asset ledger is unreliable as a source document, we disagree. There are many possible explanations for the differences highlighted by the petitioner (e.g., differences generated by the company's printers, a difference in the way that the data was sorted prior to printing, etc.). After examining the documents in question, we find no convincing evidence that the fixed asset ledger has been manipulated in order to hide information or cover discrepancies. In any event, we note that we did not rely exclusively on the information contained in this ledger for purposes of the final results, because we have increased Ekinciler's depreciation expenses to account for any understatement in the asset values recorded therein (see below).

underlying value of the majority of the company's assets, we have accepted these expenses for purposes of the final results (adjusted as noted below).

We note that the petitioner's theoretical calculation was initially proffered as a "reasonableness test," and as such it provided a legitimate basis for requesting further clarification from Ekinciler. However, contrary to the petitioner's latest argument, it is not a valid substitute for the actual data maintained by Ekinciler in its books and records. When we examine this actual data, we find that Ekinciler calculated depreciation expenses in accordance with its established depreciation methodology using the actual useful life assigned to the particular asset.[20] [21]

Nonetheless, we agree with the petitioner that the total asset value in the fixed asset ledger and the total shown on the financial statements differ to some degree. Although Ekinciler has provided an explanation for the majority of the difference, it has not fully explained why the asset values diverged. Therefore, for purposes of the final results, we have made the conservative assumption that the asset values shown on the financial statements form the appropriate base for Ekinciler's depreciation expenses,[22] and we have increased the reported depreciation expenses to account for any understatement. Specifically, we increased the expenses by the ratio of the total asset value in the fixed asset ledger to the total asset value shown on the company's financial statements, using the data shown in Ekinciler's September 9 submission. For the specifics of this calculation, see the depreciation memo at Attachment II.

Finally, we agree that certain of the depreciation expenses recorded in Ekinciler's fixed asset ledger are also understated. Specifically, Ekinciler has indicated that it experienced a computer problem which resulted in the misstatement of depreciation expenses for a certain class of assets purchased in 1996. Furthermore, Ekinciler has conceded that it does not revalue buildings in its books and records, which resulted in the company's recognizing depreciation expenses at their

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[20] In order to confirm this conclusion, we examined every line item in Ekinciler's fixed asset ledger and recomputed the depreciation expenses using the asset values and useful lives shown for each. We found that with three minor exceptions (out of more than 1,000 assets) all depreciation expenses were calculated in accordance with Ekinciler's established depreciation methodology using the actual useful life assigned to the particular asset. See the depreciation memo at Attachment I.

[21] We find that the petitioner's calculation is based on a faulty assumption because it uses as a starting point the asset values and accumulated depreciation figures shown on Ekinciler's trial balance; however, when one uses only the values in the fixed asset ledger it is evident that: 1) the average depreciation rate is consistent with the useful lives of the assets at issue; and 2) the accumulated depreciation figure shown on the financial statements does not accurately reflect the depreciation experience of the company. See the depreciation memo at Attachment I.

[22] We note that no party to this proceeding has questioned the validity of the asset values reflected on the financial statements.

historical value. Therefore, for purposes of the final results we have increased the reported depreciation expenses to account for the understatement, using the additional amounts reported in Ekinciler's June 26 and August 2, 2002, submissions.

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 results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree____ Disagree ____

_____
Faryar Shirzad
Assistant Secretary for
Import Administration

_____
(Date)