69 FR 64731, November 8, 2004

A-489-807
AR: 4/02 - 3/03
Public Document
IA/Office 2: JEP

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey – April 1, 2002, through March 31, 2003

Summary

We have analyzed the comments of the interested parties in the 2002-2003 administrative review of the antidumping duty order covering certain steel concrete reinforcing bars (rebar) 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. Treatment of Section 201 Duties
2. Application of High Inflation/Replacement Cost Methodology
3. Inputs Purchased from Affiliated Parties
4. Treatment of Packing Expenses in the General and Administrative (G&A) and Interest Expense Calculations
5. Date of Sale for Colakoglu
6. Universe of Reviewed Transactions for Colakoglu
7. Home Market Credit Expenses for Colakoglu
8. Commission Offset for Colakoglu
9. Despatch Revenue and Demurrage Expenses for Colakoglu
10. Period of Review for Diler
11. Inland Freight Supplied by Diler's Affiliate
12. Home Market Credit Expenses for Diler

13. G&A Ratio for Diler
14. POR Entries of Merchandise Produced by Habas
15. Revocation for ICDAS
16. Collapsing Issue for ICDAS
17. Whether to Treat ICDAS's U.S. Sales as Export Price (EP) or Constructed Export Price (CEP) Sales
18. Short-term Interest Rates Used for ICDAS
19. Standard Rolling Times for ICDAS
20. Prior Period Reversals for ICDAS
21. Gain on Sale of Ship for ICDAS

Background

On May 5, 2004, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on rebar from Turkey. See Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part, 69 FR 25063 (May 5, 2004) (Preliminary Results). The period of review (POR) is April 1, 2002, through March 31, 2003.

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 EP and normal value (NV) using the same methodology stated in the preliminary results, except as follows:

- We removed section 201 duties from the total customs duties reported by ICDAS and did not deduct these duties from U.S. price for the final results. See Comment 1;

- We offset commissions paid by Colakoglu in one market with the indirect selling expenses incurred in the other. We also adjusted Colakoglu's G&A expense ratio to remove certain expenses which are now reclassified as indirect selling expenses. See Comment 8;

- We have determined that the price paid by Diler for foreign inland freight expenses to an affiliated party is not at arm's length. Therefore, we have used the price reflected on the invoice submitted by Diler for freight services provided by an unaffiliated party. See Comment 12;

- We increased Diler's reported indirect selling expenses to account for bad debt. See Comment 13; and

- In calculating the total and variable manufacturing costs, we allocated ICDAS's rolling mill total direct labor and other conversion costs to specific products based on the relative actual rolling times, exclusive of stoppage. See Comment 19.

Discussion of the Issues

General Issues

Comment 1: *Treatment of Section 201 Duties*

During the POR, ICDAS paid duties pursuant to the President's section 201 determination upon entry of the subject rebar to the United States. In our preliminary results, we deducted these duties from ICDAS's U.S. price because they were included together with other customs duties in the field "USDUTYU" in the U.S. sales listing.

The petitioners argue that the Department should deduct section 201 duties collected on subject merchandise from the U.S. price for each respondent, as required by the plain meaning of the Act. In support of this assertion, the petitioners cite section 772(c) of the Act which provides that the U.S. price shall be reduced by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." The petitioners maintain that section 201 duties are "United States import duties" and should, therefore, be deducted from the U.S. price.

The petitioners note that, while the Department does not deduct antidumping or countervailing duties from the U.S. price because they are not "normal" duties, this justification does not apply to section 201 duties. According to the petitioners, failure to account for these duties unjustly denies a remedy to domestic producers faced with both a surge in imports and unfair trade practices. The petitioners argue that an industry faced with both distinct problems should be entitled to distinct remedies. Finally, the petitioners argue that deducting section 201 duties from the U.S. price is consistent with the United States' commitments under the World Trade Organization.

Colakoglu and ICDAS contend that it would be contrary to the Department's practice to deduct section 201 duties from the U.S. price. Specifically, Colakoglu and ICDAS note that the Department has explicitly addressed this issue in prior cases. See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153, 19157-19161 (Apr. 12, 2004) (SSWR from Korea).

Moreover, ICDAS argues that the Department should reduce the duties that it reported because it mistakenly included section 201 duties under the field "USDUTYU" in its U.S. sales listing, along with other customs duties. Specifically, ICDAS maintains that the Department should calculate the amount of these duties by multiplying the total entered value by 15 percent. ICDAS argues that the Department should subtract this amount from the field "USDUTYU" in its final calculations.

Diler notes that it did not incur any section 201 duties during the POR. Therefore, Diler asserts that there is no basis for the Department to deduct section 201 duties in its calculation of Diler's dumping margin.

Department's Position:

We disagree with the petitioners that we should deduct section 201 duties from U.S. price. In September 2003, the Department published a request for public comments on the issue of whether section 772(c)(2)(A) of the Act requires the Department to deduct section 201 duties from U.S. prices in calculating dumping margins. See Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties, 68 FR 53104 (Sept. 9, 2003). In response to this request, the Department received extensive comments on the record of the 2001-2002 antidumping duty administrative review of stainless steel wire rod from Korea. See SSWR from Korea at Appendix I. After considering all comments, the Department determined that it is not appropriate to deduct section 201 duties from U.S. prices in calculating dumping margins because such duties are not U.S. import duties within the meaning of the statute, and deducting them from U.S. prices in the calculation of dumping margins would constitute a double collection of these duties. Rather, it was Congress' intention to treat section 201 duties and antidumping duties as separate and complementary trade remedies.

The petitioners have offered no new reasons for departing from the practice set forth in SSWR from Korea. Therefore, we have continued to find that section 201 duties should not be deducted from the U.S. price in the margin calculations for the respondents in this case. Consequently, we have not deducted such duties from ICDAS's U.S. price for the final results.

Comment 2: *Application of High Inflation/Replacement Cost Methodology*

During the POR, Turkey experienced high inflation. Therefore, the respondents reported their sales expense data on a monthly basis, and they reported their cost data using a replacement cost methodology. We accepted this data for purposes of the preliminary results, and we performed our margin calculations using the special methodology adopted for high inflation cases. See Preliminary Results, 69 FR at 25065-25066.

The petitioners argue that the Department has no basis to apply the high inflation/replacement cost methodology with respect to Diler and ICDAS. According to the petitioners, since both of these respondents used a shortened reporting period,[1] the Department should determine whether the high inflation methodology is warranted in this review based on the inflation experienced during these companies' respective reporting periods rather than during the entire POR. See Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (Mar. 24, 2004) and accompanying Issues and Decision Memorandum at Comment 4 (Silicomanganese from Brazil).

According to the petitioners, the inflation rate during the reporting periods in question (i.e., April 1 to December 31, 2002) was 18.11 percent, which the petitioners assert translates to an annual inflation rate of 24.84 percent. The petitioners contend that it is the Department's practice to apply the high-inflation methodology for reporting cost of production (COP) and constructed value (CV) data when the annual inflation rate exceeds 25 percent. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate Products from Indonesia, 64 FR 73164, 73170 (Dec. 29, 1999) (Plate from Indonesia). Therefore, the petitioners maintain that the Department should calculate COP and CV under its normal, non-inflation methodology for the final results for these respondents.

ICDAS disagrees with the petitioners' claim that the inflation rate during the shortened reporting period was only 18.11 percent. Instead, ICDAS maintains that the inflation rate was 20.247 percent which translates to an annual inflation rate of 26.996 percent. ICDAS speculates that the difference in the figures appears to be due to the fact that the petitioners considered the change in wholesale price index (WPI) between the end of April and December 2002, rather than the change in the WPI between the end of March and December 2002. Therefore, ICDAS contends that it has properly submitted its COP and CV data based on the high-inflation method.

Diler argues that the Department should continue to apply its high inflation/replacement cost methodology to Diler's nine-month reporting period. Diler maintains that the Department has discretion in applying the 25-percent guideline in its determination of whether to apply the high inflation/replacement cost methodology in a particular proceeding. Moreover, Diler contends that it is unclear how the petitioners expect the Department to now revise its calculation methodology because the respondents have reported their costs for this administrative review based on the high inflation/replacement cost methodology, as requested by the Department. According to Diler, the Department would need to have available Diler's and ICDAS's actual material consumption costs in order to use the standard calculation methodology. Therefore, Diler maintains that the Department should continue to use the high inflation/replacement cost methodology for the final results.

---

[1] Both of these companies requested that the Department permit them to report home market sales during a nine-month period, rather than over the entire POR, in light of the facts that: 1) they had only a small number of exports to the United States during these months (and none in the remaining months); and 2) home market sales in the remaining months would not be matched to U.S. sales under the Department's high inflation methodology.

Department's Position:

In cases where the annual inflation rate exceeds 25 percent during the period of review, it is the Department's practice to perform its margin calculations using a high-inflation methodology. See, e.g., Silicomanganese from Brazil at Comment 4; Plate from Indonesia, 64 FR at 73170; Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Turkey, 67 FR 31264, 31265 (May 9, 2002), unchanged in the final determination;[2] and Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review, 61 FR 59407, 59408 (Nov. 22, 1996). Because Turkey's economy experienced significant inflation during the POR, in the preliminary results we limited our comparisons of export price to home market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60" contemporaneity rule. See Preliminary Results, 69 FR at 25065. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

We disagree with the petitioners that the inflation rate during the reporting period is less than 25 percent when expressed on an annualized basis. We find that the petitioners miscalculated the inflation rate when they used the end of April 2002 as the starting point for the nine-month reporting period. We note that the Turkish WPI reports average indexed wholesale rates and we consider these figures to be on a mid-month to mid-month basis. Therefore, to capture the entire nine-month reporting period it is most accurate to calculate the inflation rate from March through January. The annualized inflation rate during this period is 32.26 percent, which exceeds the Department's general threshold. Further, we note that the inflation rate during the POR is 35.15 percent, also above the threshold. Therefore, the use of the high-inflation methodology is warranted in this review regardless of the period examined.

Comment 3: *Inputs Purchased from Affiliated Parties*

The Department is conducting a sales-below-cost investigation for each of the respondents in this administrative review. In its questionnaire responses, each respondent reported that it sourced inputs or services from affiliated suppliers. The petitioners contend that the Department did not value these inputs appropriately in the preliminary results because it failed to obtain necessary information regarding the cost, transfer price, and market value of inputs supplied by affiliated companies. Thus, the petitioners argue that the Department should either re-open the record to obtain this information or value such inputs based on facts available.

Specifically, the petitioners contend that it is the Department's practice to obtain COP information for major inputs purchased by a respondent from its affiliated suppliers. See, e.g., Silicomanganese From

[2] See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From Turkey, 67 FR 62126 (Oct. 3, 2002).

Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37871 (July 15, 1997); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (Aug. 11, 2000) and accompanying Issues and Decision Memorandum at Comment 8.B; 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 and Revocation in Part of an Antidumping Finding, 61 FR 57629, 57644 (Nov. 7, 1997). According to the petitioners, the Department has normally defined a "major" input as an essential component of the finished merchandise which accounts for a significant percentage of the total cost of materials, the total labor costs, or the overhead costs to produce one unit of the merchandise under review. The petitioners note that the Department has discretion in determining what constitutes a major input, and they point out that it has deemed components comprising as little as two percent of the COP to be major inputs. See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38162 (July 23, 1996) (LNPP from Japan). The petitioners state that in the case of a transaction between affiliated parties involving a major input, the Department will use the higher of the transfer price, the market price, or the affiliated supplier's cost of producing the major input. See 19 CFR 351.407(b). The petitioners also note that under section 773(f)(2) of the Act, the Department may disregard transactions among affiliated entities where any element of value does not fairly reflect the usual market value.

The petitioners contend that the Department is unable to apply the major input rule for the final results because it failed to obtain COP data or market values for numerous inputs supplied to the respondents by affiliated parties. The petitioners argue that, as a result, the Department should either: 1) base the value of such inputs on the highest single reported value of such inputs by any respondent; or 2) reopen the record to obtain information sufficient to enable the Department to assign appropriate values to such inputs.

Colakoglu maintains that the petitioners' claim does not relate to it because its intra-company transactions do not relate to the production of subject merchandise.

Similarly, ICDAS argues that the petitioners' allegation does not apply to it because the only affiliated supplier of a major input into ICDAS's production of rebar during the POR was Demir Sanayi Demir Celik Ticaret A.S. (Demir Sanayi). ICDAS notes that the Department collapsed Demir Sanayi's costs with those of ICDAS in the reported COP calculations. Consequently, ICDAS points out that the costs reported for the affiliate are the actual amounts incurred by that company.

Diler argues that the Department has no basis either to reopen the record of this proceeding or to use facts available to value the inputs in question, given that Diler has complied with all the Department's requests for information regarding purchases of inputs from affiliates.

Department's Position:

In accordance with 19 CFR 351.407(b) and section 773(f)(3) of the Act, it is the Department's practice to value a major input purchased from an affiliated entity based on the higher of: 1) the price paid by the exporter or producer to the affiliated person for the major input; 2) the amount usually reflected in sales of the major input in the market under consideration; or 3) the cost to the affiliated person of producing the major input. See section 773(f)(3) of the Act.

In determining whether an input is considered "major" in accordance with section 773(f)(3) of the Act, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus unaffiliated suppliers) and the percentage the individual element represents of the product's total cost of manufacturing. We relied on this methodology in Final Determination of Sales at Less Fair Value: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 64 FR 38756 (July 19, 1999) and in Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (Feb. 10, 2004) and accompanying Issues and Decision Memorandum at Comment 32 (Pasta from Italy).

We disagree with the petitioners that LNPP from Japan applies here. As noted in LNPP from Japan, large newspaper presses require thousands of inputs, each of which accounts for a very small portion of total production cost. See LNPP from Japan, 61 FR at 38162. Rebar, conversely, has relatively few inputs, and a small number of raw material inputs account for the majority of the production cost. Therefore, it is inappropriate to apply in this proceeding the two percent threshold used in LNPP from Japan.

In this case, one input, scrap, accounts for the majority of the respondents' manufacturing costs. As such, we find that scrap is the only major input into the production of rebar. Moreover, Diler is the only respondent that purchased scrap from an affiliated party during the POR. However, we find that the major input rule does not apply to these purchases, consistent with our practice, because the amount of scrap purchased by Diler from its affiliate was minuscule compared with Diler's purchases of scrap from non-affiliates during the POR. See Pasta from Italy at Comment 32.

Regarding ICDAS, we note that this respondent used an affiliate to roll subject merchandise. However, we disagree that the major input rule applies to these intra-company transactions, given that we have collapsed ICDAS and its affiliate in the administrative review. For further discussion, see Comment 16, below. Thus we have treated these companies as a single production entity, consistent with our practice. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18430 (Apr. 15, 1997) and Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy, 64 FR 6615, 6624 (Feb. 10, 1999). See also AK Steel Corporation v. United States, 34 F. Supp. 2d 756, 765 (CIT 1998) (where the Court of International Trade (CIT) upheld the Department's determination not to apply sections 773(f)(2) and (3) of the Act to transactions between collapsed entities).

Finally, we note that the majority of the remaining affiliated party transactions cited by the petitioners do not relate to the production of the subject merchandise, but rather are movement charges. For this reason, the test outlined in section 773(f)(3) of the Act does not apply to these transactions. Nonetheless, we note that we tested the arm's-length nature of them in accordance with the requirement of section 773(f)(2) of the Act for purposes of the final results. For further discussion, see Comment 11, below.

Comment 4: *Treatment of Packing Expenses in the G&A and Interest Expense Calculations*

The petitioners maintain that the Department erred in the preliminary results when it applied G&A and financial expense ratios (calculated inclusive of packing expenses) to the respondents' COPs (calculated exclusive of packing costs). According to the petitioners, the Department should revise its calculations for the final results to calculate G&A and financial expenses by applying the packing-inclusive G&A and financial expense ratios to the total cost of manufacturing plus packing costs.

Colakoglu and ICDAS disagree that the Department included packing expenses in the denominators of the G&A and financial expense ratios. As a consequence, Colakoglu and ICDAS maintain that the Department should continue to calculate G&A and financial expenses using the same methodology as in the preliminary results.

Diler did not comment on this issue.

Department's Position:

We disagree with the petitioners that we incorrectly calculated G&A and financial expenses for purposes of the preliminary results. Regarding ICDAS, the record clearly shows that ICDAS did not include packing costs in the denominator used to calculate the G&A and net interest expense ratios. See the April 29, 2004, Memorandum from Sheikh M. Hannan and Michael P. Harrison to Neal M. Halper titled "Verification Report on the Cost of Production and Constructed Value Data Submitted by ICDAS Celik Eneriji Tersane ve Ulasim Sanayi" at page 34, and cost verification exhibits 17, 18, 19, 20, 22, and 27.

Regarding Colakoglu and Diler, we note that the record is insufficient to determine whether packing expenses were included in the denominator of the G&A and financial expense ratio calculations. However, we note that the petitioners did not provide any evidence that packing expenses were included in the denominators of the ratios for these companies, but they merely asserted that it was so. Absent documentation demonstrating that packing costs were included in the cost of goods sold figures for these companies, we have continued to follow our normal methodology of applying these ratios to the respondents' costs net of packing expenses. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 47100, 47101 (Aug. 4, 2004); and Pasta from Italy, 69 FR at 6257.

Company-Specific Issues

A. Colakoglu

Comment 5: *Date of Sale for Colakoglu*

In the preliminary results, we based the date of sale for Colakoglu on the invoice date, in accordance with our practice. Colakoglu contends that the Department should revise its date of sale methodology to use order date,[3] rather than invoice date, as the date of sale for its U.S. sales during the POR.

According to Colakoglu, in this review, there were no changes in the essential terms of sale between the customer's completion of the order and the shipment of the merchandise. Colakoglu asserts that the truth of this statement is borne out by the record in this case, which contains sales documents related to every U.S. transaction during the POR. Moreover, Colakoglu claims that the petitioners did not question its use of order date as the appropriate date of sale.

Colakoglu notes that the Department's regulations at 19 CFR 351.401(i) direct the Department to "normally" use the invoice date as the date of sale unless there is evidence that a different date better reflects the date on which the material terms of sale are established. Colakoglu claims that the preamble to the regulations clarifies that this preference for invoice date is necessitated by the complexities of the negotiating process in some industries, whereby details may not be put in writing. Colakoglu notes that the preamble envisions alternative dates of sale under circumstances similar to those present here, in that the Department may depart from its preference for invoice date when presented with "satisfactory evidence that the material terms of sale are finally established" on a different date. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27349 (May 19, 1997) (Preamble).

Indeed, Colakoglu maintains that the Department recently addressed a similar issue in Certain Hot-Rolled Carbon Steel Flat Products from Thailand; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 19388 (Apr. 13, 2004) and accompanying Issues and Decision Memorandum at Comment 1 (Hot-Rolled Steel from Thailand Review) and reached a different result. Specifically, Colakoglu asserts that, in that case, the Department used the contract date as the date of

[3] As "order" date, Colakoglu refers to the later of the date that the customer placed the order or the date that the customer provided the final size breakdown to Colakoglu.

sale because it found that the material terms of sale had not changed between the date of contract and the date of invoice, even though the final quantity differed slightly from the quantity shown on the sales contract. Colakoglu asserts that the Department characterized this quantity difference as "within the allowable tolerance typical of steel sales."[4]

In this case, Colakoglu asserts that the quantity tolerance levels in its order contracts with U.S. customers are standard industry practice. Further, Colakoglu notes that the difference in the ordered and invoiced quantities never exceeded the tolerance levels specified in the orders. According to Colakoglu, as noted above, the Department has accepted that minor quantity variations within contract-specified tolerance levels do not constitute a change in the material terms of sale.

Colakoglu asserts that the choice of date of sale is particularly important in this case, given that: 1) Turkey experienced high inflation during the POR; and 2) as a consequence, the Department limits price-to-price comparisons to U.S. and home market sales made during the same month (in order to minimize the extent to which margins are over- or understated due to price inflation). Colakoglu maintains that the use of invoice date as the date of sale effectively resulted in the Department's comparing U.S. sales to home market transactions made two to three months later. For example, Colakoglu notes that the order for one of its U.S. sales was placed in July 2002, but the company did not issue the invoice until October; under the current methodology, this sale was compared to a home market sale ordered and invoiced in October 2002,[5] more than three months after the U.S. price was set. According to Colakoglu, such comparisons lead to skewed results.

Colakoglu contends that the Department is not bound by its use of invoice date as the date of sale in past segments of this proceeding, but rather it has the discretion to consider the issue anew based on the facts in each segment of the proceeding. As support for this assertion, Colakoglu cites Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand, 65 FR 60910 (Oct. 13, 2000) and accompanying Issues and Decision Memorandum at Comment 1 (Pipes and Tubes from Thailand), where the Department changed its date of sale methodology to use contract date as the date of sale rather than the invoice date. Colakoglu asserts that in that case the Department based its decision in part on the fact that it was able to examine the limited number of contracts, purchase orders, and invoices related to sales of subject merchandise

---

[4] As additional precedent, Colakoglu cites Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 68 FR 27530 (May 20, 2003) and accompanying Issues and Decision Memorandum at Comment 12 (Saccharin from the PRC), where the Department used purchase order date as the date of sale.

[5] Colakoglu asserts that there is very little time difference between order date, invoice date, and shipment date for its home market sales and, therefore, using any of these dates as the date of sale in the home market yields virtually the same result.

during the POR. According to Colakoglu, the facts are the same in the instant proceeding because it has placed on the record all documentation related to the limited number of U.S. sales transactions during the POR, demonstrating that no changes (aside from small changes to quantity within contract-specified tolerance levels) occurred in the material terms of sale between the order date and the invoice date. Consequently, Colakoglu contends that the Department must change its date of sale methodology to use order date as the date of sale for its U.S. sales in the calculations for the final results.

The petitioners maintain that the Department has a preference for using invoice date as the date of sale in general, and it has followed this preference in setting date of sale in all past segments of this proceeding. According to the petitioners, there is no evidence on the record of this administrative review that Colakoglu's selling practices have changed during the POR. Consequently, the petitioners assert that the Department should continue to use invoice date as Colakoglu's date of sale for purposes of the final results.

Department's Position:

We disagree with Colakoglu that earlier of order date or order breakdown date is the appropriate date of sale for its U.S. sales during the POR. It is the Department's practice to treat the invoice date as the presumptive date of sale, pursuant to 19 CFR 351.401(i). This section of the regulations states

> In identifying the date of sale of the subject merchandise or the foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Magnesium Metal From the Russian Federation, 69 FR 59197, 59199 (Oct. 4, 2004).

Further, as the Department articulated in Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 68 FR 69996 (Dec. 16, 2003) and accompanying Issues and Decision Memorandum at Comment 4

> The Preamble to the Department's regulations explains that the Department will normally use the date of invoice as the date of sale because the commercial reality is that the parties to the transaction consider the terms to be "fixed when the seller demands payment (i.e., when the sale is invoiced)." See Preamble, 62 FR at 27349.

In the Preamble, the Department goes on to explain the exceptions envisioned to using the invoice date as the presumptive date of sale, stating

> If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice. However, the Department emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly "established" in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.

See Preamble, 62 FR at 27349.

We have examined the information on the record of this administrative review and find that respondent has failed to demonstrate that the material terms of sale are established on a date other than the invoice date. As articulated above, invoice date is the Department's preferred date of sale. The Department has used the date of invoice as the date of sale for Colakoglu's U.S. sales in all segments of this proceeding to date. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 68 FR 53127 (Sept. 9, 2003) (2001-2002 Rebar Review); and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (Oct. 30, 2002) (2000-2001 Rebar Review). Colakoglu has not provided any evidence showing that its selling practices have changed during the current administrative review.

In any event, we disagree with Colakoglu's claim that the material terms of sale are firmly established by the purchase orders. As an initial matter, we note that the purchase orders themselves specify sales quantities within relatively broad ranges and that the range differs from sale to sale. Moreover, we also note that, for each sale reported, the final quantity invoiced to the customer differed from the initial quantities appearing on the purchase orders. The quantity difference between the purchase order and the invoice was not insignificant, and in some cases, differed significantly from the initial amount specified in the purchase order.

We disagree that the facts in this case are similar to those in Hot-Rolled Steel from Thailand Review. In Hot-Rolled Steel from Thailand Review, the Department noted that the change in the quantity between the contract and the invoice was less than 0.4 percent. Moreover, the Department also noted in that decision that such a small change in quantity was "within the allowable tolerance typical of steel sales." See Hot-Rolled Steel from Thailand Review at Comment 1. This is also distinguishable from the present situation, given the wide variation in shipment tolerances across orders. Thus, Colakoglu has not demonstrated that a standard industry tolerance level exists in this industry.

Colakoglu's reliance on Saccharin from the PRC is also misplaced. In Saccharin from the PRC, the Department based its decision to use the purchase order date as the date of sale on the fact that the only change in quantity between purchase order and invoice was due to a "clerical conversion" between pounds and kilograms. See Saccharin from the PRC at Comment 12. The Department did not consider that discrepancy to be an actual change. Id. This is distinguishable from the present situation, where there are actual quantity differences between the quantity specified on the purchase order and the amount actually invoiced and shipped.

While we agree with Colakoglu that the Department has the discretion to determine the date of sale based on the facts in each administrative review segment, we disagree that the record of this proceeding shows that we must follow the date of sale methodology set forth in Pipes and Tubes from Thailand, as "each antidumping proceeding is distinct and based on its own record." See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy, 63 FR 40422, 40426 (July 29, 1998).

We recognize Colakoglu's concern that, because Turkey experienced high inflation during the POR, the lag time between order and invoicing may introduce the element of inflation into the margin calculations. However, to minimize the effect of inflation on the margin calculations, the Department limits its price-to-price comparisons to U.S. and home market sales made during the same month. The Department's determination of the appropriate date of sale cannot be affected by the presence of high inflation because the existence of high inflation does not affect the date on which Colakoglu established the material terms of its sales.

Moreover, while we concede that it is possible to establish different date of sale methodologies in the U.S. and home markets, Colakoglu has not provided an analysis for its home market sales (like that provided for its U.S. sales) to show whether a similar fact pattern exists. Thus, we find insufficient basis to conclude that comparing U.S. transactions ordered in a given month to home market transactions invoiced during the same time period would result in more appropriate normal values.

In any event, contrary to Colakoglu's assertions, we do not believe that the essential terms of sale are set as of the order, or order breakdown, date and, therefore, using order date, or order breakdown date, as the date of sale would be inappropriate. Thus, we have continued to use Colakoglu's invoice date as the date of sale for its U.S. sales, in accordance with our practice.

Finally, we disagree with Colakoglu that the petitioners did not comment on this issue prior to the briefing stage. We note that the petitioners addressed it specifically in a submission dated September 22, 2003, in which they objected to Colakoglu's proposed departure from the Department's standard date of sale methodology.

Comment 6: *Universe of Reviewed Transactions for Colakoglu*

In its July 14, 2003, Section C response, Colakoglu requested that the Department limit its analysis to U.S. sales actually entered during the POR in order to ensure that the importer-specific liquidation rates are accurately calculated. The petitioners argue that this change in methodology is inappropriate and unnecessary. However, the petitioners concede that this issue appears to be moot because Colakoglu asserted that there are no sales that "remain unreported by changing the reporting database." Nonetheless, the petitioners contend that the Department should require Colakoglu to either: 1) submit a complete listing of all U.S. sales invoiced during the POR that were omitted on the grounds that they were not entered during the period; or 2) certify that it has not omitted any sales invoiced during the POR from the U.S. sales listing.

Colakoglu disagrees, stating that the courts have held that it is the Department's obligation to calculate dumping margins as accurately as possible. As proof of this assertion, Colakoglu cites Shanghai Foreign Trade Enterprises Co., Ltd, et al v. United States, Slip Op, 04-33 at page 22 (CIT 2004); Rhone Poulenc, Inc. v. United States, 899 F. 2d 1185, 1191 (Fed. Cir. 1990); NTN Bearing Corp. v. United States, 73 F. 3d 1204 (CIT 1995); and Koyo Seiko Co. v. United States, 746 F. Supp. 1108, 1109 (CIT 1990). Colakoglu notes that this issue is not relevant, given that it reported all U.S. sales entered during the POR in its U.S. sales listing.

However, Colakoglu asserts that in the past the disconnect between reviewed sales and entered transactions has created confusion and unfairness. Colakoglu implies that, in future reviews, the Department should take a "master list" approach to assessing duties to avoid this unfairness. According to Colakoglu, this case is precisely the kind of case envisioned in the preamble to the Department's regulations, which states that the Department will "consider using the master list method of assessment only in situations where there are few entries during a review period and the Department can tie those entries to particular sales." See Preamble, 62 FR at 27314. Colakoglu asserts that it is able to tie each entry during the POR to the corresponding reported sale in the U.S. sales listing (i.e., the port city to which merchandise was imported, the importer's name, and the date of entry).

Department's Position:

In this case, we find that the petitioners' concern regarding unreported sales by Colakoglu is misplaced. Colakoglu has stated that it has reported all sales pursuant to entries in this administrative review. Moreover, these are all of its sales shipped and invoiced during the POR. Thus, we find that Colakoglu did not fail to report any reviewable transactions.

Regarding Colakoglu's contention that the Department should switch to a "master list" method of assessment, we find that this action is unnecessary in this administrative review because there is no disconnect between the reviewed sales and the entered transactions. Therefore, we intend to continue to calculate importer-specific assessment rates and issue assessment instructions to U.S. Customs and Border Protection (CBP) accordingly.

Comment 7: *Home Market Credit Expenses for Colakoglu*

The petitioners contend that Colakoglu's methodology for calculating credit expenses in the home market is distortive and should be rejected. Specifically, the petitioners contend that Colakoglu should have reported transaction-specific expenses where these were available, rather than merely allocating credit over each customer's total sales. The petitioners imply that Colakoglu had records which were sufficiently detailed to permit accurate reporting.

According to the petitioners, in failing to report invoice-specific payment dates, Colakoglu has not acted to the best of its ability in this administrative review. The petitioners maintain that the burden rests with Colakoglu to establish that it is entitled to a favorable adjustment, and Colakoglu failed to meet this burden. Therefore, the petitioners argue that the Department should reject Colakoglu's reported home market credit expenses and, as partial adverse facts available (AFA), apply the lowest imputed credit expense calculated for any control number in the home market to all of Colakoglu's home market sales.

Colakoglu contends that the petitioners misrepresented its credit calculation methodology and that it did, in fact, report transaction-specific credit expenses. Colakoglu asserts that, in accordance with its past practice, it reported payment dates based on the dates in its computerized accounting system. According to Colakoglu, to obtain the dates in its accounting system, it uses a computer program in the normal course of business which matches customer payments with individual invoices. Colakoglu explains that this program is necessary because, for home market sales, customers often pay by post-dated check and a single payment may cover multiple invoices. Further, Colakoglu states that the Department has verified this methodology in prior administrative reviews. Consequently, Colakoglu asserts that the Department should continue to accept its reported home market credit expenses for purposes of the final results.

Department's Position:

In its questionnaire response, Colakoglu indicated that it reported its payment dates in this review using the same methodology as it used in the most recent segment of this proceeding. See pages B-12 and B-13 of Colakoglu's July 14, 2003, response. After reviewing this information, we disagree with the petitioners that the record shows that Colakoglu's home market credit expenses are "allocated." Rather, we find that they are transaction-specific and based on a date of sale determined by a computer program that matches customer payments to specific invoices. Moreover, we note that we examined Colakoglu's methodology in detail at verification in the most recent segment of this proceeding and found that it was based on the company's books and records. We also determined that this methodology accurately reflected Colakoglu's actual home market credit expenses and was not otherwise distortive. See the Colakoglu 2001-2002 sales verification report at page 10.[6] Thus, we disagree that Colakoglu's methodology for calculating credit expenses in the home market is distortive.

Finally, we disagree with the petitioners that Colakoglu failed to act to the best of its ability in this administrative review. Colakoglu complied with each request for information in a timely manner, and we find that the information that it submitted was both complete and accurate. Thus, the application of AFA is not warranted here, and we have continued to accept Colakoglu's reported home market credit expenses for purposes of our final results.

Comment 8: *Commission Offset for Colakoglu*

Colakoglu notes that, in the preliminary results, the Department was unable to offset the commissions that Colakoglu paid in only one market with the indirect selling expenses paid in the other. However, Colakoglu asserts that it reported an indirect selling expense ratio after the preliminary results at the Department's request. Therefore, Colakoglu maintains that, because its indirect selling expense ratio is now on the record of this administrative review, the Department should apply the commission offset in its calculations for the final results.

The petitioners did not comment on this issue.

Department's Position:

We agree and have now applied the commission offset in our calculations for the final results using the indirect selling expense ratio reported by Colakoglu on May 28, 2004. We have also adjusted Colakoglu's G&A expense ratio to remove those expenses from total G&A expenses which are now included in the calculation of the indirect selling expense ratio. See the November 1, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Calculations Performed for Colakoglu Metalurji A.S. (Colakoglu) for the Final Results in the 2002-2003 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey" for the details of this calculation.

Comment 9: *Despatch Revenue and Demurrage Expenses for Colakoglu*

The petitioners note that Colakoglu reported both despatch revenue and demurrage expenses for several observations in the U.S. sales listing. However, according to the petitioners, despatch revenue

---

[6] The public version of this report has been placed on the record of this review. See the memorandum from Elizabeth Eastwood to the file entitled, "Placing the Public Version of the Colakoglu 2001-2002 Sales Verification Report on the Record of the 2002-2003 Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey, " dated October 5, 2004 (Colakoglu 2001-2002 sales verification report).

is earned when a ship is loaded more quickly than scheduled, while demurrage expenses are paid when a ship is loaded more slowly then scheduled. The petitioners claim that Colakoglu has not explained the circumstances under which it can concurrently earn despatch revenue and pay demurrage expenses for the same U.S. sales. Therefore, the petitioners contend that the Department should disallow Colakoglu's reported despatch revenue for those U.S. sales observations where Colakoglu also incurred demurrage expenses.

Colakoglu states that, contrary to the petitioners' assertion, the despatch revenue and demurrage expenses related to the U.S. invoices in question are easily explained by information on the record of this administrative review. According to Colakoglu, the demurrage revenue related to these invoices was earned at the loading port in Turkey, while the despatch expenses were paid at the port in the United States where the subject merchandise was unloaded. As support for its assertions, Colakoglu cites Exhibits C-6 and C-8 of its July 14, 2003, response, which contain demurrage and despatch invoices related to one of the U.S. sales in question.

Department's Position:

We have examined the information on the record and agree that it demonstrates that Colakoglu both earned despatch revenue and paid demurrage expenses related to the same U.S. sale. Therefore, we have continued to accept Colakoglu's reported despatch revenue amounts for those sales where demurrage expenses were also reported in the U.S. sales listing.

B. Diler

Comment 10: *Period of Review for Diler*

At the beginning of the review period, Diler informed the Department that it had a single sale to to the United States during the POR. As a consequence, Diler requested that it be permitted to report home market sales and cost of production data for the period April 1, 2003, through December 31, 2003, rather than for the entire POR. We granted Diler's request provided that its average indexed cost of producing rebar during the shortened reporting period was not significantly different from its cost of producing rebar during the POR.

The petitioners argue that the Department should compare Diler's U.S. sales to home market sales and COP data from a single month, rather than during the period April 1, 2002, through December 31, 2002 (i.e., the review period requested by Diler and granted by the Department). The petitioners maintain that there is no basis for using this nine-month reporting period for Diler and that the Department should not allow a respondent to "cherry pick" its reporting period in order to influence its margin calculation. According to the petitioners, the Department should limit its analysis to June 2002 (i.e., the month in which Diler made its U.S. sale.) The petitioners contend that it is the Department's practice to accept a limited reporting period if it covers "the three months preceding the earliest month of U.S. sales, all months from the earliest to the latest month of U.S. sales, and the two months after the latest month of U.S. sales." See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan, 67 FR 6495 (Feb. 12, 2002) and the accompanying Issues and Decision Memorandum at Comment 4 (Coils from Japan Review). According to the petitioners, the analogous reporting requirement for a high inflation proceeding would be to require data only in the month(s) in which the respondent made U.S. sales of subject merchandise.

Diler argues that the Department should continue to use the nine-month reporting period in its calculation of Diler's COP. According to Diler, section 773(b)(1) of the Act states that the Department may disregard sales made at prices below the COP when the below-cost sales are made: A) within and extended period of time in substantial quantities, and B) at prices which do not permit the recovery of all costs within a reasonable period. Diler maintains, that because it has agreed to forgo the cost recovery "test," only section 773(b)(1)(A) applies to it. Additionally, Diler maintains that section 773(b)(2)(B) of the Act goes on to define the "extended period of time" to be "normally one year, but not less than six months." Therefore, according to Diler, the Department cannot limit its analysis of Diler's home market sales and costs of production to a single month, as requested by the petitioners.

Also, Diler argues that the petitioners' reliance on Coils from Japan Review is misguided. Diler contends that in Coils from Japan Review the Department determined that limited reporting was acceptable if it covered "the three months preceding the earliest month of U.S. sales, all months from the earliest to the latest month of U.S. sales, and the two months after the latest month of U.S. sales." Diler maintains that this statement indicates that the Department's practice is to collect at least six months of sales and cost data in order to perform its analysis in a manner consistent with the Act.

Additionally, Diler contends that the Department was aware of the circumstances of Diler's U.S. sales when it granted Diler's request for a nine-month reporting period and that no new information regarding the dates of Diler's U.S. sales has been placed on the record since the Department granted Diler's request. Consequently, Diler argues that the Department has already considered this information in its decision to grant Diler's request for a shortened reporting period.

Diler notes that the Department granted Diler's request for a shortened reporting period on the condition that Diler demonstrate that its indexed cost of producing rebar during the shortened reporting period is not significantly different from its indexed cost of producing rebar during the entire POR. Diler asserts that it provided the required analysis in its October 29, 2003, response to the Department's supplemental section D questionnaire.

Finally, Diler maintains that it is consistent with the Department's practice to allow respondents to use a limited reporting period in this proceeding. See, e.g., Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey, 63 FR 42373 (Aug. 7, 1998); and Ferrosilicon From Brazil: Notice of Final Results of Antidumping Duty

Administrative Review, 63 FR 28355, 28356 (May 22, 1998). Diler also notes that the Department has granted its request for a shortened reporting period in past administrative reviews on rebar from Turkey.

Department's Position:

On June 3, 2003, Diler requested that the Department permit it to report its home market sales and costs based on the truncated reporting period of April 1, 2002, through December 31, 2002. Further, Diler agreed to forego application of the cost recovery test pursuant to section 773(b)(2)(D) of the Act. On June 10, 2003, the Department granted Diler's request, provided that Diler submit an analysis showing that the truncated reporting period was not distortive, and Diler did so on October 29, 2003. Therefore, we agree with Diler that its reporting of home market sales and costs based on the truncated reporting period was appropriate and in accordance with the Department's instructions.

We note that, although Diler agreed to forego application of the cost recovery test, the Department still must apply the "substantial quantities" portion of the cost test (i.e., section 773(b)(1) of the Act). Section 773(b)(1) of the Act states:

> Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production–
>
> > (A) have been made within an extended period of time in substantial quantities, and
> >
> > (B) were not at prices which permit recovery of all costs within a reasonable period of time, such sales may be disregard in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

Further, section 773(b)(1)(B) of the Act defines the term "extended period of time" as a period that is normally one year, but not less than six months. Therefore, the petitioners' suggestion that we base our sales-below-cost test for Diler on only one month of sales and cost data would be contrary to the requirements of the Act.

The Department's practice in this regard is clearly stated in Coils from Japan Review. In that case, the Department permitted a respondent to use a six-month reporting period for its home market sales and calculated costs on the same six-month basis. Consequently, we find that the petitioners' reliance on Coils from Japan Review as support for using one month of Diler's cost data to perform the cost test is entirely misplaced.

Finally, we note that the Department has considered the same issue and reached the same conclusion in prior segments of this proceeding. See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review, 66 FR 22525, 22526 (May 4, 2001), unchanged in the final results.[7] Therefore, we have continued to accept Diler's truncated reporting period for home market sales and costs, in accordance with our practice.

Comment 11: *Inland Freight Supplied by Diler's Affiliate*

During the POR, Diler shipped U.S. sales of rebar to the port of exportation using an affiliated party. In the preliminary results, we accepted Diler's reported per-unit inland freight expenses. The petitioners argue that Diler has not demonstrated that its purchases of inland freight services for its U.S. sales were made at arm's-length prices. Therefore, the petitioners argue that the Department should revise its calculations for the final results to use the inland freight amount paid by Diler to an unaffiliated party.

Diler maintains that the Department was correct in accepting its reported foreign inland freight expenses for its U.S. sales. According to Diler, the invoice it submitted from an unaffiliated freight supplier reflects the fees charged for shipment of a similar product but for a longer distance. Diler maintains that this difference in shipping distance accounts for the difference in freight amounts charged by the two freight providers.

Diler also maintains that the petitioners' requested adjustment to its reported inland freight costs for U.S. sales would fall under the "transactions disregarded" provision set forth in section 773(f)(2) of the Act, which states that a "transaction directly or indirectly between persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration." Diler argues that the CIT has noted that the "transactions disregarded" provision set forth in section 773(f)(2) of the Act is "permissive" and does not require that the Department use the highest of transfer price, market price, or COP in valuing inputs obtained from affiliated parties. See SKF v. United States, 116 F. Supp. 2d 1257 (CIT 2000).

According to Diler, there is no evidence on the record in this case showing that the transactions between Diler and its affiliated provider of inland freight services should be disregarded. Diler maintains

---

[7] See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (Nov. 7, 2001).

that its transactions with its affiliates may be at arm's-length prices even if the price paid by Diler is less than the prices it may have paid to an unaffiliated freight provider. Diler asserts that the Department has discretion in considering other reasons that the prices may have been lower, such as the fact that Diler would receive better prices from its affiliated inland freight provider because it uses this provider exclusively for its inland freight services from the mill to the port.

Department's Position:

In the preliminary results, we accepted Diler's reported per-unit inland freight expenses for U.S. sales, which were based on the amount charged by Diler's affiliated inland freight supplier. We have reconsidered this position for the final results, however, and are now using the price reflected on the invoice submitted by Diler for freight services provided by an unaffiliated party.

In determining whether to use transactions between affiliated parties, our practice is to compare the transfer price either to prices charged to other unaffiliated parties who contract for the same service or prices for the same service paid by the respondent to unaffiliated parties. See Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy 67 FR 35481 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 7. See also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820, 30830 (June 8, 1999) (Coils from France).

We have examined the evidence on the record and find that the affiliated and unaffiliated inland freight prices submitted by Diler are sufficiently different so as to find that the price charged by Diler's affiliate was not at arm's length. Further, there is no the evidence on the record to demonstrate that the difference in shipping distances alleged by Diler accounts for the difference in prices,[8] nor is there any evidence demonstrating that the difference in prices is due to reasons other than the relationship between the parties. Therefore, in accordance with our practice and section 773(f)(2) of the Act, we have used the price charged by the unaffiliated supplier as shown on the freight invoice submitted by Diler in Exhibit S-17 of its September 15, 2003, response.

Comment 12: *Home Market Credit Expenses for Diler*

The petitioners contend that the Department should base Diler's home market credit expenses on AFA because Diler failed to report transaction-specific payment dates, even though it appears that it is able to do so. Specifically, the petitioners contend that Diler appears able to tie: 1) payment terms on orders to the corresponding invoices; and 2) late payments to actual due dates. As a result, the petitioners claim that Diler has not demonstrated that it has acted to the best of its ability in either complying with the Department's request for information or explaining why its allocation methodology is

[8] In fact, we note that Diler has not provided documentation demonstrating the distance from its plant to the port of exportation.

not distortive. As AFA, the petitioners argue that the Department should use the highest credit expense reported for any sale during the reporting period.[9] Alternatively, the petitioners contend that, should the Department continue to accept Diler's reported credit expenses in this review, it should instruct Diler to maintain its records in such a manner as to permit transaction-specific credit expense reporting in future reviews. The petitioners imply that this latter argument is consistent with the actions taken in Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 781, 793 (Jan. 7, 1998) (Cold-Rolled Flat Products from Korea).

Diler disputes the petitioners' allegation that it can identify the invoice-specific payment dates, and thus it contends that the Department should continue to use its credit expenses as reported. Diler maintains that it has reported its imputed credit expenses on the most specific basis that its financial recording procedures and financial accounting system permit (i.e., a customer-specific average of accounts receivable days). Diler notes that the Department accepted this methodology in the 1999-2000 segment of this proceeding, and it asserts that the underlying facts have not changed since that time.

Diler maintains that the date its customers pay for an entire order: 1) is never tied back to a particular invoice; 2) is never booked into Diler's financial accounting system against individual invoices; and 3) cannot be determined through a manual review of a customer's account. Diler asserts that it does not record specific payment dates for home market sales because "in the normal course of business, Diler's home market customers typically pay against a running balance rather than against individual invoices. As a result, Diler does not record the 'date of payment' for individual invoices in its computer database, nor does it otherwise attempt, in its computer system, to tie individual payment to individual invoices." See Diler's July 18, 2003, response at page B-14.

Regarding the petitioners' assertion that Diler should be able to report individual payment dates, given that it assesses transaction-specific late payment fees, Diler disagrees. Diler notes that it explained in a supplemental response that it records payment terms for each sale on the purchase order, which is kept only until payment for the invoice is received. According to Diler, when a customer knows that it will not meet the payment terms of an invoice, the customer will call Diler prior to the payment and request an extension of the deadline. Diler maintains that it agrees to the extension if the customer accepts a late payment fee and then it issues an invoice for the amount of the fee. See Diler's September 15, 2003, response at pages 12 and 13.

In any event, Diler asserts that the petitioners' reliance on the accuracy of the payment terms is misplaced because the actual payment date can vary greatly from the payment term for a given order. Diler states that it has fully explained that it does not record invoice-specific payment dates and that record evidence clearly demonstrates that Diler was unable to provide such dates. Therefore, according to Diler, the Department should continue to use Diler's credit expenses as reported.

---

[9] Given that this suggestion is not adverse, we presume that the petitioners meant to argue that the Department should use the lowest credit expense amount in the home market as AFA.

Finally, Diler disagrees that the Department should instruct it to maintain records of payment terms in such a manner as to permit transaction-specific credit expense reporting in future reviews. Diler states that, while the Department has recognized in other proceedings that a respondent must preserve records that it already maintains and that it should anticipate needing for purposes of a later antidumping proceeding, a respondent is not obligated to change its normal record-keeping practices in order to collect the data requested in the Department's antidumping duty questionnaire. Diler also maintains that it is the Department's practice to accept less than complete information when a company's normal books and records do not track certain information in the ordinary course of business. For example, Diler cites Coils from France, where the Department stated that "even where information does not meet all of the established requirements, we will use it where it is timely, reliable, and can be used without undue difficulty." Diler maintains that, because it does not track invoice-specific payment dates in its financial recording system and it would require a significant outlay of financial and human resources to change its systems and procedures, the Department should continue to accept Diler's customer-specific average accounts receivable days in its calculation of imputed credit expenses.

Department's Position:

We have continued to accept Diler's reported customer-specific credit periods for calculating imputed credit expenses. Given that Diler has responded to each of the Department's requests for information in this review, we find no evidence that it has failed to act to the best of its ability in an effort to comply with the Department's requests for information. In its July 18 and September 15 responses to the Department's questionnaires, Diler explained that its home market customers typically pay against a running balance rather than on an invoice-specific basis. We examined the sample average accounts receivable days calculation provided by Diler in Exhibit B-2 of its July 18 response (which shows all transactions recorded in the customer's account during the POR) and confirmed that the payment amounts generally do not correspond to the amounts of individual invoices. Therefore, we find that Diler has adequately demonstrated that it is unable to report invoice-specific credit expenses using information from its financial accounting system.

Since Diler was unable to obtain invoice-specific credit information, Diler instead reported imputed credit expenses using a customer-specific average of accounts receivable days. This is the methodology Diler used to report credit expenses in the 1999-2000 administrative review of rebar from Turkey (i.e., the last segment in which Diler was a respondent). We verified Diler's methodology in that segment and found no discrepancies in Diler's claim that its customers make payments against a running balance rather than on an invoice-specific basis. In addition, we also determined that this methodology accurately reflected Diler's actual home market credit expenses and was not otherwise distortive. See the Diler 2001-2002 sales verification report at page 10.[10] Therefore, because Diler

[10] The public version of this report has been placed on the record of this review. See the memorandum from Jill Pollack to the file entitled, "Placing the Public Version of the Diler 1999-2000 Sales Verification Report on the Record of the 2002-2003 Administrative Review on Certain Steel

does not track payments on an invoice-specific basis in its normal course of business and has demonstrated that its methodology reports credit expenses on the most specific basis permitted by its accounting records, we have continued to rely on Diler's reported customer-specific average accounts receivable days for the calculation of home market imputed credit expenses for the final results.

We disagree with the petitioners' request that the Department instruct Diler to keep records that reflect invoice-specific payment dates. It is not the Department's general practice to instruct respondents on how to maintain their financial books and records for purposes of antidumping duty proceedings. We find that the petitioners' reliance on Cold-Rolled Flat Products from Korea is misguided, because in that case the Department merely instructed the respondent to retain documents that it created in the normal course of business, rather than requiring it to create additional documents for purposes of future administrative reviews. See Cold-Rolled Flat Products from Korea, 63 FR at 93.

Comment 13: *G&A Ratio for Diler*

The petitioners argue that the following items were improperly excluded from Diler's COP/CV calculations: 1) idle capacity expenses; 2) previous period expenses; 3) extraordinary expenses; 4) provisions for retirement/severance; and 5) provisions for doubtful accounts receivable.

The petitioners maintain that items related to idle capacity expenses, such as shutdown costs, should be included in the calculation of the G&A expense ratio because these expenses represent costs to the company as a whole, regardless of whether the idled assets are associated with the production of subject merchandise. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan, 63 FR 40461, 40463 (July 29, 1998) (SSWR from Taiwan). The petitioners also maintain that it is the Department's practice to include current period costs in a respondent's G&A expense calculation. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico, 64 FR 30790, 30816 (June 8, 1999) (Coils from Mexico).

Regarding retirement/severance provisions, the petitioners argue that it is the Department's practice to include these expenses in the calculation of the G&A ratio. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, 64 FR 30573, 30590-91 (June 8, 1999) (Coils from Japan Investigation); Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 8299, 8305-8306 (Feb. 19, 1999) (Hot-Rolled Steel from Brazil); and Pasta From Turkey, 63 FR at 68434. The petitioners contend that these costs are typically incurred for the general operations of the company, and are considered by the Department to be part of G&A expenses. Consequently, the petitioners contend that the Department should revise Diler's calculation of the G&A expense ratio to include retirement/severance expenses.

Concrete Reinforcing Bars from Turkey," dated October 19, 2004.

The petitioners also maintain that it is the Department's normal practice to include provisions for doubtful accounts receivable in the calculation of a G&A expense ratio. See e.g., Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 60194, 60195 (Dec. 3, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (Oct. 3, 2001) and accompanying Issues and Decision Memorandum at Comment 18 (Hot-Rolled Steel from India); and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review, 66 FR 18747 (Apr. 11, 2001) and accompanying Issues and Decision Memorandum at Comment 10 (Non-Alloy Steel Pipe from Korea). Therefore, the petitioners argue that the Department should revise Diler's G&A expense ratio calculation to include provisions for doubtful accounts receivables.

Finally, the petitioners maintain that Diler improperly included other extraordinary income and other income and profits as an offset to its G&A expenses in its calculation of the G&A expense ratio. The petitioners argue that it is the Department's practice to offset G&A expenses with gains and income only when the respondent can demonstrate that the gains are related to the production of the subject merchandise. See Notice of Final Results of the 1992/93 Antidumping Duty Administrative Review: Silicon Metal From Argentina, 62 FR 5613, 5616 (Feb. 6, 1997) (Silicon Metal from Argentina). The petitioners argue that Diler has not demonstrated that the other extraordinary income included as an offset to G&A expenses is related to the production of subject merchandise and, as a result, the Department should revise Diler's calculation of a G&A expense ratio to exclude this amount.

Diler maintains that idle capacity expenses and losses, provisions for retirement/severance, and other extraordinary expenses and losses were included in its calculation of a G&A expense ratio, as shown on the worksheets provided in exhibits D-35A, D-35B, and D-35C of its October 29, 2003, section D supplemental response.

Diler also maintains that prior period expenses and losses were properly excluded from its G&A expense ratio calculation. Diler contends that prior period expenses and losses are irrelevant to this administrative review precisely because they are related to a prior period and thus have nothing to do with the cost of production of the subject merchandise. For this reason Diler argues that the Department should continue to exclude prior period expenses and losses from its calculation of the G&A expense ratio.

Regarding provisions for doubtful accounts receivable, Diler disagrees with the petitioners' argument that these expenses should be included in the G&A ratio. Diler argues that it properly excluded these expenses because the doubtful account provision adjustment made by Diler's auditors is not consistent with Turkish Generally Accepted Accounting Principles (GAAP) and is not found on Diler's Turkish GAAP financial statements submitted to the Turkish Government. According to Diler, section 773(f)(1)(A) of the Act instructs the Department to rely on data from a respondent's normal books and records if they are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. Diler contends that the doubtful accounts receivable provision adjustment made by Diler's auditors is not consistent with Turkish GAAP and its exclusion results in a more accurate reflection of Diler's cost to produce the subject merchandise. For these reasons, Diler maintains that the Department should not make an adjustment for doubtful accounts receivable.

Regarding extraordinary income, Diler maintains that it properly included this income in its calculation of the G&A expense ratio because each component of Diler's extraordinary income relates to the production of subject merchandise.

Department's Position:

We agree with Diler that the idle capacity expenses, provisions for retirement/severance, and extraordinary expenses at issue were already included in Diler's calculation of the G&A expense ratio. An examination of exhibit D-16 of Diler's July 18 response and exhibit D-35 of Diler's October 29 response demonstrates that these expenses were included in the reported expenses.

With regard to provisions for doubtful accounts receivable, we disagree with the petitioners' assertion that it is the Department's practice to include this expense in the calculation of the G&A expense ratio. We find the petitioners reliance on Hot-Rolled Steel from India and Non-Alloy Steel Pipe from Korea to be misguided because in each of these cases the Department found that expenses related to bad debt are not considered to be part of G&A expenses, but rather that they are more appropriately classified as selling expenses. Specifically, under the Department's practice, in cases where bad debt expense cannot be tied to specific sales of subject merchandise, this expense should be included in the calculation of the indirect selling expense ratio. See Non-Alloy Steel Pipe from Korea at Comment 10. Because Diler did not include this expense in its reported indirect selling expenses, we have increased its reported indirect selling expenses to account for it, in accordance with our practice.

Regarding prior period losses and expenses, we disagree with the petitioners that they should be included in G&A expenses and find the petitioners' reliance on Coils from Mexico unpersuasive. In Coils from Mexico, the Department determined that a replenishment of reserves that was recognized as an expense on the respondent's income statement during the relevant period was a period cost that was properly included in G&A expenses. In the instant case, there is no information on the record suggesting that Diler's prior period losses and expenses are actually current period expenses. Consequently, we have not adjusted Diler's G&A expenses to include prior period losses and expenses. See also Comment 20, below.

With regard to other extraordinary income and other income and profit, we note that it is the Department's practice to exclude extraordinary items from the calculation of G&A expenses. However, many countries' GAAP have a loose test of classifying extraordinary items. Therefore, we test these classifications in accordance with U.S. GAAP, which prescribes that only events that are unusual and infrequent in nature are classified as extraordinary. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8933 (Feb. 23, 1998). See also Coils From Japan Investigation, 64 FR at 30591 (stating that the Department's policy is to exclude "extraordinary" expenses provided they are both unusual and infrequent). Based on the information on the record of this proceeding, we do not find that the items included in Diler's extraordinary income and other income and profits are extraordinary under U.S. GAAP and have continued to include them as an offset to Diler's G&A expenses. In addition, we find the petitioners' reliance on Silicon Metal from Argentina unpersuasive because the issue in Silicon Metal from Argentina was whether to include miscellaneous income and other extraordinary gains and income from a wholly-owned subsidiary of the respondent as an offset to production costs, not G&A expenses.

C. Habas

Comment 14: *POR Entries of Merchandise Produced by Habas*

In May 2003, the Department initiated an administrative review for Habas Sinai ve Tibbi Gazlar Istihal Endustrisi A.S. (Habas), a known producer/exporter of rebar in Turkey, at the request of the petitioners. Subsequently, Habas informed the Department that it had no shipments or entries of subject merchandise during the POR. In accordance with our standard practice, we attempted to confirm this statement by reviewing CBP data showing all rebar entries from Turkey during the POR. However, the CBP data indicated that there were entries of subject merchandise produced by Habas. Consequently, we requested that Habas explain the circumstances surrounding these entries, and we provided it with certain mill certificates obtained from CBP relating to this merchandise. See letter from Shawn Thompson to Habas, dated October 15, 2003.

In a response dated November 3, 2003, Habas explained that the merchandise in question was destined for Canada and that it had no reason to believe the merchandise would not be consumed there. Habas provided sales and shipment documentation to substantiate this claim. Based on Habas's explanation and supporting documentation, we preliminarily determined that Habas did not have any reviewable entries during the POR and we stated our intent to rescind the review for this company.

The petitioners disagree with this conclusion because they claim that the documentation provided by Habas did not sufficiently: 1) correspond to the mill certificates provided by the Department; or 2) demonstrate that Habas did not have knowledge that its shipments of rebar to Canada were destined for the United States. Specifically, the petitioners contend that the contract provided by Habas to substantiate one of the mill certificates did not correspond with respect to the purchase order number or rebar lengths referenced. Moreover, while the petitioners concede that certain commercial invoices provided by Habas correspond to the submitted contracts, they assert that Habas failed to illustrate how the contracts themselves relate to the U.S. sales in question. In addition, the petitioners note that certain documents provided by Habas have redactions which make it difficult to tie them to the mill certificates. Finally, the petitioners point out that one of the contracts contains a statement that the merchandise was for shipment to the United States.

Consequently, the petitioners argue that Habas failed to demonstrate that the entries at issue were outside the scope of the review and, as a consequence, the Department should assign Habas a margin based on AFA. As AFA, the petitioners contend that the Department should use the margin calculated for Habas in the less-than-fair-value investigation (LTFV) investigation (i.e., 19.15 percent). The petitioners assert that, if the Department chooses not to apply AFA, at a minimum it should instruct CBP to liquidate Habas's entries based on the all-others rate in accordance with the Department's policy clarification on reseller assessment. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Reseller Notice).

Habas agrees with the Department's preliminary intent to rescind the review. According to Habas, it responded to the Department's questions regarding the entries at issue to the best of its ability. Habas notes that, because the Department was able to provide it only with excerpts from the relevant mill certificates, it was difficult to identify the corresponding sales. Nonetheless, Habas maintains that it provided the Department with all documentation in its possession related to the POR sales relating to the mill certificates, and according to this documentation, the merchandise was sold to Canada prior to the POR and was not intended for exportation to the United States. Specifically, Habas asserts that the documentation shows that the merchandise was: 1) shipped to Canada; 2) manufactured to Canadian specifications; and 3) sold on the basis of Canadian terms of sale. Habas further asserts that, while the merchandise was apparently resold by a Canadian trading company to the United States subsequent to the POR, Habas itself had no knowledge of such sales.

Department's Position:

Based on the data on the record, we continue to find that Habas did not have any reviewable entries during the POR. In this case, we were unable to provide Habas with complete documentation on the entries in question because of the business proprietary nature of the data. However, we have examined the information provided to us by CBP, as well as the documentation submitted in explanation by Habas, and have concluded that Habas had no knowledge of the shipments in question, and thus it did not control the sale relevant to this administrative review.

Specifically, the evidence on the record (i.e., invoices and bills of lading corresponding directly to the mill certificates) clearly shows that the merchandise in question was: 1) sold and shipped to Canada; and 2) produced to Canadian specifications. Although the petitioners have questioned Habas's knowledge of destination, they provided no evidence to demonstrate that Habas itself reshipped the merchandise from Canada to the United States or that it knew of such transactions. Nonetheless, we agreed with the petitioners that one of these documents raised sufficient concerns regarding knowledge of destination to question Habas further,[11] and we did so on October 20, 2004. In response, Habas stated that it was unsure why the customer used this language and therefore it contacted the customer to ask. Habas stated that the customer indicated that the language in question was a clerical oversight and that the purchase confirmation was generated from a standard form in its system; the customer further

[11] This document indicated that Habas sold the merchandise to the customer with the knowledge that the products were "for shipment to the USA."

stated that the shipment was intended for Canada. For further explanation, see Habas's October 21, 2004, submission. We confirmed this explanation by contacting the customer directly. See the memorandum to the file from Alice Gibbons entitled "Conversation with One of Habas' Customers Regarding the Destination of Habas-Produced Merchandise in the 2002-2003 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey," dated October 22, 2004.

Regarding the petitioners' arguments that the data on the contracts submitted by Habas do not match the data on the mill certificates in all respects, we agree. Nonetheless, we are satisfied that the transactions are in fact the same, given that the quantities, product characteristics, and shipping vessels all match identically. Consequently, we find that it is appropriate to rely on the information taken from the invoices and bills of lading regarding the terms of sale. Thus, we continue to find that the information on the record substantiates Habas's claim that it did not have any sales of subject merchandise to the United States during the POR, and as a result we are rescinding the review with respect to Habas.

Finally, we agree with the petitioners regarding the assessment rate applicable to these transactions. In the Reseller Notice, we stated the following:

> If, in the course of an administrative review, the Department determines that the producer knew, or should have known, that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will be liquidated at the producer's assessment rate which the Department calculates for the producer in the review. If, on the other hand, the Department determines in the administrative review that the producer did not know that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will not be liquidated at the assessment rate the Department determines for the producer or automatically at the rate required as a deposit at the time of entry. In that situation, the entries of merchandise from the reseller during the period of review will be liquidated at the all-others rate if there was no company-specific review of the reseller for that review period.

See Reseller Notice, 68 FR at 23954. In accordance with this statement of policy, we intend to instruct CBP to liquidate the entries in question at the all-others rate. We find that this action is appropriate, given that Habas did not have knowledge that the ultimate destination of the merchandise was the United States.

D. ICDAS

Comment 15: *Revocation for ICDAS*

In the preliminary results, we determined that it was not appropriate to revoke the order with respect to ICDAS's U.S. exports of subject merchandise. Specifically, we found that the requirements of 19 CFR 351.222(d)(1) had not been met because we did not conduct a review for ICDAS of the first year under consideration (i.e., the 2000-2001 POR).[12] See Preliminary Results, 69 FR 25063 at 25065.

ICDAS maintains that the Department's decision not to revoke the order with respect to it was incorrect given that: 1) ICDAS sold subject merchandise at not less than normal value for at least three consecutive years; 2) ICDAS sold subject merchandise in commercial quantities for each of the three relevant years; and 3) it is not necessary to maintain the order with respect to ICDAS in order to offset dumping.

According to ICDAS, while the Department rescinded the April 1, 2000, through March 31, 2001, administrative review with respect to it on the grounds that it did not have entries of subject merchandise during this period, the Department's regulations regarding revocation at 19 CFR 351.222(b)(2)(i) refer specifically to "sales," not "entries," of subject merchandise. ICDAS maintains that these meanings are not synonymous, noting that CBP regulations at 19 CFR 141.0a(a) define "entry" as "that documentation required by Sec. 142.3 of this chapter to be filed with the appropriate Customs officer to secure the release of imported merchandise from Customs custody, or the act of filing that documentation," while the Department's antidumping manual notes that "sales" are deemed to have occurred when price, quantity, delivery terms, and payment terms are agreed by the parties. ICDAS also notes that the Webster's II New Collegiate Dictionary defines "exports" as merchandise that is sent or transported abroad especially for sale or trade. See Webster's II New College Dictionary (1999) at 395. ICDAS further maintains that the use of the term "sold" in the revocation regulation is consistent with the use of the term "sold" in the Department's certification requirement, neither of which mention "entries." As a result, ICDAS reasons that the existence or lack of entries during a POR is not relevant when assessing eligibility for revocation.

Similarly, with respect to the Department's requirement that there be exports in commercial quantities for the three years prior to revocation, ICDAS maintains that these regulations do not require "entries," but merely "sales" as defined above. ICDAS notes that the Department's regulations regarding the commercial quantities requirement reference either "sales" or "exports," but make no mention of "entries." See 19 CFR 351.222(d)(1) and 19 CFR 351.222(e)(1)(ii). Further, ICDAS maintains that the Department almost exclusively uses the word "sales" when conducting an analysis of commercial quantities, citing several cases in which this term has been used in this context. See Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 67 FR 51195, 51198 (Aug. 7, 2002) (Pasta from Turkey Prelim); Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 15832 (Mar. 21, 2001) and accompanying Issues and Decision Memorandum at Comment 1 (OCTG from Mexico); Notice of Final Results of Antidumping

[12] In the previous segment of this proceeding, we determined that ICDAS did not have sales in commercial quantities and, therefore, the Department could not "count" the 1999-2000 POR as the first year of this revocation analysis.

Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742, 743 (Jan. 6, 2000); Pure Magnesium From Canada; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 64 FR 12977, 12979 (May 16, 1999); and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part, 64 FR 2173, 2175 (Jan. 13, 1999) (Carbon Steel Plate from Canada).

ICDAS states that, although it had no entries of subject merchandise during the 2000-2001 POR (i.e., April 1, 2000, through March 31, 2001), record evidence demonstrates that it "sold" commercial quantities of subject merchandise to the United States during this time period. Specifically, ICDAS notes that it invoiced and shipped subject merchandise to a U.S. customer within this period, but this merchandise did not enter the United States until after March 31, 2001. Therefore, ICDAS argues, were the Department to rely on either the invoice date or the shipment date, the date of sale falls within the POR in question; thus ICDAS had both sales and exports in commercial quantities. ICDAS notes that the Department reviewed data relating to sales from the 2000-2001 POR in the context of the 2001-2002 POR.

ICDAS asserts that the Department's finding that it could not rely on the 2000-2001 POR precluded the Department from addressing the issue of whether it had sales in commercial quantities during the three relevant periods. As noted above, ICDAS maintains that the Department erred as a result of improperly equating "sales" with "entries," and that the Department must rely on the 2000-2001 POR as the first of the three relevant years in its revocation analysis. Following from the foregoing assertion, ICDAS reasons that the Department must now address whether ICDAS sold in commercial quantities for each of the three relevant PORs. ICDAS asserts that "{e}ach of these sales quantities were, relative to the Department's benchmark, well above the level at which the Department has previously found sales to be below a commercial quantity."

According to ICDAS, in the 2000-2001 POR, the Department analyzed the issue of commercial quantities by comparing ICDAS's specific sales data for the April 1, 1999, through March 31, 2000, POR to the average volume shipped by respondents (which did not include ICDAS) in the LTFV investigation in 1995. ICDAS asserts that this methodology amounts to a comparison with the period of investigation (POI) industry average, and that this same POI industry average would presumably be used by the Department as a benchmark for determining the commercial quantities question in the instant case for the relevant time periods.[13] ICDAS maintains that, should the Department use this benchmark, based upon Department precedent and practice, its shipments in the relevant years will be found to have been in commercial quantities.

---

[13] ICDAS states that it does not agree that either the POI industry average or a company's home market sales volume are appropriate benchmarks.

Citing Carbon Steel Plate from Canada, ICDAS maintains that the Department's practice has been to find that a respondent did not have sales in commercial quantities when the respondent's POR sales volumes are "abnormally small" and "so insignificant" as to not reflect the company's normal commercial experience. Further, ICDAS asserts that the Department generally has found that sales were not in commercial quantities only in cases where POR sales volumes are less than three percent of a respondent's POI sales. In support of this assertion, ICDAS cites OCTG from Mexico at Comment 1; Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke in Part: Certain Pasta From Italy, 67 FR 51827, 51832 (Aug. 9, 2002); and Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 65 FR 7497, 7504 (Feb. 15, 2000). ICDAS asserts that its shipments in 1999 through 2000 were at the "high end of the range of percentages found not to constitute commercial quantities," and that its shipments from 2000 through 2003 were significantly greater as a percentage of this purported POI industry average benchmark than "the percentage figures found in other cases where the Department determined that sales were not in commercial quantities." ICDAS goes on to note that its 2000 through 2003 annual shipments were also significantly higher than ICDAS's shipments for the 1999-2000 POR.

Finally, ICDAS argues that the petitioners have waived the issue of whether continued application of the antidumping duty order is "otherwise necessary" to offset dumping, and that the Department should therefore find that maintaining the order with respect to ICDAS is unnecessary. Citing 19 CFR 351.222(b)(2)(i)(c), ICDAS states the burden of proof regarding whether the continued application of the antidumping duty order is necessary to offset dumping initially lies with the respondent. ICDAS argues that it follows from this approach that respondents who have requested revocation, having made sales at not less than normal value over at least three review periods, are entitled to a presumption that maintaining the antidumping duty order is not otherwise necessary to offset dumping. See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (Sept. 22, 1999). Further, ICDAS asserts that in order to rebut this presumption, the petitioners must set forth additional or positive evidence. See id. ICDAS maintains that there is no such factual information on the record, and that the deadline for submission of unsolicited new factual information in this review (i.e., September 17, 2003) has passed.

The petitioners agree with the Department's finding in the preliminary results that ICDAS was not eligible for revocation. Specifically, the petitioners state that, as ICDAS was not subject to an administrative review for the 2000-2001 POR, this cannot count as the first of the relevant three years. Therefore, the petitioners contend that ICDAS is not, as a matter of law, eligible for revocation. In support, they cite 19 CFR 351.222(d), which states that there will be no revocation unless the Department has "conducted a review for the first or third (or fifth) years of the three- and five- year consecutive time periods referred to in those paragraphs." Additionally, the petitioners assert that ICDAS made no "sales" in the United States during the 2000-2001 POR, citing the fact that the Department rescinded its administrative review of ICDAS during this POR.

The petitioners state that if, despite the above, the Department were to find that ICDAS made "sales" in the 2000-2001 time period, such sales were not in commercial quantities. Thus ICDAS would still not be entitled to revocation. The petitioners assert that the Department decides whether sales are in commercial quantities on a case-by-case basis, and in so doing compares the number and volume of the sales in question to sales made by the respondent prior to the order and during other PORs, in order to establish whether such sales represent the respondent's "normal commercial practice." See, e.g., Carbon Steel Plate from Canada, 64 FR at 2175; and Pasta from Turkey Prelim, 67 FR at 51198. The petitioners argue that applying the Department's case-by-case analysis, including an examination of the number and volume of sales, to either other review periods or the POI-industry average supports a conclusion that ICDAS did not make sales in commercial quantities during the 2000-2001 POR.

Department's Position:

As noted above, in the preliminary results the Department found that ICDAS was not eligible for revocation because ICDAS had not met the requirements of 19 CFR 351.222(d), which states in part:

> The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three- and five-year consecutive time periods referred to in those paragraphs. (emphasis added)

The meaning of this regulation is unambiguous: The Department will not revoke an order with respect to a particular exporter unless it has conducted a review for it during the first year under consideration. Although the Department initiated an administrative review for ICDAS covering the 2000-2001 review period, we rescinded this initiation after ICDAS notified us that it had no entries of subject merchandise to the United States during the POR. See 2000-2001 Rebar Review, 67 FR at 66111. See also Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review, 67 FR 21364, 21365 (May 1, 2002). Therefore, we find that ICDAS is not eligible for revocation from this order because we did not conduct a review for ICDAS during the 2000-2001 POR.[14]

---

[14] This decision is consistent not only with the letter of the regulations, but also with their intent. Specifically, in determining whether the three years of no dumping are a sufficient basis to make a revocation determination, the Department must be able to determine that the company has participated meaningfully in the U.S. market during each of the three years at issue. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part, 64 FR 2173, 2175 (Jan. 13, 1999). See also 2001-2002 Rebar Review at Comment 5. In this case, given that the sale in question occurred so late in the POR that it did not enter until the following period, we find that we have insufficient basis to determine that ICDAS has participated meaningfully in the U.S. market during the three-year period under consideration.

We find that ICDAS's interpretation of this regulation (i.e., that the Department nonetheless "reviewed" its 2000-2001 sales of subject merchandise to the United States and thus it has satisfied the requirements of the applicable regulation) to be untenable. 19 CFR 351.102(b) defines "administrative review" as follows: "'Administrative review' means a review under section 751(a)(1) of the Act." Section 751(a)(1) of the Act in turn defines such a review as follows:

> At least once during each 12-month period beginning on the anniversary of the date of publication of . . .an antidumping duty order under this title. . . the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall . . . review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty. . .and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

Further, section 751(a)(2) of the Act directs the Department to review "each entry of the subject merchandise." As such, an "administrative review" not only has clearly defined parameters, but it is in fact specifically linked to entries during the review period.

We also disagree with ICDAS that the Department should treat the 1999-2000 POR as the first year under consideration. ICDAS made the identical argument in the most recent segment of this proceeding, and we considered it fully then. See 2001-2002 Rebar Review at Comment 5. Because the facts remain the same, we continue to find that ICDAS did not make U.S. sales or shipments in commercial quantities during that POR.

Accordingly, we continue to find that ICDAS is not eligible for revocation in this segment of the proceeding as it fails to meet the requirements of 19 CFR 351.222(d).

Comment 16: *Collapsing Issue for ICDAS*

For the preliminary results, the Department collapsed ICDAS and its affiliated rolling mill, Demir Sanayi, in accordance with its treatment of these entities in the prior administrative review. The petitioners argue that, based on the supply arrangement between the two parties (i.e., a tolling agreement), there is no basis to consider Demir Sanayi to be a producer of subject merchandise or to collapse it with ICDAS. According to the petitioners, because Demir Sanayi manufactures subject merchandise from steel billets manufactured in the ICDAS melt shop and the merchandise is then returned to ICDAS for selling purposes (see ICDAS's July 14 section A response at page A-12), ICDAS (not Demir Sanayi) is the producer of the subject merchandise.

As support for their position, the petitioners cite 19 CFR 351.401(f), which states the following:

> the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require

> substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes there is a significant potential for the manipulation of price or production.

The petitioners argue that, because the arrangement between ICDAS and Demir Sanayi is a classic tolling or subcontracting arrangement, Demir Sanayi does not acquire ownership or control the sale of subject merchandise or foreign like product. Accordingly, the petitioners contend that Demir Sanayi cannot be treated as a producer under 19 CRF 351.402. Further, the petitioners argue that, because Demir Sanayi cannot be considered a producer and cannot produce subject merchandise on its own without "substantial retooling" of its facilities, it cannot be collapsed with ICDAS. See 19 CFR 351.401(f)(1). As support for its position, the petitioners cite Slater Steels Corporation v. United States, 279 F. Supp. 2d 1370 (CIT 2003) (Slater Steels), which states that affiliated companies which lack equivalent production capabilities do not fit into the profile contemplated by the regulation pertaining to collapsing. According to the petitioners, the facts of this case are analogous to those in Slater Steels because Demir Sanayi: 1) is not a named respondent in this review; 2) does not produce subject merchandise imported into the United States; and 3) does not possess production facilities equivalent to those of ICDAS because it lacks a melt shop.[15]

Furthermore, the petitioners argue that, because Demir Sanayi's rolling services constitute a major input and the information needed to employ the major input rule is not on the record, the Department should value such services at the highest value reported for any control number by ICDAS for the cost reporting period.

According to ICDAS, the petitioners have mischaracterized the relationship between ICDAS and Demir Sanayi. ICDAS states that the relationship between the two entities was described in its section D submission as follows: "Demir Sanayi made sales of rebar in the home market during the POR that are reported in the section B home market database. The company has collapsed ICDAS and Demir Sanayi for calculation of COP and CV." See ICDAS's July 28, 2003, section D response at pages 11-12. According to ICDAS, Demir Sanayi sold rebar during the POR that was separate and distinct from those goods that were rolled for and returned to ICDAS under a subcontracting arrangement. ICDAS notes that such sales were reported in ICDAS's home market sales listing.

ICDAS argues that it collapsed Demir Sanayi's and ICDAS's costs in its cost calculations specifically because Demir Sanayi was an affiliated reporting entity for sales purposes, and therefore, the major input rule did not apply. Furthermore, ICDAS argues that the petitioners' reference to Demir Sanayi not being a named respondent in this review is irrelevant, while the fact that it is an affiliate of ICDAS that sold in-scope rebar in the home market requires it to be collapsed with ICDAS for cost-reporting purposes.

---

[15] The petitioners further argue that any future sales made by Demir Sanayi should be subject to the all-others rate, rather than to ICDAS's rate.

Regarding the petitioners' claim that Demir Sanayi cannot be considered a producer of the subject merchandise because it lacks a melt shop and does not posses equivalent production facilities to those of ICDAS, ICDAS disagrees. Specifically, ICDAS contends that, because the subject merchandise consists of deformed rebar and wire rod and such merchandise is produced from steel billets by a rolling mill, an entity does not necessarily have to own a melt shop that produces steel billets in order to manufacture and be considered a "producer" of rebar. Therefore, because Demir Sanayi owns a rolling mill, ICDAS contends that it is a producer of the subject merchandise and should appropriately be collapsed with ICDAS.

Department's Position:

We disagree with the petitioners that Demir Sanayi is not a "producer" of subject merchandise.[16] Demir Sanayi has a rolling mill which produces rebar from billets. Whether the billets used in its rolling mill were produced by Demir Sanayi is irrelevant for purposes of determining if this entity should be collapsed with another entity that produces merchandise subject to the order (i.e., rebar). See, e.g., Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review, 68 Fed. Reg. 47543 (Aug. 11, 2003) and accompanying Issues and Decision Memorandum at Comment 10 (Stainless Steel Bar from India) (where the Department stated that whether one "makes billets" and the other does not is "irrelevant" to collapsing analysis). The billet input and the final product (i.e., concrete reinforcing bar) are two distinct products. As noted by the Department in Stainless Steel Bar from India, it is not necessary for a company to produce billets in order to "produce" the final end product. Given these facts, it is appropriate to treat Demir Sanayi as a "producer" of rebar.

Moreover, the fact that Demir Sanayi had a tolling relationship with ICDAS to roll billets into subject merchandise does not mean that Demir Sanayi did not produce and sell subject merchandise during the POR. Rather, evidence on the record demonstrates that Demir Sanayi produced and sold rebar in the home market for its own account. See the February 10, 2004, memorandum from Irina Itkin and Elizabeth Eastwood to the file entitled, "Verification of the Sales Questionnaire Responses of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars (Rebar) from Turkey" at page 3 (ICDAS 2002-2003 Sales Verification Report). Therefore, the petitioners' argument that Demir Sanayi did not acquire ownership or control the sale of subject merchandise under its tolling agreement is without merit under the facts of this case because it is not relevant to the general question of whether Demir Sanayi is nevertheless a producer in its own right. This argument merely addresses whether Demir Sanayi functioned as a subcontractor (rather than the producer) for some of its transactions.

---

[16] The petitioners appear to argue that Demir Sanayi is not a producer for two reasons: 1) Demir Sanayi does not produce its own billets in a melt shop; and 2) Demir Sanayi only produced subject merchandise pursuant to a tolling arrangement with ICDAS.

Regarding our treatment of ICDAS and Demir Sanayi as a collapsed entity, we note that we treated these producers as such in the previous administrative review of rebar from Turkey. Further, given that Demir Sanayi's status as a "producer" is not in question (as noted above), we note that it is in accordance with our regulations at 19 CFR 351.401(f) to treat two producers as a collapsed entity where "those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production." We believe that the requirements set forth in 19 CFR 351.401(f) have been met in this case because Demir Sanayi and ICDAS: 1) have common ownership; 2) produce identical products; and 3) share price and cost information with respect to the merchandise under review, as evidenced by the detailed price and cost information of each entity combined in a single consolidated response to the Department's questionnaire. Consequently, we have continued to treat Demir Sanayi and ICDAS as a collapsed entity for purposes of the final results.

With regard to the petitioners' argument that the Department should consider Demir Sanayi's rolling services as a "major input," we note that our decision to collapse these entities obviates this argument. As noted in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea, 63 FR at 40404 (July 29, 1998), once the Department treats two producers as a single entity, the major input rule is no longer applicable.

Comment 17: *Whether to Treat ICDAS's U.S. Sales as EP or CEP Sales*

For purposes of the preliminary results, the Department treated all of ICDAS's U.S. sales as EP sales. According to the petitioners, the Department should reclassifiy these sales as constructed export price (CEP) sales and deduct all expenses associated with ICDAS's affiliated U.S. importer from the U.S. price. As support for their position, the petitioners cite AK Steel Corp. V. United States, 226 F.3d 1361 (Fed. Cir. 2000) (AK Steel).

The petitioners base their argument on the claim that ICDAS's responses are inconsistent in their descriptions of the importer. Specifically, the petitioners assert that ICDAS's statement on page A-8 of the May 8, 2003,[17] response, that the importer does not have any employees or business premises in the United States and that functions such as record-keeping and customs transactions are outsourced to third parties, is inconsistent with the fact that Exhibit A-7 of the same response shows two addresses in Houston, Texas for the affiliate, as well as the name of a sales agent.

According to ICDAS, the Department should continue to treat all of ICDAS's U.S. sales as EP transactions because they were made outside the United States. ICDAS notes that, according to AK Steel, there are two dispositive factors that should be considered when choosing between a CEP or EP

[17] We note that the relevant portions of ICDAS's response are contained on pages A-8 and A-9 of the July 14, 2003, section A response.

classification: 1) where the sale takes place; and 2) whether the producer or exporter and the U.S. importer are affiliated. See AK Steel, 226 F.3d at 1367. Further, ICDAS cites Notice of Final Results of Antidumping Duty Administrative Review and Recission of Administrative Review in Part: Canned Pineapple Fruit From Thailand, 66 FR 52744 (Oct. 17, 2001) and the accompanying Issues and Decision Memorandum at Comment 16 (Canned Pineapple from Thailand), where the Department recognized that "*AK Steel* established that 'the critical difference between EP and CEP sales is whether the sale or transaction takes place inside or outside the United States.'" In addition, ICDAS argues that the term "outside the United States," read in the context of both the CEP and EP definitions, applies to the locus of the transaction at issue, not the location of the company. See AK Steel, 226 F.3d at 1370.

ICDAS argues that the fact that its U.S. importer is a paper company which has no employees was verified by the Department in the 2001-2002 and 2002-2003 administrative reviews. ICDAS notes that the petitioners' claim that sales made through ICDAS's U.S. importer are CEP sales is based on the false premise that the importer in question had employees and business premises in the United States. However, ICDAS argues that its statements on pages A-8 and A-9 of the July 14 response are correct and that the U.S. importer is indeed a paper company and has no employees. Furthermore, ICDAS states that the petitioners' reference to an employee's name on the sales documentation is simply a reference to an employee of the accounting firm charged with keeping the accounting books for ICDAS's U.S. importer.

Department's Position:

We have continued to treat ICDAS's U.S. sales as EP transactions for purposes of the final results because these sales were made pursuant to agreements made between ICDAS personnel in Turkey and the unaffiliated U.S. customer. In its section A response, ICDAS describes the role of its affiliated importer as follows:

> ICDAS has classified its sales made through {the importer} as 'EP' sales in its U.S. sales database since the merchandise was sold before importation by company personnel located outside the United States (in Turkey). {The importer} does not have any employees or business premises in the U.S., therefore is not involved in the sales process, never takes possession or inventory of subject merchandise, and acts only as an importer of record. Functions such as recordkeeping and customs transactions are outsourced to third parties. All sales activities related to the sales to U.S. customers, of subject merchandise produced or exported by ICDAS, such as all sales negotiations, issuing of invoices, and preparation of the documentation to facilitate payment, occurred in Turkey.

See ICDAS's July 14, 2003, submission at pages A-8 and A-9.

This explanation was confirmed in the Department's sales verification reports for ICDAS in this review, as well as in the 2001-2002 administrative review:

> {ICDAS's affiliated U.S. importer} is a paper company in the United States which acts as the importer of record for ICDAS's U.S. sales of subject merchandise. According to company officials, the personnel in ICDAS's export sales department act on behalf of {the importer} because {the importer} itself has no employees.

See the ICDAS 2002-2003 Sales Verification Report at page 4.

> According to company officials, {the U.S. importer} is a paper company that was created in July 2001. For all of ICDAS's sales to the United States after the date of the company's creation, {the importer} acted as the importer of record. Company officials stated that {the importer} has no employees and that the personnel in ICDAS's export sales department act on behalf of {the importer}. According to ICDAS, {the importer} provides the following services to U.S. customers: 1) invoicing; 2) arrangement of U.S. customs clearance and payment of all brokerage charges; and 3) receiving payment from U.S. customers.[18] Company officials explained that, except for the provision of these services, there are no differences between those U.S. sales made directly by ICDAS and those U.S. sales made through {the importer}.

See the October 7, 2004, memorandum from Brianne Riker to the File, entitled "Placing the ICDAS 2001-2002 Sales Verification Report on the Record of the 2002-2003 Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey" at pages 4 and 5.

Based on the above descriptions, we disagree with the petitioners' characterization of ICDAS's affiliated U.S. importer's involvement in the U.S. sales process. According to the information gathered at both the 2002-2003 and 2001-2002 sales verifications of ICDAS, the importer's role is limited to customs clearance arrangement and payment of brokerage expenses, and receipt of payment from U.S. customers. The petitioners' assertion that the U.S. importer has employees located in the United States is unfounded. It is evident from the documentation contained in Exhibit A-7 of the July 14 response that the employee referred to by the petitioners works for the accounting firm that prepares the importer's financial statements. Nonetheless, we have conducted internet research regarding the two addresses contained in the same exhibit for the U.S. importer. We found that the first address is the location of the above-mentioned accounting firm, while the second address is apparently an office of a firm of tax attorneys. Moreover, we were not able to find any U.S. location for ICDAS's affiliated importer. See the memo from Brianne Riker to the file entitled, "Internet Research Regarding ICDAS's Affiliated Importer," dated October 12, 2004.

---

[18] Company officials explained that invoices are issued by ICDAS personnel in Turkey, while the remaining services are coordinated by the same personnel with a U.S. customs brokerage firm and a U.S. accounting firm, respectively. Company officials further stated that the fees paid to the accounting firm are not directly related to a particular sales transaction. Accordingly, company officials stated that they reported these fees as U.S. indirect selling expenses in the U.S. sales listing.

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

> [If] 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 ICDAS's U.S. importer is affiliated with ICDAS, this fact alone does not require a finding that the sales in question are CEP transactions. Under AK Steel, the salient issue is whether the sale at issue takes place inside or outside the United States. See Canned Pineapple from Thailand at Comment 16. In this case, the sales invoice was issued by an entity in Turkey (i.e., the producer/exporter) to 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 ICDAS's U.S. sales as EP transactions.

Comment 18: *Short-term Interest Rates Used for ICDAS*

For purposes of the preliminary results, we based home market credit expenses for ICDAS on the actual short-term borrowing rates in effect during each month of ICDAS's reporting period. The petitioners argue that the verified interest rates on which home market credit expenses were based are aberrational when compared with The Economist rates used by the other respondents and the Department's own inflation indices, and thus they should be rejected. According to the petitioners, not only were the few loans which comprise the total of ICDAS's home market borrowing experience all for very short periods, but the total interest expenses related to these loans are negligible. Further, the petitioners speculate that it is likely that ICDAS entered into a single loan in the month when more than half of its POR U.S. sales were made in order to inflate home market credit expenses for purposes of this proceeding. However, the petitioners contend that, even if it is assumed that the loan in question were a legitimate transaction, it is unreasonable to use that single transaction to quantify the cost of extending credit to ICDAS's customers in that month. As support for their position, the petitioners cite Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 11256 (Feb. 23, 2001) (Silicon Metal from Brazil 1998-1999); Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (Feb. 12, 2002) (Silicon Metal from Brazil 1999-2000); and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea, 64 FR 17342 (April 9, 1999) (Steel Round Wire from Korea).

The petitioners argue that, if the Department determines that it is not appropriate to disregard ICDAS's borrowing altogether in favor of published short-term borrowing rates, it should either: 1) reject the most aberrational borrowing rates from April and October 2002; or 2) apply a single weighted-average rate for the nine-month reporting period, which the petitioners note is still considerably higher than the published rates.

According to ICDAS, its reported home market credit expenses are based on short-term interest rates on bank loans used in its commercial operations in the normal course of business and should therefore not be rejected for purposes of calculating credit expenses. ICDAS argues that it reported a relatively large number of loans during the reporting period and that the total principal and interest associated with these loans is substantial and consistent with ICDAS's normal commercial practice. ICDAS notes that, while the subset of its reported borrowings during the reporting period is sufficient for calculating credit expenses, the total borrowings in home market currency are considerably larger than the reported subset. ICDAS notes that it did not report the remainder of the loans because the Department made a decision in a previous review to disregard Eximbank loans.

Regarding the petitioners' assertion that ICDAS's loan experience should be rejected on the grounds that the rates are higher than published interest rates, ICDAS disagrees. According to ICDAS, because banks apply various criteria in offering interest rates to companies, each company's individual borrowing experiences can differ significantly from each other and from published lending rates. ICDAS states that is not surprising that its interest rates were high because its total short-term loans increased three-fold between 2001 and 2002.

Regarding the cases cited by the petitioners, ICDAS argues that they do not support the petitioners' position. Specifically, regarding both Silicon Metal from Brazil 1998-1999 and Silicon Metal from Brazil 1999-2000, ICDAS argues that these cases are not analogous to the present circumstances because the respondent had a single loan during the entire POR, while ICDAS had a considerable number of loans during the POR. In Steel Round Wire from Korea, ICDAS notes that the Department rejected the respondent's use of its actual overdraft rates because those rates "{did} not appear to bear any relation to normal commercial borrowing by the respondent (the total POI amount of overdraft borrowing, when compared to the total amount of regular short-term borrowing, indicates that overdraft borrowing is exceptionally rare)." ICDAS argues that this case is also easily distinguishable from the instant case because the interest rates in question are based on regular bank loans and not overdrafts. Further, ICDAS argues that these interest rates are related to loans that are part of its normal commercial behavior and significant both in number and total principal.

Finally, ICDAS argues that the petitioners have provided no evidence that ICDAS entered into the loans in question in order to inflate its home market credit expenses. ICDAS states that while it made sales to the United States in April, September, and December 2002, the reported interest rates for September and December are the second and third lowest of the eight reported monthly interest rates for the reporting period.

Department's Position:

We agree with ICDAS that we should continue to use its own borrowing experience for purposes of calculating home market credit expenses. Policy Bulletin 98.2 states:

> if the respondent has short-term borrowings in the same currency as that of the transaction, we use the respondent's own weighted average short-term borrowing rate realized in that currency to quantify the credit expenses incurred... The short-term borrowing rate realized by the respondent in the relevant currency is the best measure of the time value of money and the cost incurred by the respondent in extending credit to its customers.

In this review, because Turkey experienced high inflation during the POR, we have used month-to-month comparisons in performing the margin calculations, pursuant to the Department's practice. In accordance with this methodology, for purposes of the preliminary results and consistent with prior reviews of rebar from Turkey, rather than using a weighted-average POR borrowing rate, we have used monthly rates for each month of the reporting period for purposes of calculating home market credit expenses. Moreover, we used ICDAS's own borrowing experience in Turkish lira as directed by the above-referenced policy bulletin.

ICDAS reported a significant number of short-term loans in Turkish lira during the reporting period (i.e., April through December 2002). We used all of ICDAS's loans in Turkish lira during the months in which it had U.S. sales in order to calculate home market credit expenses because there is no evidence on the record that: 1) these loans were not obtained in the normal course of business; or 2) the loans were obtained and reported by ICDAS in order to inflate home market credit expenses.

We find unpersuasive the petitioners' argument that we should depart from our practice of using ICDAS's own borrowing experience simply because its borrowing rates happen to be higher than the rates published by The Economist. As noted by ICDAS, the interest rate offered by a bank to any particular company depends on many factors, and may include the company's relationship with the bank, as well as the company's profitability. At verification, we tied ICDAS's borrowings in Turkish lira to bank statements from unaffiliated banks. See the ICDAS 2002-2003 Sales Verification Report at page 10. There is no evidence on the record to suggest that these rates were not legitimate commercial rates obtained in the normal course of business.

Finally, we find that the petitioners' reliance on Silicon Metal from Brazil 1998-1999, Silicon Metal from Brazil 1999-2000, and Steel Round Wire from Korea is misplaced. Regarding the first two cases, we note that the Department did not use the actual borrowing experience of the respondent because it had only one loan during the POR which was determined to be outside the normal course of trade (i.e., the loan was found to be made at an "exorbitant" rate to be used only in an "emergency" situation). In the instant case, ICDAS reported many loans which are similar to the ones in question during the reporting period and there is no evidence on the record to demonstrate that any of the reported loans were outside the normal course of trade. Regarding Steel Round Wire from Korea, we note that the Department decided to exclude the rate in question because it: 1) was related to an overdraft rate; 2) was several times higher than the respondent's regular short-term borrowing rate; and 3) did not bear any relation to normal commercial borrowing by the respondent. In contrast, ICDAS's borrowing rates in question are not overdraft rates, were not higher than other borrowing rates reported in other POR months, and represent normal commercial activity for ICDAS. Therefore, we find that it is appropriate to continue to use ICDAS's reported borrowing rates in Turkish lira in order to calculate home market credit expenses for purposes of the final results.

Comment 19: *Standard Rolling Times for ICDAS*

For purposes of the preliminary results, we reallocated ICDAS's conversion costs to individual products using a sample of actual rolling times, including stoppage, that were tabulated from the daily plant reports for two months. ICDAS asserts that its original methodology (i.e., using engineering standard rolling times) is better because the standards: 1) do not include stoppage; and 2) were developed using engineering calculations based on the geometry of the product, the density of steel, the machinery used in the production process, and the roller diameters and rotation speed settings required to roll each diameter of rebar and wire rod. Moreover, ICDAS argues that use of these standards is consistent with the Department's normal methodology in similar cases. As support for this assertion, ICDAS cites Notice of Final Determination of Sales at Less Than Fair Value: High Information Content Flat Panel Displays and Display Glass from Japan, 56 FR 32376, 32395 (July 16, 1991) (Flat Panel Displays from Japan) and Notice of Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan, 54 FR 4864, 4869 (Jan. 31, 1989) (ATVs from Japan). In addition, ICDAS points out that the standard time actual cost methodology has consistently been used by other respondents in this proceeding.

According to ICDAS, the Department erred by including stoppage in the actual rolling time because stoppages are random phenomena that are not associated with a particular size of rebar or wire rod. Therefore, ICDAS asserts that the costs associated with stoppages are not product-specific, but rather should be allocated to all products in proportion to the rolling times.

ICDAS acknowledges that its standards were developed four years ago and have not been revised since. However, ICDAS maintains that the Department should not reject them on this basis because the parameters used to develop the standard times have not changed. Finally, ICDAS claims that the daily plant reports from which the actual rolling times were tabulated are kept manually and are not automated. ICDAS asserts that the burden associated with manually analyzing and tabulating 365 daily production reports for each of the four rolling mills would have been too great, and thus the Department should accept its reported methodology.

The petitioners contend that the standard rolling times used by ICDAS are not an accurate representation of ICDAS's actual rolling times. Therefore, the petitioners argue that, for the final results, the Department should continue to use actual rolling times to allocate the direct labor and conversion costs of the rolling mills to specific products.

Department's Position:

We disagree with ICDAS that its estimated rolling times, which differed significantly from its actual experience, should be the allocation base for direct labor and other conversion costs. However, we agree with ICDAS that the stoppage time, which occurs randomly during the production process, is not directly related to the product being produced.

In its normal books and records, ICDAS does not calculate product-specific costs. As such, for reporting purposes, ICDAS allocated the direct labor and other conversion costs of the rolling mills to specific products based on estimated rolling times for producing a metric ton of a specific diameter of rebar and wire rod. The estimated rolling times were calculated using through-put rates based on the diameter of the rebar processed at ICDAS's rolling mills and taking into account multi-tracking used for rebar of specified diameters.

We found at verification that the actual rolling time (including and excluding stoppage) required to produce one metric ton of each selected diameter of rebar could be determined using the daily rolling reports maintained by ICDAS. To test the reasonableness of the estimated rolling times used by ICDAS to allocate direct labor and conversion costs for reporting purposes, we obtained a copy of the July 31, 2002, rolling report for rolling mill 1 and calculated the actual rolling times, excluding stoppage, required to produce one metric ton of a specific diameter of rebar and compared it to ICDAS's estimated rolling time. We noted a significant difference between the actual and estimated rolling time. We then expanded our testing to cover additional products produced by ICDAS of varying diameters for selected months. From the daily rolling reports, company officials prepared worksheets demonstrating the calculation of actual rolling times (including and excluding stoppage) for all products produced by rolling mills 1 and 2 during March and July 2002. We compared the actual times, excluding stoppage, to the estimated rolling times and noted that the actual rolling times were significantly different than the estimated times for all products. Accordingly, we do not consider the use of the estimated rolling times appropriate for allocating labor and other conversion costs to specific products.

For the preliminary results, we included stoppage time in the product-specific rolling times used to allocate costs to each diameter of rebar produced. However, after further consideration, we agree with ICDAS that stoppage is a random occurrence that is not directly related to the specific products being produced. The inclusion of these stoppage times in our cost calculations would be distortive. Therefore, for the final results, we have allocated the rolling mill total direct labor and other conversion costs to specific products based on the relative actual rolling times, exclusive of stoppage.

We find ICDAS's reliance on Flat Panel Displays from Japan and ATVs from Japan in support of its argument to use standard time as the allocation base to be misplaced. In Flat Panel Displays from Japan, the allocation of the factory overhead costs based on standard work time did not result in inaccurate product-specific costs, whereas, in this case it does. In ATVs from Japan, the issue was related to the absorption of the total costs when standard processing time is used as the allocation base, whereas, in this case the issue relates to the distortion of product-specific costs.

Comment 20: *Prior Period Reversals for ICDAS*

The petitioners contend that the Department should not include the reversal of prior period expenses as an offset to the respondent's reported G&A expenses. According to the petitioners, it is the Department's long-standing policy to exclude reversal of prior period expenses from the COP and CV calculations. As support for this assertion, the petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Quality Steel Products from Japan, 64 FR 24329, 24350 (May 6, 1999) (where the Department excluded the reversal of a reserve for blast furnace repair from the respondent's G&A expenses).

ICDAS contends that the Department should treat reversals of prior period items in a symmetrical manner and argues that the Department cannot exclude reversal of prior period expenses from the COP and CV calculations, and at the same time include reversal of prior period income. According to the respondent, ICDAS included in its reported G&A expenses both reversals of income and expense items accrued in the prior year. ICDAS notes that the underlying items were included as part of the costs reported in the prior POR, and therefore, the associated reversals should be included in the current POR reported G&A expenses.

Department's Position:

We agree with both the petitioners and ICDAS, in part. ICDAS included certain income and expense items in its reported G&A expense rate which resulted from the reversal of expense and income items related to prior periods. The Department's established practice in calculating the G&A expense rate is to include only expense and income items that relate to the current period. See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Malaysia, 65 FR 81825 (Dec. 27, 2000) and accompanying Issues and Decision Memorandum at Comment 19 and Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Turkey, 67 FR 62126 (Oct. 3, 2002) and accompanying Issues and Decision Memorandum at Comment 6. Because the reversal of prior period provisions for income and expense items do not relate to costs incurred in the current period, we have excluded from the G&A calculation the reversal of both the income and expense items in question.

Comment 21: *Gain on Sale of Ship for ICDAS*

During the POR, ICDAS sold a vessel to an affiliated party, and it recognized a gain related to this transaction in its accounting records. We adjusted the amount of the gain included as an offset to G&A expenses for purposes of the preliminary results in order to reflect the market price. See Preliminary Results, 69 FR at 25066.

The petitioners argue that the Department should exclude the gain in its entirety because the item sold is not related to the manufacturing activities of ICDAS. The petitioners point out that, while ICDAS may have used this ship to transport inputs and finished products, it was primarily devoted to transportation services and not to the manufacturing of subject merchandise. According to the petitioners, it is the Department's practice to include in G&A expenses only gains and losses that are related to general manufacturing activities. As support for this assertion, the petitioners cite Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from the Republic of South Korea, 66 FR 51385, 51389 (Oct. 9, 2001) (2001 SSWR from Korea).

ICDAS contends that, for the preliminary results, the Department erred in disallowing the full amount of the offset to G&A expenses. According to ICDAS, the ship was sold to an affiliated party at a market price which was substantiated by the publicly posted sale prices of other similar ships and also from the insurance policy purchased by the affiliated party for the ship in question. ICDAS states that some months after the sale of the ship, it downloaded a list of published offers of used ships from the Shipbrokers.com website and maintains that the amount paid by the affiliated purchaser was within the price range of similar ships. Moreover, ICDAS points out that in the used-ship market, each ship is different and the actual market value reflects the unique condition and characteristics of the individual vessel. According to ICDAS, the fact that one of the ships within a similar class was advertised for sale at a lower price than that received by ICDAS, while another was advertised at a higher price, affirms that the sale of the ship by ICDAS was indeed made at a market price. In addition, ICDAS asserts that the insured value of the sold vessel substantiates that the ship was sold at a market price because the insurance company has the responsibility to inspect the vessel and determine the actual value before issuing the policy. Finally, ICDAS argues that, while no independent appraisal was made at the time of sale to determine the market value of the ship, this should not be deemed to be prejudicial because it is not required by Turkish law.

ICDAS disagrees with the petitioners that 2001 SSWR from Korea applies here. ICDAS asserts that in 2001 SSWR from Korea the Department excluded the gains in question because they were related to investment assets, whereas here the ship was owned and operated to support the company's business of manufacturing and selling steel products and was not an asset held mainly for investment purposes.

Department's Position:

We agree with ICDAS that the gain on the disposal of the used ship should be included as an offset to its reported G&A expenses because it is our practice to include the gains and losses on sales of fixed assets. However, we disagree with ICDAS that the transfer price was based on an arm's-length transaction. To demonstrate that the sales price was at arm's length, ICDAS submitted a list of offers for sales and purchases of ships from the Shipbrokers.com website in Exhibit 37 of the September 30, 2003, supplemental section D questionnaire response. We noted from the list that the transfer price charged for the ship was not at a fair market price. Section 773(f)(2) of the Act provides that transactions between affiliated parties may be disregarded if they do not fairly reflect the amount usually reflected in the market under consideration. Therefore, for the final results, we have continued to adjust the gain on the disposal of a ship to reflect a market price. Due to its proprietary nature, we have addressed the specifics of this issue in the cost calculation memo. For further discussion of this issue, see the memorandum from Sheikh M. Hannan to Neal M. Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Results," dated November 1, 2004.

Finally, we find the petitioners' reliance on 2001 SSWR from Korea to exclude the gain from the G&A rate calculation to be misplaced. In that case, the Department excluded the gains because it related to assets held for investment, whereas in this case the ship was used in the company's general operations and was not held for investment purposes.

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____

____
James J. Jochum
Assistant Secretary
for Import Administration

____
(Date)