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Administrative Review
POR: 4/1/07 - 3/25/08
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DATE: August 27, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Senior Enforcement Coordinator
for the China/NME Unit

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey – April 1, 2007, through March 25, 2008

Summary

We have analyzed the comments of the interested parties in the 2007-2008 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, 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 described 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 interested parties:

1. Duty Drawback Adjustment for Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan)
2. Cost of Raw Materials Adjustment for Kaptan
3. Date of Sale for Kaptan
4. Affiliated Party Freight Revenue for Kaptan

Background

On May 6, 2009, the Department of Commerce (the Department) published the preliminary results of the 2007-2008 administrative review of the antidumping duty order on rebar from Turkey. See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 74 FR 20911 (May 6, 2009) (Preliminary Results). The period of review (POR) is April 1, 2007, through March 25, 2008.

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

Margin Calculations

We calculated export price (EP) and normal value (NV) using the same methodology stated in the preliminary results, except we granted a duty drawback adjustment for purposes of the final results. See Comment 1.

Discussion of the Issues

Comment 1: *Duty Drawback Adjustment for Kaptan*

In its initial questionnaire response, Kaptan claimed an adjustment to U.S. price related to the drawback of Turkish customs duties on imports of billets used to produce rebar. The Department disallowed Kaptan's duty drawback claim for purposes of the preliminary results because Kaptan failed to provide certain information related to this topic requested by the Department in a supplemental questionnaire dated May 1, 2009. However, we provided Kaptan an additional opportunity to provide the requested information in a subsequent supplemental questionnaire, which Kaptan submitted on May 18, 2009 (i.e., after the date of the preliminary results).

Kaptan argues that the Department should grant the full duty drawback adjustment as reported by Kaptan in its questionnaire responses. Kaptan points out that, under section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), a foreign exporter/producer is entitled to an upward adjustment to EP for import duties that are "imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." According to Kaptan, the Court of International Trade (CIT) recognized the right of a foreign exporter/producer to this adjustment in Hornos Electricos de Venezuela, S.A. (Hevensa) v. United States, 285 F. Supp. 2d 1353, 1358 (CIT 2003) (Hevensa); and Far East Machinery Co. v. United States, 12 CIT 428, 430, 688 F. Supp. 610, 611 (1988).

Kaptan notes that the Department employs a two-pronged test to determine if a duty drawback adjustment is warranted. According to Kaptan, the first prong of the test requires the exporter to establish that the import duties and rebates are directly linked to, and are dependent upon, one another, while the second prong of the test requires the company claiming the adjustment to demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on exports of the manufactured product. See e.g., Far East Machinery Co. v. United States, 699 F. Supp. 309, 311 (1988); Wheatland Tube Co. v. United States, 414 F. Supp. 2d 1271, 1286-87 (CIT 2006); Mittal Steel USA, Inc. v. U.S., 2007 WL 2701369 (CIT) (Mittal); and Arcelormittal USA Inc. v. U.S., 2008 WL 2223071 (CIT) (Arcelormittal). See also Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part, 71 FR 65458, 65462 (Nov. 8, 2006), where the Department discusses eligibility under each of the two prongs of the Department's test.

Kaptan asserts that it satisfied both prongs of the Department's duty drawback eligibility test. Regarding the first prong, Kaptan argues that it demonstrated that it met this prong when it submitted documentation demonstrating the link between the import and the duty exemption, Kaptan's request to the Government of Turkey to close each Inward Processing Regime (IPR) permit, details of the exported goods to close the IPR permit, and customs import and export documents accompanying the request to close the IPR permit. With respect to the second prong (i.e., sufficient imports to account for drawback on exports of subject merchandise), Kaptan notes that the relevant IPR permits clearly showed that the amount of raw materials imported by Kaptan during the POR, when converted into finished products including subject merchandise exported to the United States, exceed Kaptan's total exports of subject merchandise and other steel products during the same period.

Kaptan points out that the Department has granted duty drawback adjustments to EP in numerous Turkish cases, including: Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 70 FR 73447 (Dec. 12, 2005) (Pipe and Tube from Turkey), and accompanying Issues and Decision Memorandum at Comment 7; Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (Sept. 2, 2004), and accompanying Issues and Decision Memorandum at Comment 1 (Rectangular Pipe and Tube From Turkey); and Notice of Preliminary Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 71 FR 26043 (May 3, 2006). Kaptan states that, in each of the above-referenced proceedings, the Department examined the Government of Turkey's IPR regime and determined that the system meets the Department's criteria for receiving a duty drawback adjustment. Moreover, Kaptan notes that the Department granted Kaptan a full duty drawback adjustment based on the same facts present in this proceeding in the 2005-2006 administrative review. See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Notice of Intent to Revoke in Part, 72 FR 25253, 25256 (May 4, 2007), unchanged in Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part, 72 FR 62630, (Nov. 6, 2007). Kaptan argues that, because the Government of Turkey's IPR regime as described in its questionnaire responses is the same as the IPR regime in the above-referenced proceedings, the Department should continue to find that Kaptan qualifies for a duty drawback adjustment in the instant proceeding.

Finally, Kaptan notes that the Department recently solicited comments from the public regarding its duty drawback methodology. See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61723 (Oct. 19, 2006). However, Kaptan points out that none of the comments received by the Department on this issue resulted in a published change in practice. Therefore, Kaptan argues that the Department has no reason to depart from its long-standing practice regarding duty drawback and should grant Kaptan the full duty drawback adjustment as reported by Kaptan in its questionnaire responses.

The domestic industry did not comment on this issue.

Department's Position:

To determine if a duty drawback adjustment is warranted, the Department has employed a two-prong test which determines whether: 1) the rebate and import duties are dependent upon one another, or in the context of an exemption from import duties, if the exemption is linked to the exportation of the subject merchandise; and 2) the respondent has demonstrated that there are sufficient imports of the raw material to account for the duty drawback on the exports of the subject merchandise. See Pipe and Tube from Turkey at Comment 7. After analyzing the facts on the record of this case, we find that Kaptan has adequately demonstrated that import duties for raw materials and rebates granted on exports are linked under the Government of Turkey's IPR scheme. Moreover, by submitting the IPR permits themselves, Kaptan has provided evidence that the imports of billets are sufficient to account for the duty drawback claimed on the export of subject merchandise. As a result, we find that Kaptan has passed both prongs of the Department's duty drawback adjustment eligibility test. Therefore, consistent with our determination in the 2005-2006 administrative review, we are granting Kaptan a duty drawback adjustment for purposes of the final results. For further discussion of this calculation, see the August 27, 2009, memorandum from Holly Phelps, Analyst, to the File, entitled, "Calculations Performed for Kaptan Demir Celik Endustrisi ve Ticaret A.S. for the Final Results in the 2007-2008 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey."

Comment 2: *Cost of Raw Materials Adjustment for Kaptan*

In the preliminary results, the Department adjusted Kaptan's cost of manufacture (COM), computed for home market and U.S. sales of rebar, to include the value of exempted or unpaid duties for which Kaptan is claiming an adjustment to U.S. price. See Preliminary Results, 74 FR at 20913.

Kaptan argues that the Department erred in adjusting Kaptan's cost of raw materials to include import duties that were not collected by the Government of Turkey due to the re-exportation of the material, while simultaneously disallowing a duty drawback adjustment to EP. Kaptan claims that the cost adjustment artificially inflates Kaptan's expense without recognizing the revenue associated with the expense, and thus this methodology is contrary to the Department's practice of matching expenses and revenues. See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181 (Mar. 11, 2005), and accompanying Issues and Decision Memorandum at Comment 57. Kaptan notes that the Department has previously made adjustments to COM for duty drawback where it granted a duty drawback adjustment. See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 73 FR 61019 (Oct. 15, 2008), and accompanying Issues and Decision Memorandum at Comment 5; and Rectangular Pipe and Tube From Turkey at Comment 2.

Kaptan maintains that, if the Department grants a duty drawback adjustment in the final results, Kaptan would no longer contest the corresponding COM increase for duty drawback. However,

Kaptan contends that the Department's unilateral increase in COM in the preliminary results without a corresponding adjustment to export price is inappropriate.

The domestic industry did not comment on this issue.

Department's Position:

As discussed in Comment 1, above, the Department is granting Kaptan a duty drawback adjustment in the final results of this review. In accordance with our practice, we are also continuing to make a corresponding increase to COM for uncollected customs duties on imported billets.

Comment 3: *Date of Sale for Kaptan*

In the preliminary results, the Department determined that the appropriate U.S. date of sale for Kaptan is the earlier of invoice or shipment date. This finding was based on our finding in the 2005-2006 administrative review that under Kaptan's standard rebar sales contracts, Kaptan did not set its material terms of sale (i.e., price and quantity) at the contract date. Kaptan argues that the Department should amend the margin calculations for the final results to use contract date as its U.S. date of sale, in accordance with 19 CFR 351.401(i), because this date does, in fact, best reflect the date upon which the material terms of sale were established for its contracts, and the use of any other date is not supported by the evidence on the record. Kaptan notes that the contracts and invoices provided to the Department (which cover all reported U.S. sales) demonstrate that there were no changes to price or quantity following the contract date during this POR.

According to Kaptan, it is the Department's practice to treat each review as a unique segment of the proceeding and to make determinations based on the record evidence of each review. As support for this assertion, Kaptan cites Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 74900 (Dec. 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2; and 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), and accompanying Issues and Decision Memorandum at Comment 6.

Kaptan argues that, consistent with this practice, the Department may not make a decision here based solely on the facts gathered in a previous segment of the proceeding, but rather it must analyze the facts on the current record. Specifically, Kaptan asserts that the Department's finding that the material terms of sale changed between the contract and invoice date for its U.S. sales in the previous review are not relevant in the current review. Nonetheless, Kaptan asserts that, if the Department continues to consider the date of sale determination from the previous review to be relevant, it should reexamine the underlying facts of the 2005-2006 administrative review. Specifically, according to Kaptan, the Department should reconsider the circumstances surrounding any differences in the material terms of sale that occurred between contract and invoice date in the previous review. Kaptan argues that, in doing so, the Department would

realize that it was never Kaptan's practice to change its material terms of sale after the contract date or sale confirmation.

Kaptan asserts that, when considering the facts on the record of this segment of the proceeding, it is clear that the Department's determination to use invoice date as the U.S. date of sale is contrary to the requirements set forth in the statute and the Department's regulations. Specifically, Kaptan contends that, because section 773 of the Act requires the Department to make a fair comparison between EP and NV, the Department must compare U.S. and home market sales having prices and other material terms of sale established within the same temporal period. Kaptan argues that the Department has found that comparing U.S. and home market prices that were established months apart does not yield a fair comparison. For example, Kaptan cites Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania, 72 FR 6522 (Feb. 2, 2007), and accompanying Issues and Decision Memorandum at Comment 1, citing Circular Welded Non-Alloy Steel Pipe from Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32836 (June 18, 1998) (Steel Pipe from Korea), where the Department found that using invoice date as the date of sale when the terms of sale were established at the contract date would lead to "comparing home market sales to U.S. sales whose material terms of sales were set months earlier." In the instant case, Kaptan maintains that the evidence on the record demonstrates that there is a significant lag time between the contract and invoice dates for its U.S. sales and, therefore, using invoice date as the date of sale leads to inappropriate comparisons between U.S. and home market sales.

Further, Kaptan contends that, when the Department finds no evidence that the documentation pertaining to an earlier date (e.g., contract, order acknowledgment, etc.) is susceptible to modification, it is the Department's practice to find that the material terms of sale were established on the earlier date. See e.g., Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 18204 (Apr. 11, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (Hot-Rolled Steel from Romania) (where the Department found that customer order acknowledgment date was the appropriate date of sale because there was "no evidence on the record indicating that the customer order acknowledgment date is susceptible to change or modification . . ."). Kaptan argues that, in accordance with this practice, there is no evidence on the record of the current review demonstrating that the material terms of sale are susceptible to change after the contract date. Moreover, Kaptan argues that the Department's use of contract date as the date of sale for the other respondent participating in this review, Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S. (collectively "Ekinciler"), undermines the reasonableness of the Department's date of sale determination for Kaptan, given that the facts for both companies are the same (i.e., no changes between contract and invoice date).

Finally, Kaptan argues that the CIT recently examined the historical and statutory underpinnings of the Department's authority to determine the date of sale for antidumping purposes, and it concluded that the Department erred in the use of invoice date as date of sale in an antidumping duty review of this order. See Nucor Corporation, Gerdeau Ameristeel Corporation and Commercial Metals Company v. United States and ICDAS Celik Enerji Tersane ve Ulasim

Sanayi, A.S., Op. 09-20 (CIT, Mar. 24, 2009) (ICDAS). Kaptan asserts that, in ICDAS, the CIT held that it is not sufficient to reject the use of contract date as date of sale in instances where there is a price change in a single contract. Kaptan argues that the facts in ICDAS are nearly identical to the facts on the record for Kaptan, with the exception that Kaptan did not have any adjustments to contract price during the POR. Therefore, Kaptan contends that, because Kaptan made no changes to the material terms of sale after the contract date, the Department should use contract date as Kaptan's date of sale in the final results of this administrative review.

The domestic industry did not comment on this issue.

Department's Position:

In the preliminary results, the Department determined that the appropriate date of sale for Kaptan's U.S. sales is the earlier of invoice or shipment date because we found that Kaptan's rebar sales contracts are changeable. This finding was premised on our finding in the most recent administrative review involving Kaptan (i.e., the 2005-2006 administrative review) that the terms of sale for Kaptan's U.S. sales were not set at the contract date. There is no evidence on the administrative record that Kaptan used different contracts with different terms during this POR as it did in the prior review period.

We disagree with Kaptan that contract date is the appropriate date of sale for its U.S. sales during the POR. The Department's regulations at 19 CFR 351.401(i) define the date of sale as the date on which the material terms of sale (i.e., price and quantity) are established. Specifically, 19 CFR 351.401(i) states:

> In identifying the date of sale of the subject merchandise or the foreign like product, the Secretary will normally use the date of invoice, as recorded in the exporter or producer's record 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.

The CIT has held that the Department has the discretion over when to use invoice date, or an alternate date, as date of sale. For example, in Hevensa, the CIT stated, "even if the material terms of sale are not subject to change, Commerce has the authority to nonetheless use the invoice date as the date of sale; discretion in this instance means that Commerce may use a date of sale other than invoice date, but it is not required to do so." See Hevensa, 285 F. Supp. 2d at 1367. The Court went on to say:

> Commerce correctly applied the regulatory presumption in favor of invoice date in this instance. "{T}he party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer established the material terms of sale.'" (citation omitted).

See id. See also Thai Pineapple Canning Industry Corp., Ltd. and Mitsubishi International Corp. v. United States, 24 CIT 107, 109 (2000) (where the CIT found that the Department should only abandon the use of invoice date in "unusual" instances).

In the Preamble to the Department's regulations, the Department explained the exception to using the invoice date as the presumptive date of sale, as follows:

> 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, Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27349 (May 19, 1997) (Preamble).

In the instant case, Kaptan sold rebar pursuant to formal sales agreements with its U.S. customers. After considering Kaptan's arguments, we continue to find that contract date does not best represent the date upon which the "material terms of sale are finally established" within the meaning of 19 CFR 351.401(i). This finding is based, in part, on our determination in the previous administrative review in which Kaptan participated. In that review, the Department Determined that the material terms of sale were changeable after the contract date for Kaptan.[1] This finding is also based on our determination in this review that no material changes in terms have occurred in Kaptan's standard sales contracts since that prior administrative review. This decision is also consistent with the Department's many years of experience with the Turkish rebar industry, where non-changeable contracts are the exception and not the rule.[2] Because Kaptan did not report a change in its selling practices during the current POR, we find that contract date is not an appropriate date of sale as this date does not reflect the date when the material terms of sale were established.

We disagree with Kaptan that the Department may not consider findings made in previous segments of this proceeding. While we agree that each review is a separate segment, the Department is not precluded from taking into account past determinations in those segments. Indeed, the Department has a well-established practice of relying on findings made in prior

[1] See 2005-2006 Preliminary Results, 72 FR at 25256, unchanged in 2005-2006 Final Results.

[2] See, e.g., 2005-2006 Final Results, 72 FR 62630, (Nov. 6, 2007), and accompanying Issues and Decision Memorandum at Comment 2; and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (Nov. 8, 2005), and accompanying Issues and Decision Memorandum at Comment 6.

segments of a particular proceeding. See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (Feb. 12, 2007), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department determined that the evidence in the instant review did not warrant the reconsideration made during a prior review); Low Enriched Uranium from France: Final Results of Antidumping Duty Administrative Review, 71 FR 52318 (Sept. 5, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (where the Department determined that it was appropriate to rely on facts available, but without an adverse inference, based on "our experience in the last review"); Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico, 59 FR 28844 (June 3, 1994) (where the Department determined that it was appropriate to examine whether a respondent's sales were outside the ordinary course of trade based on "such a finding in a previous review"); and Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part), 59 FR 15159, 15164 (Mar. 31, 1994) (where the Department determined to use constructed value rather than sales to a third-country market based on "factors detailed in our determinations from previous reviews").

Moreover, regarding the consideration of past date-of-sale determinations, the Department stated the following in OCTG from Korea:[3]

> {T}o avoid manipulation or double-counting or omitting sales, the Department must be particularly cautious about changing a long-standing date-of-sale determination . . . The date of sale determination should not be changed from review to review without evidence of changes in a company's business or marketing practices. This is because changes to the material terms of sale between contract date and invoice date found in prior periods tend to indicate that such terms were subject to change in the current POR, even if, in fact, they did not change. Nothing submitted by respondent suggests there was a change in their approach to selling, third-country customers, market, or any other aspects of their standard business practices, which appear to routinely allow for changes to the material terms of sale, as established in the sales contract, during the time period between contract date and invoice date.

See OCTG from Korea at Comment 1.

In addition, in SSSSC from Korea,[4] the Department stated the following:

> In this case, we note that the Department has previously used invoice date as {the respondent's} home market date of sale in prior segments of this proceeding . . .

[3] See Oil Country Tubular Goods From Korea; Final Results of Antidumping Duty Administrative Review, 65 FR 13364 (Mar. 13, 2000), and accompanying Issues and Decision Memorandum at Comment 1 (OCTG from Korea).

[4] See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Finals Results and Rescission of Antidumping Duty Administrative Review, 72 FR 4486 (Jan. 31, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (SSSSC from Korea).

> In addition, we note that evidence on the record demonstrates that {the respondent's} selling practices have not changed in the home market since the prior review . . . Therefore, pursuant to the Department's regulations and practice, we continue to find that the terms of sale for DMC's home market sales were generally set at the invoice date.

See SSSSC from Korea at Comment 5.

Based on the Department's practice articulated in OCTG from Korea and SSSSC from Korea, we continue to find that it is appropriate to follow our date of sale determination from the 2005-2006 administrative review with respect to Kaptan.

Further, we find Kaptan's reliance on Hot-Rolled Steel from Romania to be misplaced. Kaptan argues that this case stands for the proposition that, if there is no evidence on the record that a proposed date of sale is susceptible to modification, it is the Department's practice to find that the material terms of sale were established on that date. However, in the instant case, we have found that there is evidence that the material terms of sale of Kaptan's standard rebar sales contracts are susceptible to change after the contract date based on our date of sale determination in a previous review.

Moreover, we disagree with Kaptan that lag time between its contract and invoice dates is relevant to our date of sale determination. As noted above, the Preamble states "{i}f 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." In this case, we are not satisfied that the material terms of sale were established at a date prior to the invoice date because Kaptan's contracts are subject to change. Therefore, contract date is not an appropriate date to consider as date of sale, regardless of the lag time between these two dates.

Finally, we disagree with Kaptan that the CIT's decision in ICDAS is relevant to the instant case. While the CIT in ICDAS did remand a date of sale issue to the Department, the facts underlying that decision were specific to that respondent and that segment. In any event, the CIT in that case did not direct the Department to revise its date of sale methodology, despite Kaptan's claims to the contrary, and the case itself remains in litigation.

Therefore, for the foregoing reasons, we have continued to use the earlier of shipment or invoice date as the U.S. date of sale for Kaptan for purposes of the final results.

Comment 4: *Affiliated Party Freight Revenue for Kaptan*

In this administrative review, Kaptan reported that its affiliated shipping agent received payment from vessel owners during the POR for freight-related costs (e.g., agency fees, attendance fees, wharfage revenue, etc.). In the preliminary results, we disallowed Kaptan's reported freight revenue because we determined that it was not at arm's length.

According to Kaptan, the Department erred when it disallowed this revenue. Kaptan argues that the arm's-length test is irrelevant in this case because the vessel owners, from whom payment is received, are not affiliated with Kaptan or its shipping agent. Therefore, Kaptan argues that the Department should include its reported freight revenue in its calculations for the final results.

The domestic industry did not comment on this issue.

Department's Position:

After reexamining the facts surrounding the issue of affiliated party freight revenue, we continue to find that it is appropriate to disallow this revenue for purposes of the final results. We note that Kaptan's affiliated shipping agent receives this revenue from an affiliated party; however, the affiliate does not pass the revenue on to Kaptan. Therefore, we disagree that it is appropriate to take this revenue into account in Kaptan's margin calculations, given that it is neither revenue earned by Kaptan on the sale of subject merchandise to the United States nor an offset to expenses incurred by Kaptan on such sales.

The Department has not collapsed Kaptan and its affiliated freight provider in this or earlier segments of this proceeding. Therefore, whether the transaction is at arm's length is immaterial in this case because, as noted above, Kaptan itself did not receive the revenue. Consequently, we have continued to disallow it for purposes of the final results.

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____

_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____

(Date)