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FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND
ELKEM METALS COMPANY AND GLOBE METALLURGICAL INC., V.
UNITED STATES
Court No. 02-00232

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to a remand order from the Court of International Trade (the Court) in Elkem Metals Company and Globe Metallurgical Inc. v. United States, 350 F. Supp 1270 (CIT) (Elkem Metals II). Elkem Metals II covers one issue from the final results of the administrative review of the antidumping duty order on silicon metal from Brazil, covering the period July 1, 1999, through June 30, 2000. The issue covered is the Department's exclusion of certain value-added taxes (VAT) from the calculation of constructed value (CV) for Rima Industrial, S.A. (Rima). In Elkem Metals II, the Court found that the Department did not provide a reasonable explanation for excluding VAT paid on purchases of material inputs from the CV calculation. Accordingly, the Court found that the Department improperly calculated CV by excluding VAT paid by Rima on these material input purchases. Therefore, in Elkem Metals II, the Court remanded this matter for the Department to include VAT paid by Rima in the re-calculation of CV and to make any necessary adjustments to the dumping margin. In accordance with the Court's remand instructions, we recalculated Rima's CV, to include the VAT paid by Rima on material input purchases, for this review period. As a result of these re-calculations, Rima's margin of dumping is 0.48 percent.

BACKGROUND

On February 12, 2002, the Department published in the Federal Register a notice of final results of the antidumping duty administrative review on silicon metal from Brazil. See Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (February 12, 2002) (Final Results). In these Final Results, the Department stated that "{i}n this case, because Rima did not pay ICMS on its purchases of inputs during the {period of review} (POR), we find that the amounts of ICMS credits were properly excluded from CV in the preliminary results. We continue to make the same finding for the final results." See Final Results, 67 FR at 6488, and accompanying Decision Memorandum at Comment 23.

Elkem Metals Company and Globe Metallurgical Inc. (collectively petitioners) filed a summons on March 14, 2002, and filed a complaint on April 1, 2002, challenging the Department's Final Results. On October 24, 2002, petitioners filed, with a supporting brief, their motion for judgment upon the agency record. In their motion, petitioners challenged a single aspect of the Final Results: whether the Department erred in its CV calculation by not including certain VAT that Rima paid upon inputs. See petitioners' October 24, 2002, proposed order and brief in support of motion for judgment upon the agency record (Motion for Judgment).

Petitioners requested that the Court remand the Final Results to the Department with instructions to include in Rima's CV calculation the VAT that Rima paid upon certain production inputs. See Motion for Judgment at 11.

In response to the Motion for Judgment, the Department requested that the Court dismiss this matter as moot. The Department supported its request with a test re-calculation of CV that included Rima's VAT input costs as requested in petitioners' Motion for Judgment. The test re-calculation demonstrated that a re-calculation, executed in the manner as requested by petitioners in their Motion for Judgment, would not result in a change to the final margin. See December 20, 2002, Motion to Dismiss for Lack of Jurisdiction as Moot (Motion to Dismiss). The Department requested also that the Court suspend briefing upon petitioners' Motion for Judgment pending a decision by the Court upon the Department's Motion to Dismiss. On January 24, 2003, petitioners responded to the Department's Motion to Dismiss by challenging the underlying data upon which the Department relied in its test re-calculation. See petitioners' January 24, 2003, Opposition to Defendant's Motion to Dismiss (Opposition Motion). On February 12, 2003, the Department filed its reply and faulted petitioners' attempt to raise issues that had not been raised during the administrative proceedings. In addition, the Department argued that petitioners failed to demonstrate that this matter is not moot.

On February 13, 2003, Rima filed a motion to strike from the Court record portions of petitioners' Opposition Motion, arguing that in challenging the underlying data of Rima's reported VAT payments, petitioners had raised new claims that were not properly pleaded before the Court and had not been raised in the administrative proceedings. See Rima's February 13, 2003, Motion to Strike from Record Portions of Plaintiff's Opposition to Defendant's Motion to Dismiss (Motion to Strike). On March 4, 2003, petitioners timely opposed Rima's Motion to Strike.

On December 9, 2003, the Court denied Rima's Motion to Strike and the Department's Motion to Dismiss and ordered both parties to respond to petitioners' Motion for Judgment. On January 29, 2004, the Department filed a motion for the Court to remand this matter for the Department to recalculate Rima's CV. On February 17, 2004, Rima filed a response to the Department's motion for remand. In its response, Rima stated that it did not oppose a remand to include VAT in the re-calculation of CV. However, Rima did submit that, when adding VAT to CV, the Department should account for the value of VAT credits already included in Rima's costs to ensure that double-counting does not occur. On February 25, 2004, the Court remanded this matter to the Department.

Although the Department voluntarily requested that this matter be remanded in order for it to recalculate Rima's CV to include VAT, the Department, in the first redetermination on remand, after an examination of Rima's underlying data, as well as an examination of interim findings, determined that re-calculation was not warranted. See Final Results of Redetermination Pursuant to Court Remand; Elkem Metals Company and Globe Metallurgical Inc. v. United States, (June 8, 2004) (First Remand). Specifically, in the First Remand, citing Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review (Silicomanganese), the Department stated that "... where a respondent demonstrates the recovery

of the taxes paid on material inputs during the period of review, we have determined that such taxes are not incurred and, therefore, do not constitute a material cost for the purposes of calculating CV. See Silicomanganese, 69 FR 13813 (March 24, 2004), and accompanying Decision Memorandum at comment 15.” Specifically, the Department found that Rima had demonstrated, by its use of VAT credits to purchase inputs, that it recovered taxes paid on material inputs during the POR. Therefore, since we found that Rima recovered the VAT it paid during the POR, we did not include VAT in CV in the First Remand.

In Elkem Metals II (November 16, 2004), the Court remanded the Department’s exclusion of certain VAT from Rima’s CV and ordered the Department to include VAT paid by Rima in the calculation of CV. On January 14, 2005, the Department released its “Draft Results of Redetermination Pursuant to Court Remand” (Draft Remand Results II) to Rima and petitioners. Rima submitted comments on January 24, 2005. Petitioners submitted rebuttal comments on February 4, 2005.¹ On January 28, 2005, we met with the Government of Brazil, regarding the Draft Remand Results II. See Memorandum to The File, from Paige Rivas, Special Assistant to Acting Deputy Assistant Secretary, AD/ CVD Operations, Regarding Silicon Metal from Brazil: Draft Remand ReDetermination: Ex Parte Meeting, dated January 28, 2005. On February 1, 2005, Rima submitted a request to meet with the Department to discuss its January 24, 2005, comments and we met with Rima pursuant to this request on February 18, 2005. See Memorandum to The File, from Mark Manning, Acting Program Manager, Regarding Silicon Metal from Brazil: Draft Remand Redetermination; Ex Parte Memo, dated February 18, 2005.

DISCUSSION

As the Department explained in the First Remand, the antidumping duty statute provides that the cost of materials (which are included in the calculation of CV) “shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.” See section 773(e) of the Tariff Act of 1930, as amended (the Act). Under the Brazilian tax system, companies pay certain VAT on domestic purchases of inputs, collect these taxes on home market sales, and remit the difference to the government if the taxes collected on sales exceed those paid on inputs or receive credit if the amount paid on inputs exceeds the amount collected on domestic sales. In some instances, companies are able to apply these VAT credits towards the purchase of production inputs. However, using VAT credits to pay for raw material input purchases does not alter or reduce the cost of the actual material. The use of VAT credits versus cash to purchase inputs only affects a company’s cash and VAT accounts in its financial records; it does not affect the actual cost of the input. As

¹Both parties in this proceeding included new factual information in their submissions of comments and rebuttal comments. Therefore, on February 15, 2005, and February 25, 2005, the Department instructed both parties to re-submit their comments and rebuttal comments with the new factual information excluded. See Letter to Rima RE: Submission of New Factual Information, dated February 15, 2005; see Letters to Petitioners RE: Submission of New Factual Information, dated February 15, 2005, and February 25, 2005.

stated in the First Remand, we consider this application of credits to be a means for recovering the VAT paid on inputs. See First Remand at 3. Where a respondent demonstrates the full recovery of the taxes paid on material inputs during the POR, we have determined that such taxes are not incurred and, therefore, do not constitute a material cost for the purposes of calculating CV. See Silicomanganese, 69 FR 13813. We note that because VAT is not a material cost, we have neither increased Rima's direct material cost by an amount for VAT, nor offset its material cost by an amount for VAT credits.

As stated previously, we believe that, in the First Remand, we fully explained our position regarding the exclusion of VAT from Rima's CV. Nevertheless, the Court in Elkem Metals II disagreed with the Department's interpretation and held that, under section 773(e) of the Act, when internal taxes are not remitted or refunded upon exportation of the subject merchandise, the Department must include such internal taxes paid on inputs in its calculation of CV. Therefore, although we respectfully disagree with the Court's finding and believe that our position taken in the First Remand is correct, we have recalculated Rima's CV to include VAT in accordance with the Court's order.

In preparation for the First Remand, the Department, on May 5, 2004, released its "Draft Results of Redetermination Pursuant to Court Remand" (Draft Remand Results I) to Rima and petitioners, which included a re-calculation of Rima's CV inclusive of VAT. Both parties submitted comments and rebuttal comments on the Draft Remand Results I on May 14, 2004, and May 21, 2004, respectively. Specifically, in response to the Draft Remand Results I, petitioners argued that the Department had erroneously increased the cost of production (COP) used in determining the CV profit rate when it recalculated Rima's CV to include VAT. However, for the First Remand, the Department determined that an adjustment to Rima's CV for VAT was not warranted. Therefore, because the Department determined that an adjustment to Rima's CV for VAT was not warranted, the Department did not address the argument from petitioners' that had been submitted in response to the Draft Remand Results I in the First Remand. However, given the Court's directive to recalculate Rima's CV to include VAT, we addressed that argument by petitioners' in the Draft Remand Results II. See Comment 1 below.

Comment 1:²

Petitioners argue that although the Department included the proper amount of VAT in

² Comment 1 was included in the Draft Remand Results II, which were released to Rima and petitioners on January 14, 2005. As explained above, in Comment 1, the Department summarized and addressed arguments from interested parties that were not addressed in the First Remand. As a result, and as a part of their comments and rebuttal comments submitted on the Draft Remand Results II, Rima and petitioners submitted arguments regarding the information contained in Comment 1. See Rima's comments at 10-14, dated January 24, 2005; see also petitioners' rebuttal comments at 7-9, dated February 4, 2005. These arguments are addressed below at Comment 3 of these final remand results. However, in order to maintain the accuracy of the record, we have continued to include Comment 1 in these final results as it appeared in the Draft Remand Results II.

CV, the Department erroneously increased the COP used in determining the CV profit rate by the same amount as it increased CV. Petitioners contend that this generated an erroneous reduction in the amount of profit included in CV that exactly offsets the corrected VAT amount added to CV.

Petitioners argue that by increasing the COP that is compared to Rima's home market selling prices, the Department artificially reduced the amount of profit calculated on Rima's above-cost home market sales. Further, citing Silicon Metal from Brazil; Preliminary Results of Antidumping Administrative Review and Notice of Intent to Revoke Order in Part, 67 FR 51539, 51543 (August 8, 2002), and Silicon Metal from Brazil; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not to Revoke Order in Part, 65 FR 47960, 47966 (August 4, 2000) (SiMet 2000), petitioners argue that increasing Rima's reported material costs by adding an amount of VAT is contrary to the Department's practice of comparing COP and home market prices on a tax-exclusive basis. Moreover, petitioners argue that VAT should still be included in CV even if the Department finds VAT to have been recovered by means other than remission or refunded upon exportation. Petitioners argue that not including VAT in CV would be contrary to law because the U.S. Court of Appeals for the Federal Circuit (CAFC) has twice held that Brazilian VAT must be included in CV unless they are remitted or refunded upon exportation. Petitioners assert that the CAFC specifically analyzed whether VAT paid on inputs may be excluded from CV when the taxes are recovered through means other than exportation. See Camargo Correa Metais, S.A. v. United States, 200 F. 3d 771 (Fed. Cir. 1999) (Camargo). Petitioners contend that, in this case, the CIT referred to the CAFC decisions and recognized that in Camargo, "the CAFC held that under the plain meaning of the statute, the VAT must be included in the calculation of the CV of the exported products unless such taxes are 'remitted or refunded' upon exportation." Accordingly, petitioners argue that the VAT incurred by Rima on material inputs must be included in CV, without an offsetting adjustment for VAT to the COP used in determining the CV profit rate.

Rima disagrees with petitioners and argues that the Department properly calculated the CV profit rate on the same basis as the CV to which the CV profit rate is applied. Rima argues that the statute requires the Department to include the same direct material cost in both COP and CV. Under the statute, Rima argues that both COP and CV must include "the cost of materials and fabrication or other processing of any kind employed in producing" the foreign like product or subject merchandise respectively. Rima asserts that because the subject merchandise and foreign like product are identical, there are no differences between the cost of materials for COP and the cost of materials for CV. Therefore, Rima argues that if the Department considers any amount of VAT to be a part of material cost and includes it in CV, the same amount should also be included in COP. Rima argues that to treat VAT on material inputs as a cost for CV purposes and not for COP purposes would be contrary to law.

Rima further notes that it is the Department's practice to deduct from home market price all taxes which are included in home market price but not collected on the subject merchandise. Rima argues that this statutory requirement applies to both the calculation of home market net price for comparison purposes and the home market price for CV profit purposes. Therefore, Rima argues that the Department properly excluded VAT from the net home market value in

calculating the CV profit rate. Rima argues that this is a logical step because VAT collected on sales is not a profit for the seller. Further, citing Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18422 (April 15, 1997), Rima argues that it is the Department's practice to apply the CV profit rate on the same basis as that used to calculate the CV profit rate. Consistent with this practice, Rima argues that the Department must determine the CV profit rate based on the same components as the CV.

Rima further disagrees with petitioners' reference to the eighth and tenth administrative reviews of this proceeding in support of petitioners' argument that it is the Department's practice to compare COP and home market price on a tax-exclusive basis. Rima asserts that petitioners' reliance on the eighth and tenth reviews is misplaced because CV was not used as the basis for normal value in those reviews. As a result, Rima notes that the inclusion of VAT in CV and the calculation of the CV profit rate were not raised as issues in those reviews. Thus, Rima argues that the Department's price-comparison methodology in the eighth and tenth reviews is not relevant to the calculation of the CV profit in the instant review. Rima also notes that the Department's CV profit calculation methodology is the same as that used to determine the dumping margin in the calculation supporting the Department's Motion to Dismiss and petitioners did not raise any objections to the methodology.

Department's Position:

We agree with petitioners that the Department's method of including VAT in the calculation of Rima's CV was erroneous. However, we disagree with petitioners suggested method for including VAT in Rima's CV. When calculating CV profit, the Department inadvertently used a VAT-inclusive COP, although it intended, consistent with its normal practice, to use a VAT-exclusive COP. Consistent with this practice, the Department has corrected this ministerial error. The Department's practice is to exclude VAT from both the COP and home market price. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review, 69 FR 54101, 54107 (September 7, 2004). Thus, in determining the profit rate for purposes of CV, the COP used by the Department in the Draft Remand Results should have been tax exclusive. Therefore, in order to apply the profit rate to a base that is consistent with that used to determine the rate, the Department, for purposes of these results of redetermination, has applied the profit rate to a VAT-exclusive COP. See Attachment I. Furthermore, to include VAT in CV, the Department included the per-unit amount of VAT to the calculation of Rima's total constructed value. See Attachment V and line 554 of the margin program.

INTERESTED PARTY COMMENTS

Comment 2

Rima argues that the Department improperly revised the amount of VAT to be included in the re-calculation of its CV. Rima notes that the Department made the following revisions to

its reported VAT amount in the Draft Remand Results II: (1) revised several multiplication errors; (2) revised the values of certain consumption amounts reported because they were inconsistent with material costs reported in another section of the response; (3) revised VAT amounts for certain months where it appeared that Rima failed to report VAT paid on purchases of graphite and carbon electrodes. Regarding the first revision, Rima concedes that these mathematical errors should have been corrected. Regarding the second revision, Rima argues that there was no error to correct. Specifically, Rima notes that it reported its consumption values in Exhibit D-10 and its material costs in Exhibit D-5 and D-9 of its October 10, 2000, questionnaire response. Rima contends that the figures in these exhibits differ because the values in Exhibits D-5 and D-9 include, as a part of material cost, certain interest charges that Rima incurred for late payment of invoices to its suppliers. Rima states that because the Department's dumping methodology requires a respondent to report the interest charges as a part of direct material costs, it reported these charges as a part of its cost data provided in Exhibits D-5 and D-9, while it included these charges as a part of its financial expenses in its profit and loss statement. Because VAT is imposed only on the cost of the material input as invoiced, and not on late payment charges, Rima argues that the values shown in Exhibit D-10, which were used to calculate the VAT amount, do not include late payment charges. Rima contends that the Department verified that the material costs for certain material inputs reported in Exhibits D-5 and D-9 included interest charges. Therefore, Rima argues that the Department should not have revised the reported values in Exhibit D-10. Regarding the third revision, Rima states that VAT for electrode purchases was not reported in certain months because it only purchased imported electrodes, for which no VAT was paid. Moreover, Rima argues that the petitioners have not demonstrated that the amount of VAT Rima reported for electrodes was erroneous.

Further, Rima states that the revisions to its reported per-unit VAT are based upon allegations that were first raised by petitioners during the litigation phase of the underlying review. Rima notes that when these allegations were first raised by petitioners, the Department petitioned the Court to dismiss these allegations because they were improperly raised and should not be addressed. Given this fact, Rima states that by revising its reported VAT amount in the Draft Remand Results II, the Department reversed its previous position and accepted petitioners untimely allegations. By doing so, Rima contends that the Department neither assessed the accuracy of petitioners' allegations nor requested that Rima explain or provide additional information.

Specifically, Rima asserts that, since the Department found no deficiencies with its reported VAT data, the burden was upon the petitioners to use information on the record to demonstrate why the data was incorrect. Rima counters that if the Department found that petitioners' allegations warranted questioning the accuracy of its reported data, the Department should have reopened the record to vet the issue. Further, Rima states that the Department's revision of its VAT amount is not in accordance with the Court's remand instructions. Rima contends that although the Court ordered the Department to include VAT in CV, it made no finding as to whether petitioners' allegations were correct. Rima notes that when the record closed in the underlying review, no party questioned the amount of VAT it reported.

In addition, Rima notes that it inadvertently included a VAT amount for eucalyptus charcoal for November 1999 in its reported VAT amounts in Exhibit D-10. Rima states that VAT is not imposed on eucalyptus charcoal and requests that the Department correct this clerical error by deleting this VAT amount. However, Rima notes that not deleting this amount would not result in a significant change to its total VAT value and would not affect its dumping margin.

Petitioners disagree with Rima and argue that the Department's revisions to Rima's reported VAT amount were proper. Specifically, petitioners state that they first raised the issue regarding Rima's VAT amount during the administrative review when they asked the Department to examine at verification the total amount of VAT paid by Rima. However, petitioners state that the Department only examined Rima's use of VAT credits to pay for inputs. Next, petitioners assert that they detailed discrepancies in Rima's reported VAT amount on January 24, 2003, in their Opposition Motion. Petitioners contend that they once again detailed these discrepancies during the first remand. Petitioners contend that at no point did Rima challenge the discrepancies detailed by petitioners nor the ensuing revisions made by the Department.

Moreover, petitioners claim that Rima's explanation regarding the second revision made by the Department, *i.e.*, revision of the values of certain reported consumption amounts reported because they were inconsistent with material costs reported in another section of the response, is premised on new factual representations by Rima that are both untimely and uncertified. Petitioners state that Rima points to no record evidence to support its claim that VAT is not owed on late payments. Conceptually, petitioners state that there is no reason that VAT would not be owed on interest charges. Therefore, petitioners argue that the Department should continue to adjust Rima's reported VAT amount. In addition, petitioners take exception to Rima's argument that it did not pay VAT during certain months for electrodes that were imported. Petitioners argue that Rima has not demonstrated that it segregated imported electrodes from domestic electrodes and only consumed domestic electrodes during one month, while consuming imported electrodes during another.

Department's Position

As both petitioners and Rima acknowledge, petitioners first raised the aforementioned specific error allegations during the litigation phase of this review. Although the Department petitioned the Court to have these allegations stricken from the record by arguing that they were untimely and improperly raised, the Court disagreed and stayed petitioners' allegations. Therefore, the first opportunity the Department has had to address petitioners' allegations has been in this remand proceeding.

First, regarding the mathematical errors alleged by petitioners, we note that Rima has consented to their correction. Therefore, we have continued to make this adjustment to Rima's reported data in the final remand results.

Second, regarding the discrepancy between exhibits D-5, D-9 and D-10, petitioners alleged that the reported value of electricity and carbon electrodes in Exhibit D-10 was less than

the reported value of electricity and carbon electrodes in Exhibits D-5 and D-9. Rima reported the following information in Exhibits D-5, D-9 and D-10: 1) Exhibit D-5 shows the unit cost calculation for raw materials with the amount of interest charged on late payments both included in the cost of material inputs, as well as broken out separately; 2) Exhibit D-9 shows the unit cost calculation for raw materials with the amount of interest charged on late payments included in the cost of material inputs, and not broken out separately; 3) Exhibit D-10 shows the value of material inputs, without an amount for interest, as well as the calculation of VAT based upon the material input values. In reviewing petitioners' allegation, the Department, in the Draft Remand Results II, compared these three exhibits. Although the reported value of material inputs was consistent between Exhibits D-5 and D-9, these exhibits were not consistent with the values reported in Exhibit D-10. Therefore, in the Draft Remand Results II, the Department assumed that there had been a transcription error and adjusted the values reported in Exhibit D-10 to be consistent with the values reported in Exhibits D-5 and D-9.

However, in their comments on the Draft Remand Results II, Rima argued that there was no error to correct because the differences between these exhibits resulted from the fact that Exhibits D-5 and D-9 included interest from late payments as a part of material cost, while Exhibit D-10 did not. Rima further explained that while the Department requires respondents to report interest charges on material purchases as a part of material costs, it reported such late payment charges as part of its financial expenses in its profit and loss statement.

The Department's standard antidumping questionnaire, which was issued to Rima on August 8, 2000, instructs respondents that "direct material costs should include transportation charges, import duties and other expenses normally associated with obtaining the materials that become an integral part of the finished product." See Rima's October 10, 2000, questionnaire response at D-27. After reviewing Exhibit 22 of Rima's Verification Report, the Department has determined that while Rima did not consider interest charges incurred on late payments for material input as a part of material costs in its own accounting system, it did include these interest charges in the material costs reported to the Department. See Verification Exhibit (VE) 22 of Rima's July 30, 2001, Verification Report. For example, in January 2000, Rima purchased electricity as a material input. Id. In the cost data submitted to the Department, Rima reported the price of electricity R\$ [* * *]), as well as the amount of interest R\$ [* * *]) paid as a result of late payment to the supplier. See Exhibits D-5 and D-9. However, in Rima's inventory ledger for January 2000, in a column entitled "Valor Material, Valor ICMS/ ISS," Rima only recorded the value of the electricity R\$ [* * *] , without an amount for interest paid. See VE 22 of Rima's Verification Report. In addition, the VAT amount recorded in the ledger is based on the recorded cost of [* * *] , which is exclusive of interest on late payments. See VE 28 of Rima's Verification Report. In Exhibit D-10 of Rima's October 10, 2000, questionnaire, which provided the value of material inputs used to calculate VAT, the value of electricity reported for January 2000 reconciles to the value recorded in Rima's inventory ledger R\$ [* * *]), i.e., net of interest.

Petitioners alleged that Rima's computation of VAT was defective because the values of material inputs used to calculate VAT, as reported in Exhibit D-10, were less than the values reported for the same material inputs in Exhibits D-5 and D-9. However, as explained above, the

Department's antidumping questionnaire instructs respondents to include interest charges as a part of direct material costs. This does not mean, however, that VAT is assessed on these interest charges. Alternatively, the Department's antidumping questionnaire does not instruct respondents that VAT must be calculated on material inputs inclusive of interest charges. As evidenced by information on the record of this proceeding, Rima did not include interest charges as a part of material costs in its own accounting system. In addition, in months where Rima did incur interest charges on the acquisition of material inputs from suppliers, it still recorded the value of the material input exclusive of interest, as well as a VAT amount calculated upon that input value in its accounting records. See VE's 22 and 28 of Rima's Verification Report. Therefore, given that Rima properly included interest charges in the material costs reported to the Department, we find that the differences between exhibits D-5, D-9 and D-10, which were alleged as an error by petitioners, can be explained by record evidence. In addition, given that there is no record evidence to demonstrate that Rima improperly calculated its VAT amount by calculating VAT upon material input values that were exclusive of interest charges, and given that Rima's data was verified with no discrepancies noted with respect to material costs, we will accept Rima's data as verified and make no further adjustments for this matter in the final remand results.

Third, regarding the absence of VAT payments for certain purchased electrodes, Rima reported that it purchased electrodes during the POR as a material input. See Exhibit D-10. However, for certain months where it reported a purchase of electrodes, Rima did not report a corresponding VAT payment. Id. In the Draft Remand Results II, after reviewing the petitioners' error allegation and given the Department's knowledge that Rima had in fact purchased electrodes during the months in question, the Department took the prevailing tax rate and calculated a VAT amount where it appeared that Rima had purchased electrodes and not reported an amount for VAT. We note that there is nothing on the record to indicate that VAT should not have been paid on these purchases. However, given that we did verify Rima's questionnaire responses during the POR, and given that we did not specifically examine the purchases in question, there is nothing on the record to prove or disprove the reason for the absence of VAT payments. We do note though, as stated in Chrome-Plated Lug Nuts from Taiwan, the purpose of verification is not to perform a complete audit of a respondent's financial records; rather, it is "fundamentally a spot check of selected data-not a detailed examination of a respondent's entire accounting system." See Chrome-Plated Lug Nuts from Taiwan; Final Results of Antidumping Administrative Review; 64 FR 17314, 17316 (April 9, 1999). Therefore, since Rima's data was verified and there were no discrepancies noted with respect to these purchases, we will accept Rima's data as verified and make no further adjustments to its data for this matter in the final remand results.

In addition, we will not make an adjustment, as requested by Rima, to the VAT amount it reported for eucalyptus charcoal in November 1999. We note that this request is the first time that Rima has requested that the Department delete the amount of VAT it reported it paid for eucalyptus charcoal in November 1999. Specifically, Rima did not raise this matter in its submissions during the administrative review, nor as a minor correction at verification. Therefore, similar to the reasoning noted above with respect to the absence of VAT payments on graphite and carbon electrodes, since Rima's data was verified and there was no discrepancy

noted with respect to this purchase, we will accept Rima's data as verified and make no further adjustments to its data for this matter in the final remand results. We note that, in its January 24, 2005, comments, Rima consented to the Department making no further adjustments to its data for this matter.

Comment 3:

Rima argues that the Department incorrectly determined the CV profit rate used in the calculation of CV. Rima contends that the Department's CV profit methodology in the Draft Remand Results II was not in accordance with law and its own practice. Specifically, Rima argues that the Department added VAT to direct material costs for CV purposes, without making the same addition to direct material costs for the total COP used to calculate the CV profit rate. As a result, Rima argues that the CV profit rate was then applied by the Department to a total COP for CV inclusive of VAT paid on material inputs to determine the CV profit amount. Rima argues that the statute requires the Department to include the same direct material cost in both COP and CV. Under the statute, Rima argues that both COP and CV must include "the cost of materials and fabrication or other processing of any kind employed in producing" the foreign like product or subject merchandise respectively. Rima asserts that because the subject merchandise and foreign like product are identical, there are no differences between the cost of materials for COP and the cost of materials for CV. Therefore, Rima argues that if the Department considers any amount of VAT to be a part of material cost and includes it in CV, the same amount should also be included in COP. Rima argues that to treat VAT on material inputs as a cost for CV purposes and not for COP purposes would be contrary to law.

Rima further notes that it is the Department's practice to deduct from home market price all taxes which are included in home market price but not collected on the subject merchandise. Rima argues that this statutory requirement applies to both the calculation of home market net price for comparison purposes and the home market price for CV profit purposes. Therefore, Rima argues that the Department properly excluded VAT from the net home market value in calculating the CV profit rate. Rima argues that this is a logical step because VAT collected on sales is not a profit for the seller. Further, citing Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18422 (April 15, 1997), Rima argues that it is the Department's practice to apply the CV profit rate on the same basis as that used to calculate the CV profit rate. Consistent with this practice, Rima argues that the Department must determine the CV profit rate based on the same components as the CV. Rima states that there is no precedent that supports the Department's methodology of determining CV and CV profit on a different cost basis.

Rima argues that the cases cited by the Department, and by petitioners, in support of the position that CV profit should be based on a VAT-exclusive COP, are inapposite because they differ from the present case in two important aspects. First, Rima contends that those cases refer to a VAT-exclusive COP in the context of a sales-below-cost test, rather than the CV profit rate calculation. Second, Rima argues that, in the cases cited by the Department and petitioners, the Department was not mandated to include VAT as a part of material cost for CV purposes. In those cases, Rima asserts that the Department excluded VAT from both COP and home market

price in order to avoid distortion in the below-cost test.

Rima notes that, prior to this remand, the Department's practice has been to exclude VAT from CV if VAT was fully recovered or rebated. Rima states that this may be the first case where the Department must consider the treatment of VAT for CV profit purposes, where it is forced to include in CV the entire amount of VAT regardless of the fact that the VAT were not incurred. Rima contends that if VAT is treated as a material cost for CV, it does not suddenly become a non-cost for COP and asserts that there is no basis in law or practice to exclude the same cost from the CV profit calculation. Therefore, Rima argues that the Department, in calculating the CV profit rate, should add the same amount of VAT to COP as that added to CV.

Petitioners disagree with Rima and state that the Department properly calculated the CV profit rate. Petitioners allege that Rima's comments are based on its belief that "the CV profit rate was ...applied to total cost of production for CV (COPCV), inclusive of VAT paid on material inputs to determine the CV profit amount." However, petitioners note that this belief is demonstrably wrong, as the Draft Remand demonstrates that the Department calculated CV profit by applying the CV profit to a "VAT-exclusive COP." Moreover, petitioners argue that the Department precedent cited by Rima to support its argument demonstrates that the Department's calculation in the Draft Remand is consistent with its practice. Specifically, petitioners contend that the cases cited by Rima demonstrate the Department's practice of calculating the CV profit rate in a manner that is consistent with the CVCOP to which it is applied. Petitioners argue that to calculate profit rate in the manner suggested by Rima would be contrary to the Department's practice.

Further, petitioners fault Rima's claim that "the statute requires the Department to include the same direct material cost in both COP and CV." Petitioners contend that section 773(e)(1) of the Act provides that taxes paid on inputs that are not remitted or refunded upon exportation of the merchandise made from inputs are to be included in the cost of materials for the purposes of calculating CV. Petitioners assert that no such statutory requirement exists with respect to the calculation of COP. In addition, petitioners argue that increasing the COP used in the profit rate calculation by a VAT amount, would cause an erroneous reduction in the CV profit amount that would offset the inclusion of VAT in CV, which petitioners allege would be in direct contradiction to the remand instructions of the Court.

Department's Position:

We disagree with Rima. Specifically, the Department's calculation of the CV profit amount in the Draft Remand Results II was not calculated by using a CV profit rate applied to a VAT inclusive COP. In the Draft Remand Results II, we stated that we were applying "the profit rate to a base that is consistent with that used to determine the rate." See Draft Remand Results II at 5-6. To accomplish this, the Department calculated a profit rate using a VAT-exclusive COP and applied this ratio to a VAT-exclusive COP to determine an amount for CV profit. See line 590 of the comparison market program and line 450 of the margin program. After calculating these two variables, the Department added an amount for VAT to the calculation of CV. See line 568 of the margin program. By including VAT at that stage of the

calculation, we are able to follow the Department's practice of excluding VAT from both the COP and home market prices. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review, 69 FR 54101, 54107 (September 7, 2004). In fact, the Department's calculation in the Draft Remand Results II is in accordance with Rima's argument that the Department must apply the CV profit rate on the same basis as that used to calculate the CV profit rate, *i.e.*, a consistent basis.³ Therefore, we will not alter the calculation of CV profit in the final remand results.

Comment 4:

Rima argues that if the Department adds VAT to CV, it must also account for VAT credits by reducing Rima's reported costs by the amount of VAT credits used to purchase material inputs. Rima notes that although the Court ordered the Department to include VAT in the calculation of CV, it also instructed the Department to make any necessary adjustments to the dumping margin. Rima interprets this instruction from the Court as not precluding the Department from accounting for VAT credits in CV.

Rima explains that during the POR, the amount of VAT it paid on inputs exceeded the amount of VAT that it collected from its domestic customers. As a result, Rima states that it maintained a net VAT credit balance during the POR, which it used to pay for material inputs. Thus, Rima contends that, although the material costs reported to the Department did not account for VAT credits, its costs were reduced by the amount of VAT credits. Rima states that under Brazilian law, Rima was authorized to use VAT credits to purchase raw material inputs. Therefore, Rima contends that the VAT paid on the purchase of material inputs in the previous month, which was not offset by VAT received from domestic sales, was used by Rima to purchase material inputs in the subsequent month. Rima argues that by including VAT in Rima's reported costs, without excluding VAT credit transfers from such costs, the Department is double-counting the amount of VAT included in Rima's material costs. Rima explains that the VAT credit transfer used in one month to purchase material inputs is the VAT that was paid by Rima on the purchase of material inputs in the previous month. Rima therefore argues that this cost can be accounted for either by reporting it as a cost of purchase of the material inputs in the month in which it was paid or by not deducting the VAT credit amount that is used to purchase material inputs in the subsequent month.

Rima notes that in previous submissions, petitioners have contended that no adjustment for VAT credits should be made because they do not represent a reduction to the cost of material inputs. Rima characterizes this statement by petitioners as nonsensical and asserts that it contradicts petitioners' characterization of VAT credits in the context of another case. Specifically, in the countervailing duty petition on silicon metal from Brazil, Rima alleges,

³ We note that had we calculated the profit rate using a VAT-inclusive COP and applied the rate to a VAT inclusive COP in determining profit for CV, there would have been little to no difference in the result because the COP used to compute the profit rate includes the same cost elements as the COP to which the rate is applied.

petitioners argued that the “reduction of the cost of inputs and other benefits obtained by using accumulated ICMS credits” by Brazilian silicon metal producers constituted countervailable subsidies. Rima contends that if petitioners argue that VAT credits provide a benefit by reducing input costs in the context of a subsidy allegation, they cannot argue that there is no cost reduction in this case.

Petitioners state that there is no basis for reducing Rima’s reported costs by the amount of VAT credits used to pay for inputs. Petitioners note that the Department has previously found that VAT credits do not reduce the cost of purchased inputs and that the full costs of inputs must be included in CV, regardless of the method of payment used to purchase the inputs. Further, petitioners argue that the record demonstrates that, during the POR, Rima had an accumulated balance of VAT credits that was generated by past purchases of inputs used to produce all of its products. Petitioners allege that if Rima had used the credits received for VAT paid on inputs in one month during the immediately following month, there would be no VAT credit balance.

In addition, petitioners fault Rima’s argument that its costs were reduced by the amount of VAT credits used. Petitioners contend that the costs a respondent incurs are not measured by the means of payment. Rather, petitioners assert that costs incurred are measured by the total amount of consideration paid, regardless of the form of that consideration. Moreover, petitioners argue that there is no connection between the amount of VAT Rima paid on silicon metal production inputs and the amount of VAT credits Rima used to pay for such inputs. Petitioners state that the VAT amount added to CV accounts for the amount of taxes Rima paid when it purchased inputs used to produce silicon metal, while VAT credits are the amount of accumulated tax credits used to pay for production inputs under a Brazilian government program.

Finally, petitioners contend that by arguing that there is an “inconsistency in qualifying the same Brazilian VAT scheme as creating both a countervailable subsidy and a cost for Rima,” Rima is in effect asking the Department to disregard a cost that the company actually incurred on the basis that a form of payment for that cost could be determined to constitute a countervailable subsidy. Petitioners state that the Department correctly decided not to disregard this cost in applying the U.S. antidumping law.

Department’s Position

We have not made an adjustment to Rima’s material costs in the final remand results to account for VAT credits. Rima argues that in order to avoid double-counting the amount of VAT included in its material costs, the Department should reduce its material costs by the amount of VAT credits it used to acquire material inputs. However, we find that since Rima’s material costs were not affected by its use of VAT credits, making an adjustment to Rima’s material costs would be improper. Specifically, using VAT credits to pay for raw material input purchases does not alter or reduce the cost of the actual material. Regardless of the method of payment used to acquire material inputs, *i.e.*, cash, VAT credits, etc., the economic cost of the material input does not change. The use of VAT credits versus cash to purchase inputs only

affects a company's cash and VAT accounts in its financial records; it does not affect the actual cost of the input. Therefore, since the cost of Rima's material inputs was not altered or reduced by its use of VAT credits, we have not adjusted its material costs to account for VAT credits for the final remand results.

RESULTS OF REMAND DETERMINATION

As a result of this redetermination, Rima's dumping margin for the period July 1, 1999-June 30, 2000, is 0.48 percent. This rate has changed from the rate announced in the February 12, 2002, final results of the ninth review.

Joseph Spetrini
Acting Assistant Secretary
for Import Administration

(date)

**ATTACHMENTS I -V
CONTAIN BUSINESS PROPRIETARY INFORMATION**