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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memo for the Antidumping Duty Administrative Review of Oil Country Tubular Goods from Argentina - August 1, 2000 through July 31, 2001

Summary

We have analyzed the case briefs and rebuttal briefs of interested parties in the antidumping duty administrative review of oil country tubular goods (OCTG) from Argentina. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. 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 issues in this administrative review for which we received comments and rebuttal comments by parties:

1. Calculation of CV Profit
2. Depreciation Expenses
3. Bad Debt
4. General and Administrative Expenses
5. Rebates Received Under Argentine Government Rebate Programs
6. Clerical Errors
7. No Shipments

Background

On September 9, 2002, the Department of Commerce (the Department) published its preliminary results of review of the antidumping duty order on OCTG from Argentina. See Notice of Preliminary Results of Antidumping Duty Administrative Review; OCTG from Argentina, 67 FR 57217 (September 9, 2002) (Preliminary Results). The period of review (POR) is August 1, 2000 through July 31, 2001. There is one respondent in this review: Acindar Industria Argentina de Aceros S.A. (Acindar). We are rescinding the review with respect to Siderca S.A.I.C. (Siderca). We invited parties to comment on our preliminary results of review. We received comments from IPSCO Tubulars, Lone Star Steel Company, and Maverick Tube Corporation (collectively domestic interested parties), from United States Steel Corporation (petitioner), and from Acindar.

Discussion of the Issues

I. Changes from the Preliminary Results

1. We calculated depreciation on a per-unit basis based on production volume, rather than by applying a ratio to the cost of manufacture. See Comment 2.

2. We added direct selling expenses into the calculation of constructed value (CV). See Comment 3.

3. We removed the downward adjustment to CV for the Convergence Factor program. Additionally, we made the Reintegro reimbursement as a downward adjustment to CV, rather than to selling expenses. See Comment 5.

4. We removed packing from the setup string in the calculation of constructed value profit (CVPROFIT) and the foreign unit price in dollars (FUPDOL). See Comment 6.

II. Company-Specific Issues

Comment 1: Calculation of CV Profit

Acindar argues the Department erred in its calculation of constructed value (CV) by using a profit ratio calculated from Siderca's financial statement, rather than from Acindar's own financial statement. (The Department used a profit ratio calculated from Siderca's financial statement in the preliminary results because Acindar's home market was not viable. See Preliminary Results 67 FR at 57216.) Acindar argues that under the Tariff Act, Siderca's financial statement does not qualify for use under any of the statutory options available for calculating CV profit. See section 773(e)(2)(B) of the Tariff Act of 1930, as amended (the Tariff Act). Acindar reasons that where the home market is not viable, the Tariff Act allows for three possible methods of calculating profit. The first method (alternative I) would be to use Acindar's own data. The relevant section of the statute reads that when actual data are not available for calculating CV, the Department shall use:

> The actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in

> connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. See section 773(e)(2)(B)(i) of the Tariff Act.

Acindar states that because Siderca is not "the specific exporter or producer being examined," Siderca's financial statement does not qualify for use under alternative I.

The second method (alternative II) is to use data from a different entity based on the production or sale of the foreign like product in the home market. The relevant section of the Tariff Act provides that the Department shall use:

> The weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. See section 773(e)(2)(B)(ii) of the Tariff Act.

The Department referenced alternative II as its method of calculating profit in the preliminary results. See Preliminary Results, 67 FR at 57216. Acindar, however, argues that the use of Siderca's financial statement does not meet the statutory requirements of alternative II for three reasons. First, alternative II, Acindar argues, is limited to sales of the same product, and because Acindar sold only welded OCTG during the POR, and Siderca sold only seamless OCTG during the fiscal year covered by the financial statement, the two companies did not sell the same "foreign like product." There are good reasons, Acindar argues, for distinguishing the products because their production processes, costs and commercial environments are very different. Moreover, Acindar states, the Department itself distinguished between the two products in defining its model match criteria. See the October 25, 2001, antidumping questionnaire, appendix V. Furthermore, the International Trade Commission (ITC) also treated the two products as separate product categories in the recent investigation pursuant to section 201 of the Trade Act of 1974. See News Release: ITC Details its Determinations Concerning Impact of Imports of Steel on U.S. Industry at 2 (October 23, 2001). Finally, the Court of Appeals for the Federal Circuit (Federal Circuit) has recently held that the term "foreign like product" must have a single meaning throughout the antidumping statute unless the Department can clearly explain to the courts why the term should be defined differently in Section 1677b(e). See SKF USA Inc. v. United States, 263 F.3d 1369, 1372, 1383 (Fed. Cir. 2001) (SKF USA).

The second reason the use of Siderca's financial statement does not meet the requirements of alternative II, according to Acindar, is that alternative II requires the Department use actual amounts realized in connection with sales "in the ordinary course of trade." In this review, Acindar states, the Department did not gather any information about Siderca's home market sales. Thus, the Department has no way to adjust the profit figure to eliminate the effect of sales outside the ordinary course of trade. Unless the Department can eliminate the effect of any possible home market sales outside the ordinary course of trade, Acindar argues, it cannot use the information in Siderca's financial statement consistently with alternative II.

The third reason that use of Siderca's financial statement does not meet the requirements of alternative II, Acindar argues, is the financial statement does not report profit earned on sales "for consumption in the foreign country." Acindar argues that requirement is not met here because Siderca's financial statement reports only one aggregate profit figure, and it cannot be relied upon as a measure of Siderca's home market profit because seventy-three percent of Siderca's sales (by volume) were export sales.

The third method (alternative III), Acindar states, for calculating profit under the statute for a respondent whose home market is not viable is to use "any other reasonable method" the result of which does not exceed "the amount normally realized by {other} exporters or producers ... in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise." See section 773(e)(2)(B)(iii) of the Tariff Act. Acindar argues that under the Tariff Act, the "profit cap" (if the Department uses Siderca's financial statement) would be the profit Siderca realized on its home market sales. However, this information is not available in Siderca's financial statement because, as previously stated, Siderca's financial statement reports only one aggregate profit figure, and its export sales volume constituted seventy-three percent of its total sales. Moreover, Acindar argues, Siderca's profits from home market sales would likely be less than from its export sales because Siderca's home market sales were made pursuant to long-term supply contracts. See Siderca's March 31, 2001, financial statement, found at petitioner's January 18, 2002, submission, exhibit 29 (Siderca's financial statement), at 7-9, 10. Acindar argues that this is a distinction between the markets that would tend to cause Argentine prices to lag behind the general price increase during the period. Moreover, Acindar argues, the market performance of Siderca's seamless pipe differed from that of its welded OCTG pipe during the period. Thus, Siderca's financial statement states, "[t]he improvement in the seamless tube market did not carry over to welded tubes, for which demand decreased. As a result, the Company's share in the result of operation of Siat and Confab Industrial resulted in a loss of $0.4 million." See Siderca's financial statement at 4.

Acindar argues that instead of using Siderca's financial statement, the Department should use Acindar's own financial statement. Specifically, the Department should use the financial data for Companhia 103, the production unit that sold welded pipe in the home market during the POR. Acindar states that this welded pipe, while not OCTG, is in the same general category of product as the subject merchandise. Thus, Acindar argues, these financial data fall squarely within the requirements of alternative I because it is (1) the actual amount realized, (2) by the specific producer being examined, (3) in connection with the production and sale for consumption in the foreign market, and (4) of merchandise that is in the same general category of products as the subject merchandise. See section 773(e)(2)(B)(i) of the Tariff Act.

Acindar's profit rate for Companhia 103 was a negative figure. Thus, Acindar argues, its CV profit should be zero. Acindar states that a zero percent profit for antidumping calculations is not only permissible, but in some circumstances is required. As support for this assertion, Acindar cites Floral Trade Council v. United States, 41 F. Supp. 2d 319 (Ct. Int'l Trade 1999) (Floral Trade). There, Acindar states, the Court of International Trade (CIT) specifically rejected the Department's argument that "it interprets CV as requiring a positive amount for profit." (Floral Trade, 41 F.Supp. 2d at 327.) Instead, Acindar states, after an exhaustive analysis of the statutory language, legislative history, and Congressional intent regarding section 773(e), the CIT determined that the statute does not require a positive profit figure.

Acindar argues that in the alternative, if the Department decides not to use Acindar's financial statement, it should use the financial statement of Siderca's affiliate Siat under alternative III. (Siat's profit information is on the record as part of Siderca's financial statement.) Acindar argues that unlike Siderca, Siat sold welded pipe in the home market during the POR, and that its products were therefore far more similar to Acindar's welded OCTG than were Siderca's seamless pipe products. Moreover, since they were home market sales, Siat's welded pipe sales do not run afoul of the profit cap requirement in the way that Siderca's export sales do. Like Acindar, Siat reported a negative value for profit, but Acindar citing Floral Trade, 41 F. Supp. 2d at 327, argues that a zero profit margin is not only permitted, but required when that is the highest profit margin indicated by the record evidence.

Petitioner argues the Department should continue to use Siderca's profit experience to calculate CV for Acindar. First, petitioner argues that use of Siderca's financial statement fully meets the requirements of alternative II. With respect to the similarity of merchandise, petitioner argues that alternative II does not require that the alternative source for profit be based on sales of the same product, but on sales of "a foreign like product." This requirement is met when using Siderca's financial statement, petitioner argues, because both welded and seamless OCTG are within the scope of the order. This is evidenced by the fact that in every antidumping and countervailing duty case decided by the Department and the ITC with respect to OCTG, seamless OCTG and welded OCTG have fallen within the scope of the order and have been treated as a single like product. That the Department distinguishes in its matching criteria between welded and seamless OCTG does not, petitioner argues, make them different foreign like products. Petitioner argues that, to the contrary, because model match characteristics have relevance only within a single like product, the use of characteristics for seamless versus welded further confirms that seamless and welded OCTG are a single like product.

Furthermore, petitioner argues that in its various determinations the ITC has emphasized the numerous similarities between seamless and welded OCTG. In its most recent determination on this issue, petitioner states, the ITC found seamless and welded OCTG were a single product based on the fact that they have similar physical characteristics, are used in similar applications, are sold through similar channels of distribution, and have similar production processes after the initial stages of production. See ITC Preliminary Determination in 2002 OCTG Investigation, USITC Pub. 3511, at 6-7.

Moreover, petitioner argues that Acindar's assertions regarding the ITC's Section 201 safeguards determination with respect to steel products are also incorrect. As an initial matter, petitioner states, the ITC's determination of the relevant product categories in a Section 201 safeguards investigation has no relevance in an antidumping or countervailing duty case. But even assuming it was relevant, petitioner argues that in the section 201 investigation five of the six ITC commissioners found seamless and welded OCTG constitute a single like product. Thus, petitioner argues, the ITC's determination in the Section 201 case supports the conclusion that seamless and welded OCTG are a single like product, and that the profit for a seamless OCTG producer can properly be used for a welded OCTG producer.

Moreover, petitioner argues that Acindar has failed in its attempt to differentiate between the market performance of welded OCTG and seamless OCTG. With respect to the statement in Siderca's financial statement that "improvements in the seamless market did not carry over into welded tubes," petitioner argues that such statements are not statements about seamless and welded OCTG, but only about seamless and welded tubes generally. Thus, this quote from Siderca's financial statement does not provide any basis for a comparison between the performances of seamless and welded OCTG.

Furthermore, petitioner argues the Department has previously rejected the very argument asserted by Acindar here on this issue. In the preamble to its regulations the Department noted that certain commentators recommended that the regulations provide for the calculation of profit "on the basis of different product groupings, and that such groupings be limited to those models of the foreign like products capable of comparison to each model of the subject merchandise." Petitioner states the Department rejected this recommendation, stating "we continue to believe...that an aggregate calculation that encompasses all foreign like products under consideration for normal value represents a reasonable interpretation of the statute." See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27359 (May 19, 1997). Moreover, petitioner argues that while it is true that the Federal Circuit remanded a case to the Department to further explain its use of a different, more restrictive definition of "foreign like product" for product-matching purposes than it uses for calculating CV profit, the Department determined in its remand determination that in calculating CV profit, it is not restricted to its determination of what constitutes the foreign like product for product-matching purposes. In other words, petitioner states, the Department reaffirmed its conclusion that it is not the case that only sales of identical merchandise may constitute the foreign like product for purposes of calculating CV profit. See Final Remand Determination, SKF USA, Inc., v. United States, Court No. 98-07-02540 (March 29, 2002) at 11-12, aff'd, SKF USA, Inc., v. United States, 2002 Ct. Intl. Trade, LEXIS 65, Slip Op. 2002-63 (CIT July 12, 2002).

With respect to Acindar's argument that Siderca's financial statement does not permit a determination of the level of profit for only sales within the ordinary course of trade, petitioner argues that the Statement of Administrative Action (SAA) clearly sanctions the use of the financial statements as the basis for the calculation of profit figure under section 773(e)(2)(B) of the Tariff Act, and the Department routinely uses financial statements for this purpose. See SAA reprinted in H.R. Doc. 103-316 at 870 (1994). Furthermore, petitioner argues, the SAA states that sales in the ordinary course of trade for purposes of Section 773(e)(2)(B)(ii) of the Tariff Act means "profitable sales." Thus, petitioner argues that to the extent the Department did not eliminate the effect of sales that are outside the ordinary course of trade, it has understated the profit figure. Furthermore, petitioner argues that even if the term "ordinary course of trade" meant more than "unprofitable sales," there is nothing on the record to indicate that Siderca's sales were outside the ordinary course of trade for any reason.

With respect to Acindar's argument that Siderca's profits were earned on export sales, petitioner notes its financial statement shows that it had home market sales of seamless tube totaling 209,000 metric tons (MT). By any measure, petitioner argues, this is a substantial volume of home market sales, and represents an adequate basis to show profits earned "in connection with the production and sales of a foreign like product... for consumption in the foreign country." See section 773(e)(2)(B)(ii) of the Tariff Act. By comparison, petitioner notes, Siat sold at most 49,000 MT of non-OCTG welded pipe in Argentina. Furthermore, petitioner argues Acindar is incorrect in its assertion that Siderca sold tubes domestically "through long-term supply agreements, a market condition not then present for the export market." Petitioner states that Siderca's annual report shows that it made substantial exports under long-term supply agreements with customers. Moreover, petitioner argues that Siderca's annual report dispels any notion that profits on its Argentine sales lagged behind profits on its export sales. The annual report notes Siderca's sales of seamless tubes in Argentina increased by sixty percent, and that "the Argentine market reacted favorably to the strong recovery in the price of oil." See Siderca's financial statement at 10.

Petitioner also argues that Siderca's financial statement qualifies under alternative III. Under this alternative, petitioner states, the Department may calculate CV profit "based on any other reasonable method" as long as the result is not greater than the amount normally realized by exporters or producers in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (i.e. as long as it does not exceed the "profit cap"). Acindar's sole argument against alternative III, petitioner contends, is that the profit cap is equal to the profit that Siderca earned on its domestic sales, and that that profit is likely to have been lower than that for export sales. In particular, Acindar stated that unlike the export market, the Argentine market for Siderca's products was characterized by long-term supply contracts. With respect to this argument petitioner reiterates that Siderca's financial statement shows that its exports were often made under long-term agreements with customers, and that there was no lag in the prices or profits for Siderca's sales in the Argentine market. Furthermore, petitioner argue the Department has previously determined that under alternative III, a company's profit experience can be used as the basis for CV profit irrespective of the extent of its export sales as long as it has a significant volume of sales in the domestic market. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001), Decision Memorandum at Comment 8 (Magnesium from Israel); Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review, 61 FR 55957, 55961 (October 30, 1996). In Magnesium from Israel the Department used a company's profit experience under alternative III even though the vast majority of its sales, approximately ninety percent, were export sales. Thus, petitioner argues, the fact that seventy-three percent of Siderca's sales of seamless tubes were export sales does not undermine the validity of its profit figure given the fact that it made substantial sales of that merchandise in the Argentine market.

Petitioner urges the Department to reject Acindar's suggestions of using either Acindar's or Siat's financial statements as the basis for calculating CV profit. With respect to using the costs from Acindar's Companhia 103, petitioner first argues that because Companhia 103 produces non-OCTG material, it does not satisfy the statutory requirement for alternative I that the merchandise be in the "same general category of products as the subject merchandise." The SAA, petitioner argues, states the language "general category of merchandise" means "a category of merchandise broader than the 'foreign like product.'" See SAA at 840. Here, petitioner argues, the non-OCTG material does not constitute a broader category of product, but a different category of product, and thus does not meet the statutory requirements of alternative I.

Moreover, petitioner argues that Acindar's contention that the Companhia 103 sales were all made in the home market is contradicted by information on the record. In Acindar's own case brief, petitioner argues, Acindar acknowledges (in the context of a different issue) that Companhia 103 included welded pipe sales of pipe "for the domestic and regional market." Acindar's October 9, 2002, case brief at 13 (emphasis added). Furthermore, petitioner argues, the verification report also stated that Companhia 103 covers "sales of pipe to the domestic and regional markets." See August 27, 2002, verification report, pp. 4 and 26 (emphasis added). Moreover, petitioner argues it is not clear what percentage of the total volume of sales were home market sales.

Furthermore, petitioner states that not all the information is on the record to calculate the profit for Companhia 103. Specifically, petitioner states the Companhia 103 data reflected in its questionnaire responses include not only the depreciation expense applicable to the Companhia 103 sales, but also the depreciation expense applicable to the export sales of welded pipe products reported for Companhia 107. The effect of such accounting, petitioner argues, is to overstate the costs for Companhia 103, thereby understating profit. Because there is nothing on the record to quantify the amount of depreciation expense improperly included in the Companhia 103 data, there is no way to determine the actual profit realized for Companhia 103.

Petitioner also argues that the Department should reject Acindar's alternate suggestion of using Siat's profit rate for calculating CV profit pursuant to alternative III. It argues that Acindar's assertion that the non-OCTG welded pipe sold by Siat is "far more similar" to Acindar's welded OCTG than the seamless OCTG sold by Siderca is simply wrong. This assertion ignores, petitioner argues, the consistent determinations to the contrary by the Department and the ITC dating back almost twenty years. In those determinations, petitioner states, the Department and the ITC have consistently determined that seamless and welded OCTG constitute a single like product based on vast similarities. In contrast, petitioner states, the Department and the ITC have consistently conducted separate investigations of welded OCTG and welded-pipe products other than OCTG and consistently determined that they are not like products.

Furthermore, petitioner argues that Acindar's representation that Siat's sales were purely home market sales is contradicted by Siderca's financial statement which shows Siat had export sales of 29,000 MT. See Siderca's financial statement, p. 25. Moreover, there is nothing on the record, petitioner states, that provides a breakdown of Siat's profit between its export sales and its domestic sales. Furthermore, petitioner argues, Siat's home market sales totaling 49,000 MT of non-OCTG product pale by comparison to Siderca's domestic sales of 209,000 MT of seamless tubes.

Finally, petitioner argues that the record evidence regarding Siat's profit is limited and contradictory even on matters as fundamental as to whether Siat had a profit or a loss. Since Siat's financial statement is not on the record, petitioner states, Acindar has had to base its argument on what little information is contained about Siat in the notes to Siderca's financial statements. Petitioner states that even though Acindar claims that Siderca reported a loss for Siat during the period under review, Siderca's financial statement actually contains various and conflicting statements regarding whether Siat had a profit or a loss and the amount of any such profit or loss. Petitioner therefore argues that without Siat's financial statement on the record, there is no accurate basis for calculating profit.

Additionally, the domestic interested parties argue that Acindar's and Siat's financial statements are inappropriate because they show a loss. They argue that the use of zero or negative profit is contrary to established Department practice in CV calculations. See Fag Kugelfisher v. United States, 2002 Ct. Intl. Trade Lexis 188, Slip Op. 02-119 (October 4, 2002) at 8 ("In Commerce's calculations of CV profit, Commerce excluded below-cost sales, which are disregarded in the determination of NV pursuant to 19 U.S.C. § 1677b(b)(1).")). The Department has also noted, the domestic interested parties argue, that the SAA states that "if a company has no home market profit on sales of the foreign like product or has incurred losses in the home market, the Department is directed to find an alternative home market profit." See Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Indonesia, 64 FR 14690, 14693 (March 26, 1999) (Thread from Indonesia), (citing the SAA at 841). The Department also noted that "the statute also infers that a positive profit amount must be included in the calculation of constructed value." See Thread from Indonesia, 69 FR at 14693. See also Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37877 (July 15, 1997).

Department Position:

We agree with the petitioner and the domestic interested parties that Siderca's financial statement constitutes the appropriate basis for calculating Acindar's profit. We have used Siderca's financial statement in these final results because it is the only financial statement on the record that indicates the profits earned by an Argentine producer of subject merchandise with a significant volume of home market sales. However, because we did not analyze any of Siderca's home market sales in this review, we determine that use of Siderca's financial statement is more appropriately used by the Department under alternative III (section 773(e)(2)(B)(iii) of the Tariff Act), rather than under alternative II (section 773(e)(2)(B)(ii) of the Tariff Act). Using alternative III is within our discretion because the Tariff Act does not establish a hierarchy or preference among the alternatives.

The arguments Acindar has set forth against using Siderca's financial statement are not availing. First, we do not agree with Acindar that welded OCTG and seamless OCTG constitute two separate foreign like products. Welded and seamless OCTG are both OCTG products covered under the OCTG antidumping duty order. This fact creates a presumption that the products constitute a single product group, and that all home market sales of such products are sales of a foreign like product, even if they are not sales of identical product. See the Preliminary Results, where we stated, "In accordance with 771(16) of the Tariff Act, we considered all products produced by the respondents, covered by the descriptions in the "Scope of the Review" section of this notice, supra, to be foreign like products for the purpose of determining appropriate production comparisons to U.S. sales of oil country tubular goods." See Preliminary Results 67 FR at 57216. The arguments Acindar has presented to rebut this presumption are not persuasive. The fact that the Department distinguishes between these two products in its model match criteria shows only that they are not identical merchandise, and not that they constitute two separate product categories. Moreover, Acindar has pointed to no statute, regulation, Departmental precedent, or other authority indicating that products must be identical merchandise to be within the same "foreign like product" category. Furthermore, the evidence from the section 201 ITC investigation (though of questionable relevance) works against Acindar because four of the six commissioners specifically grouped welded and seamless into one product category, and only one specifically distinguished them. (A sixth commissioner grouped all pipe and tube products together.) Moreover, the petitioner is correct that SKF USA, 263 F.3d. at 1382, does not prove that welded OCTG and seamless OCTG must be considered separate product categories. In SKF USA, the Federal Circuit remanded a case to the Department to further explain why it used one foreign like product grouping when calculating dumping margins based on price-to-price comparisons, and a different foreign like product group when calculating antidumping margins based on price-to-CV comparisons. In its remand redetermination the Department affirmed its discretion to do so. The Department stated: "[i]n our view, 'foreign like product' is defined in the statute in such a way that different categories of merchandise may satisfy the meaning of the term, depending upon the facts and circumstances of the case and the application of the term in the particular statutory context in which it appears." See Final Remand Determinations, SKF USA Inc. v. United States, 2002 Ct. Intl. Trade Lexis 65, Slip Op. 2002-63 (July 12, 2002), and FAG Kugelfischer Georg Schafer AG v. United States, 2002 Ct. Intl Trade Lexis 64 (July 12, 2002), at 6. The Department also stated, "[i]n our view, a narrowly construed foreign like product in the CV profit context is unworkable and contrary to the intent of Congress." Id.

Second, we do not agree with Acindar that use of Siderca's financial statement in calculating Acindar's profit ratio is precluded by the fact that seventy-three percent of Siderca's sales were export sales. In Magnesium from Israel the Department used profit reported on the financial statement of a company whose volume of home market sales totaled ten percent because the Department found this volume of sales to be "a significant level" of home market sales. See Magnesium from Israel, and accompanying Decision Memorandum at Comment 8 and April 23, 2001, calculation memorandum in Magnesium from Israel, attachment 5, p.6 (attached to the March 10, 2003, final results analysis memorandum of this proceeding.)

Furthermore, we are not persuaded that the information on the record regarding Siderca's long-term supply agreements necessarily means that its export sales would have realized higher profits than its domestic sales. It is true that Siderca's financial statement says (at 10) that Siderca "continued to provide local oil companies with a wide range of services through long-term supply agreements," but Siderca's financial statement also says (at 9) that the Tenaris Group (of which Siderca is a part) sold almost fifty percent of its exports of OCTG under long-term agreements. This information is both limited and seemingly contradictory, and is thus insufficient for us to conclude that Siderca's prices or profits on home market sales would necessarily have been lower than its prices or profits on export sales.

With respect to the profit cap, in this instance we cannot calculate the profit cap because the record does not contain information that would allow us to calculate the profit amount Siderca normally realizes in connection with the sale, for consumption in Argentina, of the merchandise in the same general category of merchandise as the subject merchandise. Therefore, we are applying alternative III based on the available information on the record of the instant review (i.e., without quantifying a profit cap). See Magnesium from Israel, and accompanying Decision Memorandum at Comment 8.

Furthermore, we find we cannot use Acindar's financial statement under alternative I because we cannot determine the level of profit realized by Companhia 103 in the home market. In its case brief (at 13), in connection with the issue addressed under comment 2, Acindar states, "Companhia 103 includes welded pipe sales revenue and cost of sales only for the domestic and regional market. Welded pipe sales revenue and cost of sales for export markets are included in the Companhia 107 unit." Acindar also states on the same page, "Companhia 107 does not carry any of the depreciation costs for the products it sells. Instead, these are retained at the production units, including Companhia 103." These statements (which are nowhere explained on the record) indicate that:

- Acindar has allocated to Companhia 107 an unspecified amount of revenue for welded pipe produced by Companhia 103; and,

- Acindar has allocated to Companhia 103 an unspecified amount of costs for depreciation incurred by Companhia 107.

Given the ambiguity of the information on the record with respect to Companhia 103's costs and revenue, we are unable to determine the exact level of profit it realized. Therefore, we cannot use the information Acindar has submitted regarding Companhia 103 as the basis for Acindar's CV profit.

Finally, we determine that we cannot use the profit realized by Siat as the profit amount for Acindar because its level of profit is unclear. Siat's financial statement is not on the record. The only information on the record about this company is what is reported in Siderca's financial statement. Although Acindar states that Siderca's financial statement shows this entity had no profit, Siderca's financial statement, as petitioner has noted, is unclear on this point. Statements on pages 4 and 25 of Siderca's financial statement indicate that Siat had losses of $0.4 million and $0.6 million respectively, whereas information on pages 17 and 21 indicate that Siat had a profit of $0.4 million. We will not use profit data about a company where, as here, the information on the record about that company's profits is ambiguous.

In sum, we find that the profit recorded on Siderca's financial statement meets the requirements of alternative III, and that we cannot use the profit data in Acindar's financial statement or the profit data on the record about Siat. Therefore, in the final results of review, as in the preliminary results of review, we have used Siderca's financial statement for calculating Acindar's CV profit.

Comment 2: Depreciation

Acindar argues that the Department overstated depreciation in its recalculation of Acindar's depreciation expense. The Department calculated depreciation by dividing the depreciation reported in Acindar's books for Companhia 103 (the production unit that makes welded pipes, including OCTG) by the cost of goods sold (COGS) for Companhia 103, and multiplying the resulting ratio by Acindar's cost of manufacture (COM). This method overstated depreciation, Acindar states, because of the manner in which Acindar keeps its books. Acindar states that the welded pipe COGS reported under Companhia 103 are only for the domestic and regional market, and does not include the COGS of the export market. The COGS for the export market, Acindar states, are reported under Companhia 107. However, Acindar states, it records the depreciation on the pipe sold on the export market at Companhia 103. Thus, Acindar argues, the numerator in the Department's calculation is the depreciation on the production of all welded pipes, while the denominator is the COGS only for welded pipe sold domestically and regionally. This inconsistency, Acindar states, led to an exaggerated depreciation ratio.

Acindar continues to maintain that the computation it submitted in its questionnaire responses is appropriate. In that calculation Acindar divided total consolidated depreciation expense by its total consolidated sales volume. See Acindar's February 28, 2002, submission, exhibit SD-3. Nevertheless, Acindar argues that the Department's computation can be corrected by including in the denominator of the computation the COGS for the welded pipe sold for export markets.

Petitioner states that it does not oppose the change Acindar suggests with respect to how the Department recalculated depreciation for the preliminary results, but does oppose resorting to the way Acindar submitted depreciation in its questionnaire response. Petitioner states that for two reasons Acindar's method is inappropriate. First, the Department's practice requires that depreciation expense be calculated with the greatest specificity possible using unconsolidated, rather than consolidated, financial information. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002), Decision Memorandum at Comment 48. Second, the Department's well-settled practice is to calculate this ratio as a percent of cost of goods sold, rather than as a flat cost per ton. See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada, 58 FR 37099, 37121 (July 9, 1993) (Flat Products and Plate from Canada).

Domestic interested parties argue that any overstatement of depreciation costs is caused by Acindar's own bookkeeping practices, and that from these practices the Department is under no obligation to provide Acindar relief. They argue that the Department is entitled to rely on Acindar's reporting in its financial statements which is in accordance with GAAP. See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 46759, 56766 (October 21, 1999). Therefore, domestic interested parties argue, the Department should not recalculate Acindar's depreciation expenses. Furthermore, domestic interested parties object to Acindar's proposed correction to the Department's calculation because, they state, the wording of Acindar's argument in its case brief implies that Companhia 103 does not include all the depreciation expense. Specifically, Acindar said in its case brief that depreciation expenses "are retained at the production units, including Companhia 103." See Acindar's case brief at 13 (emphasis added). This statement implies, domestic interested parties argue, that only a portion of the depreciation expense for the merchandise sold by Companhia 107 is included in Companhia 103.

Department Position:

We agree with the domestic interested parties that the Department is under no obligation to provide a respondent relief from its own bookkeeping practices. However, where information is on the record that would provide a more accurate calculation than that allowed by the respondent's normal bookkeeping practices, we may use that information. We also agree with Acindar that a change in our computation is warranted, and we have done so in these final results. However, as explained below, we do not have the information on the record to make the change that Acindar requests without possibly understating depreciation.

As a preliminary matter, the suggestion that Companhia 103 recorded depreciation expenses for more than just Companhia 103 was submitted for the first time in Acindar's case brief. It is not supported by any other evidence on the record of this review. However, assuming this information is correct, we could correct the error in one of two ways. First, we could subtract the Companhia 107 depreciation from the numerator. This option is precluded by the fact that the Companhia 107 depreciation amount included in the reported Companhia 103 depreciation is not on the record. Second, we could, as Acindar suggests, add the Companhia 107 COGS to the denominator of the ratio. However, as domestic interested parties have argued, the wording of Acindar's argument suggests that not all of

Companhia 107's depreciation is contained in the reported Companhia 103 depreciation. Specifically, Acindar's statement that Companhia 107's depreciation is "retained at the production units, including Companhia 103" implies that some of Companhia 107's depreciation may be recorded at production units other than Companhia 103. Thus, we do not know that all of Companhia 107's depreciation is contained in the numerator. That being so, if we add all of Companhia 107's COGS to the denominator, as Acindar suggests, we could potentially understate the total depreciation. Therefore, because both of these alternatives fail, we have no way of correcting the computation we used in the preliminary results without possibly understating depreciation. However, we have, as explained below, modified our computation from that of the preliminary results.

Regarding Acindar's argument that the computation it submitted in its questionnaire response is appropriate, we agree with petitioner that our practice is to calculate depreciation on as specific a basis as possible. Therefore, because the computation Acindar provided in its original questionnaire response is based on its consolidated financial statement, rather than its unconsolidated financial statement, it is not in accordance with our practice. Thus, for these final results, we have continued to use information contained in Acindar's unconsolidated financial statement.

However, we disagree with petitioner that our practice requires that we calculate a ratio based on COGS. <u>Flat Products and Plate from Canada</u>, which petitioner cites, does not relate to our normal practice for calculating depreciation. In <u>Flat Products and Plate from Canada</u>, a respondent had calculated its general and administrative (G&A) and its interest expenses on a volume basis. The Department recalculated the G&A and interest expenses based on cost of goods sold because products which cost more to produce should bear a proportionately higher amount of G&A and interest expenses. Depreciation was not an issue. <u>See</u> <u>Flat Products and Plate from Canada</u>, 58 FR at 37121.

In the instant case, we determined based on the information on the record that using production volume as the allocation basis reasonably reflects the depreciation expense related to the production of the subject merchandise. Therefore, in these final results we have changed our method of calculating depreciation from that of the preliminary results, and have calculated depreciation on a per-unit basis using the depreciation figure for Companhia 103 found in Acindar's non-consolidated financial statement and Companhia 103's production volume calculated from figures on the first page of cost verification exhibit 3. <u>See</u> the final results analysis memorandum for details.

Note that our determination to calculate depreciation on a per unit basis using production volume in the denominator, rather than calculating a ratio using COGS in the denominator, does not enable us to correct the problem that Acindar has raised. In both computations the numerator is the same, and cannot be adjusted to correct the problem Acindar has raised without possibly understating depreciation.

Comment 3: Bad Debt

Acindar argues the Department erred in making an addition to total selling expenses for Acindar's contributions to a bad debt reserve. It argues this addition was inappropriate because the Department's practice is to treat bad debt as a direct selling expense. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15444, 15448 (March 31, 1999) (Stainless Steel Plate in Coils from Korea) and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30664, 30674 (June 8, 1999) (Stainless Steel Sheet and Strip in Coils from Korea). During this POR, Acindar states, it incurred no bad debt expenses on its OCTG sales, and the Department verified this fact at the verification. See August 27, 2002, verification report, pp. 8-11.

Acindar states that, as with other direct expenses, if the Department cannot determine the bad debt expenses incurred on reported sales, the Department may treat the expenses as indirect selling expenses. However, Acindar argues, that option is not relevant here because Acindar is readily able to identify whether payment has been received or not on a sale-by-sale basis, and to trace credit notes back to particular transactions. Consequently, here there is no basis for treating bad debt expenses as indirect selling expenses. They are a direct expense, Acindar argues, and an expense that happens to be zero for Acindar's OCTG. Moreover, even if they were an indirect expense, Acindar states, that expense can be segregated between OCTG and other products, and is zero for OCTG.

Acindar explains what it believes to be the correct treatment of bad debt expenses by means of an example. It states that if its home market had been viable, and it had incurred bad debt expenses, those bad debt expenses would have been deductions from normal value. If all sales had been below cost, and normal value had therefore been based on CV, the bad debt expenses would still have been deductions, as circumstance of sale adjustments, to CV, and not indirect selling expenses in the build-up of CV.

Furthermore, Acindar argues that the Department has implemented the WTO requirement that an administering authority show that bad debt expense could have been reasonably anticipated before making an adjustment for such an expense. See United States - Antidumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea, WT/DS179/R (adopted February 1, 2001); see also Stainless Steel Plate in Coils from the Republic of Korea, and Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 66 FR 45279, 45282 (August 28, 2001) (Coils from Korea). Acindar states that the Department made no such finding in the preliminary results, nor does the record provide a basis for such a finding. Acindar contends it is illogical to reason from the existence of a reserve the existence of a further contribution to that reserve. A company might leave a reserve unchanged or even reverse earlier contributions; there is no basis to infer that there would be a further contribution. Consequently, Acindar states, the record does not support a position that Acindar anticipated the bad debt expense. However, Acindar states that this issue is moot, since the correct amount of bad debt adjustment is zero.

Petitioner argues that Acindar is correct that the Department's practice is to treat bad debt tied to specific sales as a direct selling expense, but argues that the Department treats a provision for bad debts or doubtful accounts that cannot be tied to specific sales as an indirect selling expense. Thus, petitioner argues, where a company has set up a provision for anticipated bad debts or doubtful accounts and makes a contribution for that provision, the contribution constitutes a cost to the company, and Departmental practice is to treat it as an indirect selling expense. See Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 60194, 60195 (December 3, 2001); Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 50406 (October 3, 2001), decision memorandum at comment 18 (Carbon Steel Flat Products from India); Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 66 FR 18747 (April 11, 2001), decision memorandum at comment 10; Bicycles from the People's Republic of China, 61 FR 19026, 19041 (April 30, 1996); Roller Chain, Other than Bicycle, from Japan, 55 FR 42602, 42603 (October 22, 1990).

Furthermore, petitioner argues that there is nothing on the record to substantiate Acindar's assertions that the Department verified that Acindar did not incur bad debt expenses on its U.S. sales or that Acindar can identify bad debt on a sales-specific basis. Moreover, even if these statements were true, petitioner argues, they would be irrelevant because Acindar clearly had sales of subject merchandise during the POR that were not paid as of the end of the verification, and these unpaid sales could result in bad debt. Acindar's making of a provision for bad debt or doubtful accounts for such unpaid sales, petitioner asserts, constitutes an indirect selling expense properly added to selling, general, and administrative (SG&A) expense.

With respect to Acindar's argument that the Department is required to show that bad debt expense could have been reasonably anticipated before making an adjustment for such expense, Petitioner argues that the facts of Coils from Korea (the only case Acindar cited in support of its argument) differ from those present here. In Coils from Korea the Department declined to make an adjustment for bad debt expenses in implementing the WTO Panel's report based on the fact that "the extraordinary bad debt expenses... could not reasonably have been anticipated." In that case, however, petitioner argues, the Department found that, unlike here, the respondent "did not have a bad debt account" and there was no evidence that the respondent's customers "had ever before defaulted on payment." See Coils from Korea, 66 FR at 45282. By contrast, petitioner argues, Acindar clearly had a bad debt account or provision for doubtful accounts based on its historical experience. Acindar's financial statements show it had a provision or reserve for bad debts in fiscal years 1999, 2000, and 2001. See Acindar's 2000 consolidated and unconsolidated financial statement, p. 35 (found in Acindar's November 16, 2001 submission, exhibit A-11), and Acindar's 2001 consolidated and unconsolidated financial statement, p. 81 (found in Acindar's February 28, 2002 submission, exhibit SA-5). Furthermore, petitioner argues, the financial statements show that Acindar made a contribution to that reserve in fiscal years 2000 and 2001, and that it used that reserve to write off bad accounts. See id. Furthermore, petitioner argues, the 2001 consolidated financial statements explicitly state that "an allowance for doubtful accounts was set up based on the analysis of the aging of ordinary trade receivables and notes receivable and on the total amount of accounts in litigation." See Acindar's 2001 audited consolidated financial statement, p. 2 (found in Acindar's November 16, 2001 submission, exhibit A-12). Petitioner argues therefore that Acindar would not have established a provision or reserve for bad debts, contributed to it, and administered it had it not anticipated bad debt expenses.

With respect to Acindar's argument that it would not be logical to reason from the existence of a reserve the existence of a further contribution to that reserve, petitioner argues that the financial statements show for each fiscal year the beginning balance of the bad debt reserve, the increases or contributions to the reserve during the year, the reserve used during the year, and the ending balance of the bad debt reserve. Indeed, Acindar's 2001 financial statements clearly show an increase in or contributions to the bad debt reserve to be "charged to income under 'Doubtful account'" in the amount of $12,441,679, precisely the amount included by the Department in selling expenses as part of the calculation of SG&A expense in the preliminary results.

Finally, petitioner states that Acindar is correct that items categorized as indirect selling expenses should be used in the build-up of CV, and not deducted from CV as circumstance-of-sale adjustments, but that the Department erred by deducting the indirect selling expenses (including the bad debt expenses) from CV as circumstance of sale adjustments. Petitioner argues the Department should correct this error in the final results.

Domestic interested parties argue that since Acindar has made no representation that the contribution to bad debt had been reversed, the contribution to the bad debt reserve is allocable to the sales under review as an indirect selling expense. In any case, domestic interested parties argue, the adjustment Acindar requests has only a minuscule effect on the margin, and therefore the Department need not consider whether the requested adjustment is justified pursuant to the Department's discretion not to evaluate and make insignificant adjustments. <u>See</u> 19 CFR § 351.413.

Department Position:

We agree with the petitioner and the domestic interested parties that Acindar's contributions to a bad debt reserve properly belong in the pool of indirect selling expenses. Acindar's argument is based on a failure to distinguish between bad debt expenses that can be linked to sales of subject merchandise (and hence are direct selling expenses), and those attributed to both subject and non-subject merchandise, which the Department treats as indirect selling expenses. The expenses at issue here are expenses Acindar has listed on its financial statement as "deudores incobrables" (doubtful accounts) under the category "previsiones" (provisions.) <u>See</u> Acindar's 2001 financial statement, pp. 56 and 81, found at Acindar's February 28, 2002 submission, exhibit SA-5. This account constitutes a reserve for bad debts related to all of Acindar's sales. Our practice has been to treat such expenses as indirect selling expenses because they are related to both subject and non-subject merchandise. <u>Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review</u>, 66 FR 18747 (April 11, 2001), Decision Memorandum at 10.

The cases Acindar cites in support of its position (Stainless Steel Plate in Coils from Korea and Stainless Steel Sheet and Strip in Coils from Korea) are inapposite because in both those cases the respondents did not maintain a separate account for bad debt. Instead, the respondent issued negative invoices to customers who defaulted on debt because they had gone bankrupt. Thus, because the bad debt was linked to sales of subject merchandise, the Department treated the bad debt as direct selling expenses. That situation differs from this one in that here the respondent maintains a separate reserve for all bad debt.

Furthermore, we agree with the petitioner that Acindar's contributions to the bad debt reserve during the years 2000 and 2001 constitute evidence that Acindar anticipated the possibility of bad debt. Thus, our determination is consistent with U.S. law, and the U.S. law is consistent with WTO requirements. We also agree with the petitioner that Coils from Korea is distinguishable from the instant case in that in Coils from Korea, the respondent had not maintained a bad debt reserve. See Coils from Korea, 66 FR at 45282. Thus, Coils from Korea is inapposite to the instant case because Acindar did maintain a bad debt reserve.

Finally, we agree with the petitioner that in the preliminary results the Department subtracted selling expenses rather than adding them. We have corrected this error in these final results.

Comment 4: General and Administrative Expenses

Acindar argues the Department erred by including in G&A four items that were extraordinary and that meet the Department's criteria for exclusion. It argues that the courts have set forth two criteria for exclusion of extraordinary expenses: they must be infrequent and they must be unusual. Floral Trade Council v. United States, 67 F.3d 318 (Fed. Cir. 1995). Consequently, Acindar states, the Department's policy with regard to unforeseen expenses is to treat them as extraordinary, and exclude them from the calculation, "when they are both unusual in nature and infrequent in occurrence." See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium, 64 FR 15476 (March 31, 1999). Acindar states it believes all four of the expenses at issue meet the criteria for exclusion, but has decided to brief only two of the four.

The first expense is the write-off of a semi-finished rolling mill, number three, that was under construction. Acindar states it never completed construction of this mill because of changes in market conditions. In fact, Acindar states, not only did the mill never begin operations, but the equipment for the mill was never even imported into Argentina. The resulting expense was very large, totaling about four percent of the cost of sales. This event, Acindar states, was obviously both unusual in nature and infrequent.

The second expense concerned advice on a strategic investor. Possibly of importance, Acindar states, the Department mistranslated this item in the preliminary results analysis memorandum as "advice to a strategic advisor." See the September 3, 2002, analysis memorandum, p. 3. The payment, Acindar states, concerned "the search *for* a strategic investor to invest *in* Acindar." See Acindar's October 9, 2002, submission, p. 19 (emphasis in original). Quite apart from the extraordinary nature of the expense, Acindar argues, the expense relates to Acindar's equity and, like the cost of equity itself, is not appropriately part of the dumping calculation. Acindar states that the expense was clearly extraordinary, as Acindar does not routinely spend large sums of money to find a strategic investor. Furthermore, Acindar states that by its nature the expense was both unusual and infrequent, as a strategic investor is sought only under extraordinary circumstances such as those in which Argentina found itself during the POR.

Petitioner argues that the Department should continue to treat the four expenses at issue as G&A expenses. With respect to the two expenses Acindar did not brief, petitioner states it is Acindar's burden to demonstrate why each of these items qualify for an exclusion from G&A expense. Acindar's failure to address these two items, petitioner argues, mandates that the Department continue to include them in its calculation of G&A expense.

With respect to the two items Acindar did brief, petitioner states the Department's practice provides substantial guidance as to what types of expenses qualify as extraordinary expenses. This practice, petitioner states, shows that only in extremely rare situations will an event occur that satisfies both the "unusual in nature" and "infrequent in occurrence" criteria. For example:

- The Department has determined that losses on the sale or write-off of manufacturing plants or equipment and expenses related to restructuring do not qualify as extraordinary expenses. See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review, 65 FR 8935, 8940 (February 23, 2000) (Corrosion-Resistant Steel from Japan); Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24356 (May 6, 1999) (Hot-Rolled Steel from Japan); Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review, 63 FR 18879, 18882 (April 16, 1998) (Steel from the U.K.); Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia, 61 FR 54767, 54772 (October 22, 1996) (Thread from Malaysia); Final Determination of Sales at Less Than Fair Value: OCTG from Argentina, 60 FR 33539, 33549 (June 28, 1995).

- The Department has determined that the death of a production manager, major flooding, and crop disease experienced by a respondent were not extraordinary or unforeseen so as to qualify as extraordinary expenses. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246, 72251 (December 31, 1998).

- The Department has determined that expenses related to a blast furnace explosion and unrecoverable fire loss expenses were not extraordinary expenses. See Hot-Rolled Steel from Japan at 24354; Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998).

- The Department has found that losses due to disease that affected a respondent's entire crop of salmon did not constitute an extraordinary expense. See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 25, 1991).

Petitioner argues that the Department should follow these determinations in rejecting Acindar's argument that the write-off of rolling mill number 3 and the expenses for advice on a strategic investor constitute extraordinary expenses.

More specifically, with respect to the write-off of rolling mill no. 3, petitioner argues that the Department has already determined that there is nothing unusual about a company's writing off manufacturing plants or equipment. See Thread from Malaysia, 61 FR at 54772; Corrosion-Resistant Steel from Japan, 65 FR at 8940; Hot-Rolled Steel from Japan, 64 FR at 24356; Steel from the U.K., 63 FR at 18882. Furthermore, petitioner states that under U.S. GAAP, gains or losses from the sale or abandonment of property, plant, or equipment are usual in nature or may be expected to recur as a consequence of customary and continuing business activities. Petitioner states that given the cyclical nature of the steel industry (which is the environment in which Acindar operates) losses due to the write-off of plants or equipment are neither unusual nor infrequent.

Moreover, petitioner argues, the record here shows that expenses of this type are likely to continue after the POR for Acindar. Acindar's own interim financial statements issued for the quarter ending September 30, 2001, indicate that "to adjust the current financial structure of Acindar, the Company is ... evaluating the sale of productive assets, which will enable it to reduce its financial burden." See Acindar Unaudited Interim Consolidated Financial Statements September 30, 2001, note 23, p. 26 (found at Acindar's February 28, 2002, submission, exhibit SA-7. Emphasis added.). Additionally, petitioner points to several news reports regarding Acindar which state that as part of a cost-saving "turnaround plan" instituted by its part owner, Belgo Mineira, Acindar is seeking to sell a wire plant and to close other inefficient operations. See petitioners' January 18, 2002, submission at exhibit 16, p. 2 and exhibit 17, p. 1.

Finally, domestic interested parties argue that it is not unusual for long-planned capital investments to not reach completion. The decision not to proceed with a capacity expansion based on changes in market conditions, domestic interested parties argue, is not a unique occurrence. Indeed, they argue, the re-evaluation of capital projects is a constant process for producers, and abandonment of major projects is a normal aspect of a competitive manufacturing environment. Thus, domestic interested parties state, the write-off was properly included in the CV calculation.

With respect to the expenses for advice to find a strategic investor, petitioner argues that in order to determine whether expenses are so unusual and infrequent as to be considered extraordinary, the environment in which the entity operates, including the industry of which it is a part, must be taken into account. In the steel industry in which Acindar operates, petitioner states, strategic investments and consolidation occur with ever-greater frequency. See petitioner's January 18, 2002, submission, exhibit 27, p. 1 (detailing merger to create NewCo and NewCo's interests in various South American steel companies). Thus, petitioner argues, such events or transactions certainly cannot be considered unusual or infrequent. Furthermore, petitioner states, U.S. GAAP provides that an event or transaction of a type that occurs frequently in the environment in which the entity operates cannot, by definition, be considered as extraordinary, regardless of its financial effect.

Furthermore, petitioner states that Acindar's own interim financial statements for the quarter ending September 30, 2001, indicate it is "negotiating new financing alternatives," which, petitioner argues, could include new investments. See Acindar September 30, 2001, Unaudited Interim Consolidated Financial Statements at note 23, p. 26 (found at Acindar's February 28, 2002, submission, exhibit SA-7). Moreover, petitioner states, although Acindar contends that the expenses for advice on a strategic investor were incurred only because of the extraordinary circumstances in which Argentina found itself during the POR, the adverse financial circumstance of both Argentina and Acindar were in place before the POR, and have only worsened since. Thus, petitioner states, the expenses at issue are certainly capable of recurrence and are not extraordinary.

Finally, domestic interested parties argue that Acindar's new translation of this expense in its case brief comes late and is coupled with new, unsupported information regarding the nature of the expense. On these grounds alone, domestic interested parties argue, the Department is justified in making no change to its preliminary results. Moreover, domestic interested parties argue that the search for operating capital is no different than an expense related to obtaining credit facilities, and is not an unusual event. Thus, they argue, the record supports the Department's determination to include this expense in the CV calculation.

Department Position:

We agree with petitioner that none of the G&A expenses Acindar incurred qualify as extraordinary.

The two G&A expenses which Acindar chose not to brief are "depreciation and amortization of intangible assets" and "expenses corresponding to advice for corporate reorganization." On the surface these two expenses are not extraordinary (i.e., they are neither infrequent nor unusual) because they concern expenses commonly incurred by companies in the normal course of business. Furthermore, we agree with petitioner that it is a respondent's burden to establish its entitlement to an adjustment. Therefore, since Acindar has not demonstrated that these expenses are extraordinary, we have continued to include them in G&A in these final results.

Regarding the write-off of rolling mill number 3, we agree with the petitioner and domestic interested parties that this expense is not extraordinary because it does not meet the Department's criteria of being both unusual and infrequent. As domestic interested parties have stated, it is not unusual for long-planned capital investments to not reach completion, and the decision not to proceed with capacity expansion plans because of changes in market conditions is not a unique occurrence. Furthermore, as petitioner has shown, there is evidence on the record that Acindar has considered disposing of other assets in order to reduce its financial burden. See Acindar's Unaudited Interim Consolidated Financial Statement September 30, 2001, note 23, p. 26 and petitioner's January 18, 2002, submission at exhibit 16, p. 2 and exhibit 17, p. 1. Therefore, because it is a cost-cutting measure, the write-off of a semi-finished mill is in an expense category that can be expected to recur (i.e., the discontinuance of a capital investment), and thus does not fit the Department's definition of "infrequent" for purposes of determining whether the expense was extraordinary.

Regarding the search for a strategic investor, contrary to the domestic interested parties' assertions, we do not regard a different translation of a phrase already on the record as "new information" that the Department may not consider. We also do not consider the additional explication of this expense "new information" because it amounts to a further elaboration of what is implicit in the name of the expense. In any case, the determination to include this expense in G&A in the preliminary results was not affected by the translation of the expense contained in the preliminary results analysis memorandum.

Regarding this expense, we agree with petitioner and domestic interested parties that, given the current unsettled economic environment in Argentina, this expense is neither "unusual" nor "infrequent," especially where, as here, Acindar's interim financial statements specifically state that it is negotiating new financing alternatives. See Acindar September 30, 2001, Unaudited Interim Consolidated Financial Statements at note 23, p. 26. Acindar is correct that the cost of equity is not part of the dumping calculation, but here the expense concerns the search for equity, and therefore consists of costs incurred to market the company. As such, they are properly classified as general expenses. Therefore, we have continued to include them in G&A expenses in these final results.

Comment 5: Rebates Received Under Argentine Government Rebate Programs

Petitioner argues the Department erred by making a downward adjustment to Acindar's CV for rebates received under two Argentine government rebate programs. The two programs are the Reintegro and the Factor de Convergencia programs. Acindar claimed in its submissions that under these programs it received cash reimbursements from the Argentine government for previous payments of indirect taxes. See Acindar's February 28, 2002 submission, p. 14.

Petitioner first states that the only section of the Tariff Act under which the Department is authorized to make a downward adjustment to CV is section 773(e). It provides that in calculating CV, "the cost of materials 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. Thus, petitioner argues, at a minimum, any downward adjustment to CV would have to be for an indirect tax.

With respect to the Factor de Convergencia program, petitioner argues that Acindar's reimbursements do not qualify as an adjustment under the statute because they are not reimbursements for taxes. As evidence, it cites the Department's verification report which states that the Factor de Convergencia program is an "export program" designed "to make the Argentine peso, which was officially pegged to the U.S. dollar, more competitive with other world currencies... Under the Convergence Factor program, the amount of the remittance was equivalent to the FOB value {of the exported merchandise} multiplied by half of the difference between the peso-U.S. dollar and peso-Euro exchange rates." See the August 27, 2002 verification report, pp. 14-15. Based on this statement, petitioner argues that the Factor de Convergencia program provided no remittance of indirect taxes or of any other kind of taxes. Thus, petitioner argues, there is no statutory basis for a downward adjustment to CV for reimbursements received under the Factor de Convergencia program.

Furthermore, petitioner argues that even if the Factor de Convergencia program did provide for the rebate of indirect taxes, neither it nor the Reintegro program would meet all the requirements of Section 773(e) of the Tariff Act. It states that in order to be entitled to an adjustment to CV for the rebate of indirect taxes under that provision, a respondent must show that the rebates received were linked and directly related to the internal taxes actually paid on material inputs incorporated into the subject merchandise. Where a respondent fails to make such a showing, petitioner states, the adjustment must be denied.

Petitioner argues that prior case law supports their contention. For example:

- In Stainless Steel Bar from India, the Department denied an adjustment to CV for revenue received from the government because the respondents had failed to "demonstrate a sufficient link between revenue received and a reduction of material costs." See Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Recission of Administrative Review, 65 FR 48965 (August 10, 2000), Decision Memorandum at Comment 3 (Stainless Steel Bar from India).

- In Silicon Metal from Argentina, the Department denied a respondent's request for an adjustment to CV under the Reembolso program (the predecessor program to the Reintegro program) because the respondent had failed to "link the Reembolso tax to material inputs that are physically incorporated into the subject merchandise." See Notice of Final Results of the 1992/93 Antidumping Duty Administrative Review: Silicon Metal from Argentina, 62 FR 5613, 5617 (February 6, 1997).

- In American Alloys, Inc. v. United States the Federal Circuit held that in order for the Department to make an adjustment for the remission of indirect taxes that reduces the dumping margin, there must be a "direct relationship between the tax and the exported product or

> components of the exported product." See American Alloys, Inc. v. United States, 30 F.3d 1469, 1473 (Fed. Cir. 1994). In that case the Federal Circuit held that because the Department did not determine if the taxes rebated under the Reembolso program were directly imposed upon the exported merchandise or components thereof, the Department lacked the authority to reduce the dumping margin for the Reembolso rebates. Id. at 1473-74.

Based on the above, petitioner argues that even if the Factor de Convergencia program did provide for the rebate of indirect taxes, Acindar has still not met the requirements for an adjustment to CV for either it or the Reintegro program because it did not demonstrate, or attempt to demonstrate, that the rebates were directly related to the internal taxes paid on material inputs incorporated into the subject merchandise. Petitioner argues that Acindar has only stated that it can "link the Argentine government payments to the U.S. sales for which it claims these {Reintegro and Factor de Convergencia} reimbursements." See Acindar's February 28, 2002 submission, p. 16. Petitioner argues that the relevant test is not whether Acindar can link the reimbursements to its U.S. sales, but whether it can link the reimbursements to the indirect taxes paid on the material inputs incorporated into the subject merchandise.

Acindar contends that petitioner's argument is without merit because the Department did not adjust CV under section 773(e) of the Tariff Act, but adjusted CV under section 773(a)(6). Acindar states that petitioner may have been misled because the Department's preliminary determination incorrectly referenced section 773(e) of the Tariff Act, but the Department's disclosure materials indicate the Department actually made the adjustment under section 773(a)(6) of the Tariff Act. See Preliminary Results, 67 FR at 57216 and the September 3, 2002 analysis memorandum at 4. Section 773(a)(6)(B)(iii) of the Tariff Act states that normal value shall be:

> "reduced by ...the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated...on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product."

See section 773(a)(6)(B)(iii) of the Tariff Act. Acindar argues that under this provision of the Tariff Act and under the Department's regulations, the Department was justified in making an adjustment for the two rebates at issue because they are both "taxes imposed upon the foreign like product or components thereof" and because at the verification Acindar established "the amount and nature" of the adjustments involved to the satisfaction of the Department as required by 351.401(b)(1) of the Department's regulations. See the August 27, 2002 verification report at pages 15-16.

Furthermore, Acindar claims that even if the Department determines that the rebates do not consist of rebates for taxes, the Department should still make the adjustment as a circumstance-of-sale adjustment under section 773(a)(6)(C)(iii) of the Tariff Act. Under this provision of the Tariff Act, circumstance-of-sale adjustments are not limited to adjustments for rebates of indirect taxes paid. The statute instead directs the Department to adjust for "any difference...wholly or partly due to...differences in the circumstances of sale." See section 773(a)(6)(C) of the Tariff Act.

However, Acindar argues that if the Department did intend to make the adjustment under section 773(e) of the Tariff Act, doing so was permissible. The express language of the Tariff Act, Acindar argues, provides that "the cost of material 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." Acindar argues that this language accurately describes the Reintegro and Factor de Convergencia programs: both are reimbursements for indirect taxes, apply to all products (whether input materials or finished merchandise), and are remitted when subject merchandise is exported.

Finally, Acindar argues that while the Department has the option of making the adjustments under either of the three sections of the statute, it does not have the option of not making the adjustment at all. It states that the Department has verified the nature and amount of the rebates received under both programs, and accordingly is required to make an adjustment for each under section 773(a)(6)(C)(iii) of the Tariff Act.

After receiving the above comments, the Department issued to Acindar a supplemental questionnaire stating that in order to qualify for the Convergence Factor and Reintegro adjustments, it must demonstrate that the reimbursements received under these programs were directly linked to payment of domestic taxes on material inputs that were consumed in the production of the subject merchandise. See Letter from the Department to Acindar, January 31, 2003. Acindar submitted its response on February 12, 2003. We received comments from the petitioner on February 19, 2003, and rebuttal comments from Acindar on February 21, 2003.

Petitioner argues that Acindar has failed to demonstrate its entitlement to an adjustment to CV for either the Convergence Factor or Reintegro programs. With respect to the Convergence Factor, petitioner argues that for two reasons Acindar has failed to meet its burden of proving entitlement to an adjustment. First, petitioner states that the narrative explanation of the Convergence Factor program contained in Acindar's February 12, 2003 submission shows that the amounts remitted under that program were not "internal taxes" that qualify for an adjustment under the plain language of the statute. In its February 12, 2003 submission, Acindar stated:

> Acindar must import many of the inputs used to produce OCTG... As an importer, Acindar was liable for the convergence factor times the value of the entry for each input that it imported... The payment was a tax imposed on inputs that were used to produce OCTG. When Acindar exported the OCTG, it was reimbursed an amount equal to the convergence factor times the value of the export. Thus, some portion of the tax collected was refunded upon exportation of the subject merchandise. See Acindar's February 12, 2003 submission, p. 2.

Based on this statement, petitioner argues that the remittances Acindar received were not "internal taxes." The Department's regulations define an internal indirect tax as "a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than ... an import charge." See 19 CFR § 351.102(b)(2002) (emphasis added). An import charge, in turn, is defined as "a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax." Id. (emphasis added). According to these definitions, petitioner argues, the charges under the Convergence Factor program were import charges, and not internal taxes. As such, petitioner argues, they do not qualify for an adjustment to CV under the statute because 773(e) of the Tariff Act provides for an adjustment only for "internal taxes."

Furthermore, petitioner argues that the amounts the importers paid under the Convergence Factor program were not taxes at all, much less internal taxes. It argues that not all government charges represent taxes, and that the language of the decree authorizing the Convergence Factor program nowhere refers to the charges in question as taxes or even suggests that they could be taxes. Instead, that decree provided for importers to pay an import charge equal to the convergence factor multiplied by the CIF value of the imports, and provided for the convergence factor to be "equivalent to one United States dollar less the simple average of one United States dollar and one European euro..." See Acindar's February 28, 2002 submission, exhibit SC-8, pp. 10-11. Petitioner states that the Department found at verification, and Acindar has admitted, the Factor Convergence program was an export program designed to make the Argentine peso more competitive with other world currencies. See August 27, 2002 verification report at 14-15. Thus, petitioner argues, the import charges under the program were never intended to be taxes.

Second, petitioner argues that even if the remittances Acindar received were remittances for taxes, Acindar still does not qualify for a CV adjustment for them. Petitioner asserts that Acindar has not shown that the amounts remitted under the program were directly linked to the amounts that it actually paid on material inputs incorporated into the exported merchandise for which the remittances were made. Petitioner states that, as an initial matter, such a linkage is virtually impossible from a timing standpoint. The Convergence Factor program went into effect on June 19, 2001. Thus, only charges paid on inputs that were imported on or after that date, but that were used to produce subject merchandise that was exported by the end of the POR on July 31, 2001 could possibly qualify for the adjustment to CV. Petitioner argues that Acindar has not shown that the import charges Acindar paid during this time frame were paid on inputs that were actually used in the production of OCTG shipped to the United States during the POR. Petitioner states that Acindar simply has not made any attempt to trace how the amounts remitted to it under the Convergence Factor program for any of its sales of subject merchandise to the United States were linked to charges that it paid on inputs consumed in the production of the merchandise in question.

With respect to the Reintegro, petitioner again argues that Acindar has failed to meet its burden of establishing its entitlement to this adjustment. It states that the only documentation Acindar submitted in its February 12, 2003 submission in support of its claim for an adjustment to CV are invoices from

Acindar's vendors that include indirect taxes paid on inputs that could be used to produce OCTG. Thus, petitioner argues, Acindar has failed to meet the required burden of proof for two reasons. First, Acindar has failed to show that the materials for which it purportedly incurred indirect taxes were, in fact, incorporated or consumed in the production of the subject merchandise. Second, and more importantly, Acindar has provided no showing of the required direct linkage between the amounts remitted under the Reintegro program and the indirect taxes that it actually paid on material inputs used to produce the subject merchandise. Petitioner also argues that the instant case differs from See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 67 FR 62138 (October 3, 2002) (Cold-Rolled from Argentina), in which the Department granted the Reintegro adjustment. In Cold-Rolled from Argentina, petitioner argues, the respondent had submitted a tax incidence study showing the amount of taxes incurred on material inputs used to produce the merchandise under investigation. In this review, petitioner states, Acindar has submitted no such study.

With respect to the Factor Convergence program, Acindar argues that its liability as an importer under the Convergence Factor program did not constitute an import charge. Acindar states, citing the U.S. Supreme Court, that an import charge is "a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax." See United States v. U.S. Shoe, 523 U.S. 360, 362 (1998) (U.S. Shoe) (citing Pace v. Burgess, 92 U.S. 372, 375-376 (1876)). In U.S. Shoe the Supreme Court held that the Harbor Maintenance Tax was not a user fee because (1) the amount was determined entirely on an *ad valorem* basis, and (2) the amount did not correlate with the government services used or usable by the exporter. Id. 523 U.S. at 369. (Acindar acknowledges that in the instant case the Supreme Court was interpreting the Export Clause of the U.S. Constitution rather than Argentine law, but argues that that does not make the Court's reasoning any less sound.) Acindar argues that like the Harbor Maintenance Tax, the taxes paid under the Convergence Factor program were border taxes, which fall within the Department's definition of an indirect tax. They were assessed strictly on an *ad valorem* basis, and did not correlate in any way to a government service rendered to the importer. The Convergence Factor payments, Acindar states, were simply a means of generating hard currency income for the government, and were thus internal indirect taxes.

With respect to the Reintegro program, Acindar states that part of petitioner's argument is unclear. Specifically, Acindar finds it unclear whether petitioner's concern is that Acindar might be making OCTG without the necessary materials, or that Acindar might purchase raw materials without using them to produce finished merchandise. Acindar states that in either case the Department would surely have noticed such behavior at verification. Instead, Acindar states, the Department toured Acindar's production facilities, examined invoices, and verified purchases, sales, and costs (including material costs). Acindar states that all was satisfactory, and it is unclear what more petitioner wants the Department to do.

With respect to both the Convergence Factor and Reintegro programs, Acindar argues that petitioner's argument that Acindar has failed to show the necessary linkage between taxes paid and reimbursements received places to heavy a burden on both Acindar and the Department. Acindar states that petitioner would have the Department attempt to trace which imported raw materials were used in which exports to the United States. This alleged requirement, Acindar argues, is unreasonable, and is not the Department's practice when examining the relationship between a rebate and indirect taxes. Acindar states that the Department is not required to trace the evolution of each remittance from indirect tax paid on a particular package of input material through incorporation into a particular item to remittance of the exact amount of indirect taxes paid at the exact moment the finished product is exported. The Department, Acindar states, need only determine that taxes were paid, that there were rebated, and that there was a relationship between the rebated taxes and the subject merchandise. See e.g., American Alloys, Inc. v. United States, 30 F.3d 1469, 1474 (Fed. Cir. 1994); Daewoo Electronics Co., Ltd. v. United States, 6 F.3d 1511, 1517 (Fed. Cir. 1993). Acindar argues its demonstration that it paid indirect taxes on OCTG inputs constitutes adequate proof of that relationship.

Acindar also argues that the Department is not required to determine whether inputs incorporated or consumed in the production of subject merchandise were purchased during the POR. Acindar states that the Department routinely accounts for certain costs and revenues by examining the amounts incurred or realized during the POR even though they may relate to sales outside the POR. For example, the Department routinely treats warranty expenses, advertising, and technical service as direct selling expenses even though they may arise from transactions outside the POR. Acindar cites as evidence the Department's questionnaire which contains the standard instruction to "report the unit cost of warranty incurred during the POR" including any direct expenses "less any reimbursement received from the customer or unaffiliated parts suppliers." See October 25, 2001 questionnaire, p. C-27.

Furthermore, Acindar argues that the determination to make an adjustment to CV in the preliminary results for the Convergence Factor and Reintegro programs was in accordance with the Department's standard practices. For example, in Cold-Rolled from Argentina, the Department found that the record supported the relationship between the rebate received under the Reintegro program and the indirect taxes paid throughout the production and distribution process. See Cold-Rolled from Argentina, 67 FR 62138 (October 3, 2002), and accompanying Decision Memorandum at Comment 1 (p. 5). Acindar asserts that the Department reached this determination after reviewing the same information already on the record in this review.

Moreover, Acindar argues the petitioner's single example of a case in which the Department denied an adjustment for the Reembolso (the predecessor of the Reintegro) differs from the present case. In Silicon Metal from Argentina, Acindar states, the Department denied the Reembolso adjustment because the respondent was unable to isolate the Reembolso amount received on exports to the United States from that received on exports from all countries. The Department found, Acindar states, that this over-inclusive amount did not bear a sufficient relationship to the material inputs incorporated into exports to the United States. See Silicon Metal from Argentina, 62 FR at 5617. In contrast, in this review, Acindar states, it reported the value of the Reintegro or Convergencia Factor collected for each individual Customs Bill of Dispatch associated with each U.S. sale of subject merchandise, a level of detail not provided in Silicon Metal from Argentina. See Acindar's February 28, 2002 submission, p.

16.

Department Position:

To qualify for a downward adjustment to CV for internal taxes reimbursed upon export under section 773(e) of the Tariff Act, parties are required to show that the amount rebated is for internal taxes in the exporting country imposed on materials employed in producing the subject merchandise. In determining whether an adjustment is appropriate here, we employed a standard akin to that employed by the Court of Appeals for the Federal Circuit. See American Alloys, 30 F. 3d. at 1474 (requiring that in order to qualify for an increase to U.S. price under section 772(d)(1)(C) of the pre-URAA statute, the claimed adjustment must bear "a direct relationship to the exported product or a physically incorporated component of that product"). To receive an adjustment for import duties rebated upon export (i.e., a duty drawback adjustment), different requirements must be met, as discussed below. Here, we have determined that the Reintegro reimbursement constitutes a reimbursement of internal taxes and made a downward adjustment to CV. However, we have determined that the Convergence Factor is a duty drawback adjustment, and that Acindar has not met its burden of showing its entitlement to this adjustment because it has not met the requirements for a duty drawback adjustment discussed below. Therefore, in these final results we have granted the Reintegro reimbursement adjustment, but have denied the Convergence Factor adjustment.

In its original section C questionnaire response Acindar made a duty drawback claim for reimbursements received under the Reintegro and Factor Convergence programs. It stated, "Acindar receives a reimbursement of duties and other indirect taxes on imports upon exportation." See Acindar's December 13, 2001 section C submission, p. C-26 and exhibit C-4. Accordingly, in our January 28, 2002 supplemental questionnaire, we asked Acindar various questions about the duty drawback programs. In order to receive a duty drawback adjustment under a standard duty drawback program, the Department has interpreted the Tariff Act to require a respondent to satisfy a two-prong test: (1) whether the import duty and rebate are directly linked to, and dependent upon, one another; and (2) whether the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. See Rajinder Pipes, Ltd. v. United States, 70 F.Supp. 2d 1350, 1358 (CIT September 17, 1999).

In particular, we asked Acindar to "demonstrate... that the amount rebated by the Government of Argentina is 'directly linked' to import duties your company paid" and to provide documentation showing that "your company had a sufficient quantity of imports... to account for the amount rebated on exports." See the Department's January 28, 2002 supplemental questionnaire to Acindar, p. 6. Acindar provided no demonstration or documentation in response to our questions, and as part of their answers to both questions Acindar stated that "these programs are not linked to import duties." Elsewhere in its narrative answer to these questions, it explained that the Factor Convergence and Reintegro programs were not duty drawback programs, but instead constituted reimbursements for "domestic indirect taxes." <u>See</u> Acindar's February 28, 2002 submission, pp. 14-16.

However, in its February 12, 2003 submission, Acindar stated, as explained above, that:

> Acindar must import many of the inputs used to produce OCTG... As an importer, Acindar was liable for the convergence factor times the value of the entry for each input that it imported... The payment was a tax imposed on inputs that were used to produce OCTG. When Acindar exported the OCTG, it was reimbursed an amount equal to the convergence factor times the value of the export. Thus, some portion of the tax collected was refunded upon exportation of the subject merchandise. <u>See</u> Acindar's February 12, 2003 submission, p. 2.

Based on this explanation, we determine that, despite the statement in its February 28, 2002 submission, the Convergence Factor adjustment is more appropriately considered as a claim for a duty drawback adjustment because it consists of a reimbursement of duties paid on imports, and not internal taxes. As such, we would need answers relevant to the two-pronged test discussed above before we could make an adjustment for the Convergence Factor reimbursements. Since Acindar did not provide answers to the questions that we asked in the January 28, 2002 supplemental questionnaire, we have not made the Convergence Factor adjustment in these final results of review.

With respect to the Reintegro, we agree with Acindar that the record supports making this adjustment under 773(e) of the Tariff Act. Acindar's narrative explanation of the Reintegro in its February 12, 2003 submission and its February 28, 2002 submission is consistent with our understanding that it provides for rebate of certain indirect taxes. Furthermore, in its February 12, 2003 submission Acindar provided sample statements from its suppliers of inputs used in the production of OCTG which demonstrate that Acindar pays internal taxes on these inputs. <u>See</u> Acindar's February 12, 2003 submission, exhibit 5. Furthermore, Argentine law states that the Reintegro is a reimbursement for internal taxes. <u>See</u> Acindar's February 28, 2002 submission, exhibit SC-8.

Our determination to make this adjustment is in accordance with <u>Cold-Rolled from Argentina</u>, in which the Department also granted the Reintegro adjustment. There the Department made an adjustment for the Reintegro reimbursement after having examined documentation related to domestic taxes assessed and reimbursement received. <u>See</u> <u>Cold-Rolled from Argentina</u>, 67 FR at 62138, and accompanying Decision Memorandum at Comment 1 (p. 5). Though petitioner is correct that the respondent in <u>Cold-Rolled from Argentina</u> did submit a tax incidence study, and Acindar did not submit one here, we believe there is a sufficient basis for an adjustment in this case.

Because we are basing all calculations on a price-to-CV comparison, and because 773(e) of the Tariff Act directly addresses the manner in which taxes should be treated when using CV, we have made the adjustment in accordance with 773(e) of the Tariff Act, and have subtracted the Reintegro reimbursement from COM. This treatment differs from that of our preliminary results, in which we inadvertently subtracted the Reintegro reimbursement from total direct selling expenses.

Comment 6: Clerical Errors

Acindar argues the Department erred in its preliminary results by double-counting packing expenses (PACKINGU) in the computation of foreign unit price in dollars (FUPDOL) and in the computation of CV profit (CVPROFIT). In the preliminary calculations the Department calculated FUPDOL by summing a string of variables which included PACKINGU, and calculated CVPROFIT by applying a ratio to a sum of variables that included PACKINGU. Acindar states that in neither case is it necessary to make a separate addition for packing expenses because they are already included in the reported cost of manufacture (COM), and the set-up string for both FUPDOL and CVPROFIT included COM. See the August 27, 2002, verification report, pp. 17, 26-27, and 31-33. With respect to profit, Acindar argues that the Department can correct the error by changing the plus sign in front of PACKINGU to a minus sign in the setup string for the variable CVPROFIT. With respect to FUPDOL, Acindar argues that the Department can correct the error by dropping the addition of PACKINGU from the setup string in the computation of FUPDOL.

Petitioner agrees with Acindar that the Department's computation of CVPROFIT was incorrect, but disagree about how to correct the error. It argues that Acindar's proposed method of revising the calculation of CVPROFIT is incorrect because it fails to recognize that the denominator used in the calculation of the CV profit rate is Siderca's cost of production, which includes packing expenses. Therefore, it argues, because the CV profit rate is calculated using a denominator with packing expenses included, that rate should be applied to a COM for Acindar that also includes packing expenses. Therefore, petitioner argues that the correction should consist only of removing PACKINGU from the setup string for CVPROFIT, and not of changing the plus sign to a minus sign.

Domestic interested parties argue that there is no evidence on the record to substantiate Acindar's statement that packing costs are included in the reported COM. With respect to CVPROFIT, domestic interested parties argue that if the Department determines to make a change in the treatment of packing, it should only delete the packing variable from the calculation of CVPROFIT, and should not change the plus sign to a minus sign. With respect to the calculation of FUPDOL, domestic interested parties argue that this variable is correctly calculated by, *inter alia*, adding PACKINGU to CV to make FUPDOL comparable to U.S. price, and thus should not be removed from the set-up string.

Department Position:

We disagree with the domestic interested parties that there is no evidence on the record to substantiate Acindar's claim that its packing costs are included in its reported COM. The connum-specific worksheets contained in exhibit SD-1 of Acindar's February 28, 2002 submission shows that packing costs were included in the reported COM. Therefore, we agree with Acindar that our calculations of CVPROFIT and FUPDOL contained an error.

With respect to CVPROFIT, we agree with petitioner that this error should be corrected by removing the addition of PACKINGU, rather than by changing the plus sign to a minus sign. To change the plus sign to a minus sign (as Acindar proposes) would be to entirely remove packing costs from the set-up string. This would skew the computation because, as petitioner has pointed out, the denominator of the ratio being applied to the set-up string is Siderca's COGS, which included packing costs. Therefore, in these final results we have removed PACKINGU from the setup string, but have not changed the plus sign to a minus sign.

With respect to FUPDOL, we agree with Acindar that because packing costs are included in COM, it is not necessary to make a separate addition for them. Therefore, we have removed them from the setup string in these final results.

Comment 7: No Shipments

Following release of the March 4, 2003 Siderca verification report, the Department allowed parties an opportunity to comment. Petitioner submitted comments on March 6, 2003. Siderca submitted rebuttal comments on March 7, 2003.

Petitioner argues that evidence on the record indicates that Siderca had shipments of subject merchandise during the POR, and that therefore the Department should apply adverse facts available to Siderca because Siderca reported no sales, and stated in its submission that it had no shipments to the United States during the POR. See Siderca's October 9, 2001, November 6, 2001, December 11, 2001, and February 20, 2002 submissions. Petitioner argues that it previously put U.S. Census Bureau IM-145 data on the record which show 941 net tons of seamless OCTG entered U.S. Customs territory during the POR. Therefore, petitioner argues, the burden rests on Siderca to establish its no-shipment claim and to account for the merchandise it produced. Petitioner asserts Siderca has failed to meet its burden in several significant respects. Petitioner cites three alleged discrepancies that arise from the verification of February 20-22, 2003.

The first alleged discrepancy concerns the disposition of a shipment about which petitioner raised questions prior to the verification. Petitioner asserts the explanation that Siderca provided at verification was "convoluted and inconsistent," and never accounted for the ultimate disposition of a portion of the order Siderca claimed had entered into a foreign trade zone (FTZ) in the United States. Specifically, petitioner argues that since Siderca alleges that part of the shipment was shipped to an FTZ, Siderca would have been required to document to the U.S. Customs Service the final disposition of the merchandise by showing that all shipments were either destroyed or re-exported. Based on Siderca's failure to provide such documents, petitioner argues, one can reasonably infer that the merchandise in question was not destroyed or re-exported, but that it entered into the commerce of the United States.

The second alleged discrepancy concerns a shipment that Siderca claimed was not subject to the order because it was drill pipe (a type of pipe excluded from the order effective August 11, 2000) and because it entered the United States under a temporary import bond (TIB). Petitioner argues that evidence on the record indicates the merchandise was not drill pipe. Furthermore, petitioner argues that if the shipment had really entered into the United States under a TIB, Siderca would have been required to document to Customs the destruction or exportation of the merchandise in order to qualify for TIB treatment. Siderca's failure to provide this documentation, petitioner argues, strongly suggests the merchandise actually entered the United States for consumption.

The third alleged discrepancy concerns a set of sales which Siderca claimed had been shipped to an FTZ in the United States. Petitioner argues Siderca failed to meet its burden with respect to these sales because it did not demonstrate that the merchandise had been destroyed or re-exported. The only reasonable conclusion to draw from this fact, petitioner argues, is that the merchandise entered the commerce of the United States.

Petitioner concludes from the above alleged discrepancies that Siderca knew or had reason to know that its OCTG was being shipped to the United States. Therefore, it argues, the Department should apply adverse facts available in the 2000-2001, and should continue to investigate this issue thoroughly in the 2001-2002 administrative review.

With respect to the first alleged discrepancy, Siderca first states that if the petitioner thinks the explanation given at verification was "convoluted and inconsistent," it is because the transaction in question was both complicated and atypical, and this fact is reflected in the verification report. See Siderca's March 7, 2003 comments at 3. Nevertheless, Siderca argues, none of the information on the record suggests that Siderca knew or had reason to know the balance of the material of which petitioners are concerned would be sent to other than an FTZ, as Siderca represented in its submissions and at the verification. Furthermore, Siderca argues that petitioner is incorrect in stating Siderca would have been required to document to the U.S. Customs Service that the shipments had been either destroyed or re-exported. Siderca states this obligation is placed on the party entering the merchandise into the FTZ, and that party was not Siderca, but the customer to whom Siderca made the sale.

With respect to the second alleged discrepancy, Siderca argues petitioner has cited only the customer's purchase order in support of its theory that the material was actually covered merchandise. Siderca argues that its own description of the merchandise is relevant to whether Siderca knew or should have known of any consumption entries of subject merchandise, and that all of Siderca's documentation shows the merchandise in question is drill pipe. Furthermore, with respect to petitioner's argument that Siderca had failed to document to Customs the destruction or re-exportation of the merchandise, Siderca argues that petitioner has made the same mistake as with the first alleged discrepancy. Siderca argues that it (Siderca) would have been required to document the destruction or re-exportation of the merchandise only if it were the entity entering the merchandise under TIB. Documentation on the record, Siderca asserts, shows that Siderca was not that entity.

With respect to the third alleged discrepancy, Siderca argues that petitioner has again confused the obligations of Siderca, as exporter, with those of the party entering the merchandise into the FTZ. Siderca reiterates that it is not Siderca's obligation under U.S. law or regulations to demonstrate the disposition of the merchandise it shipped into an FTZ; that responsibility, Siderca insists, lies with Siderca's customer which entered the merchandise into the FTZ. Siderca points out with respect to this shipment that its sales confirmation and invoice demonstrate clearly that the material was not destined for the United States.

Department Position

We disagree with petitioner's argument that the record of this review establishes that Siderca had shipments of subject merchandise which were entered for consumption in the Customs territory of the United States. Thus, as discussed further below, assigning facts available to Siderca would be inappropriate in this case.

From February 20 to 23, 2003, the Department conducted an on-site verification of Siderca's sales during the POR, as well as in the subsequent 2001-2002 POR. We examined Siderca's sales ledger and export schedules, traced numerous sales and production lots (some identified to Siderca before the start of verification and some not until the first day of verification), and verified Siderca's reported quantity and value. See the Department's March 4, 2003 verification report. We found no evidence at verification that Siderca had knowledge of any shipments to the United States that were to be entered for consumption.

With respect to all three alleged discrepancies, petitioner has argued that Siderca failed to submit evidence of the destruction or re-exportation of the merchandise. However, we agree with Siderca that there is no record evidence that Siderca was the entity that entered the merchandise into the FTZ or under TIB. Therefore, the absence of the documentation which petitioner references is not evidence that Siderca knew the merchandise was destined to enter the commerce of the United States, and petitioner has provided no evidence to the contrary. Furthermore, even if Siderca were the entity that entered the merchandise into the FTZ or under TIB, the mere absence of documentation that was never specifically requested by the Department but that could

have been provided by Siderca does not warrant the use of facts available because it also does not constitute affirmative evidence that the respondent knew or had reason to know that the merchandise was entered into the commerce of the United States.

In the absence of any evidence on the record of the review that Siderca knew or had reason to know that its shipments were destined for the United States for consumption, and in light of the voluminous record evidence that it, in fact, did not know that merchandise was ultimately purchased in the United States, and petitioner has provided no evidence to the contrary, we have determined not to apply facts available or otherwise in calculating a rate for Siderca for the administrative review. Instead, the Department has determined to rescind Siderca from the administrative review based upon Siderca's having had no knowledge of shipments to the United States.

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE ______ DISAGREE ___

____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

____
(date)